



Public Prosecution Service for Northern Ireland

# Policy for Prosecuting Cases of Human Trafficking

Independent, Fair and Effective



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# 1. Introduction

Trafficking in human beings is a serious crime which demeans the value of human life. It is a form of modern day slavery, whether it is for labour, sexual or other forms of exploitation. It involves the recruitment and movement of adults and children to exploit them in degrading situations for financial rewards for their traffickers.

Trafficking often takes place across international borders but it can also happen within the United Kingdom (UK), to both foreign nationals and UK citizens. It has a devastating effect not only on the individuals trafficked but also their families. It causes harm to the victims and undermines the fabric of society as a whole.

The most effective means of combating trafficking is disruption, which includes prosecution. The Public Prosecution Service (PPS) is committed to reducing the harm caused by trafficking and exploitation through prosecuting those responsible where the Test for Prosecution is met.

This Policy explains the way in which the PPS deals with cases involving human trafficking and the wide range of other crimes associated with it. It explains the role of the PPS, how prosecution decisions are taken and how prosecutions are conducted at court. It describes how the PPS works with the police and other investigators in case building and the PPS's role in supporting and protecting victims and witnesses throughout the process.

This Policy should be read in conjunction with the Code for Prosecutors and other PPS policies which include the PPS Victims and Witnesses Policy and the Policy for Prosecuting Cases of Rape.

Policy and guidance has also been published by other agencies in Northern Ireland detailing the services, support and protections available to victims of human trafficking. Some of these are referred to in this Policy.

The PPS recognises the central role of victims and witnesses in achieving successful prosecutions. However it recognises that some victims may be reluctant to tell police or authorities what has happened to them. They may be apprehensive or frightened about coming to court to give their evidence or find it difficult to understand the legal process.

Many victims are concerned about the consequences of giving evidence and may be reluctant to support criminal proceedings. They may, for example, fear risk of harm to themselves or their family members. Some victims may fear that exposing what has happened to them to their family or their community could lead to social isolation or even honour-based violence.

## 1. Introduction

Fear and mistrust of authorities can be a significant barrier for some victims who may have experienced corruption in their country of origin, poor responses to previous reports of violence or possibly violence inflicted by authorities. Fear of immigration authorities may also be a major concern for victims especially if their immigration status has not been confirmed.

Female victims may be reluctant to report offences as their experience of discrimination in their home country may lead to them assuming that the authorities here will not believe them or will blame them. Male victims of sexual exploitation may be particularly reluctant to disclose what has happened to them due to a fear of being stereotyped. Lesbian, Gay, Bisexual or Transgender victims may have experienced violence or threats of death in their home country. Victims with a disability may have experienced discrimination or even violence in their home country due to their disability and may therefore mistrust authorities or fear that their report will not be taken seriously.

These fears are often used by traffickers to manipulate victims in order to prevent them disclosing information to police, supporting prosecutions and accessing services.

The complexity of human trafficking cases can result in the victim being involved in a number of different legal processes which may take place in parallel or subsequent to any criminal proceedings for example, the National Referral Mechanism (NRM) determination process or an asylum claim. The PPS recognises that this has significant implications for victims who may be required to provide information to a number of authorities with the resultant risk of them being re-traumatised. Prosecutors will be aware of this impact and the need therefore for effective communication with the victim, their legal representative, if one has been instructed, and such other agencies as may be involved with the victim.

It is therefore essential that victims of human trafficking are afforded the proper protection, support and treatment to enable them to assist with criminal proceedings and participate fully in the prosecution process.

The PPS will consider the range of legal measures available to support and protect trafficked victims and will make appropriate applications to the court to enable victims to give their best evidence. When necessary the PPS will also ensure that an appropriate interpreter or translator is provided to enable victims to give evidence at court, to translate correspondence or to translate for a victim at any meetings with the prosecutor. More information on the measures which can be applied for at court to assist victims and witnesses and on the provision of interpreters is provided at section 14 (page 33).

The United Nations Convention on the Rights of the Child recognises that children have the right to be protected from abuse or exploitation. Article 3 of the Convention states, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Child victims of trafficking will need extra support and are likely to be in need of welfare services and, in many cases, safeguarding. Although the main responsibility for children's welfare and safety will usually lie with other agencies such as social services, health and education services, the PPS will positively engage with other authorities and agencies to support the appropriate safeguarding of children through the prosecutorial process.

The PPS is committed to working with agencies, both statutory and voluntary, to provide victims and witnesses with appropriate protection and support to ensure their safety thereby enabling them to support a prosecution. A list of agencies that support trafficked victims is available at Annex 5, page 58.

### **Working with others**

The PPS recognises the need for a multi-agency response to the challenges of dealing with human trafficking. The PPS works with the police, the Organised Crime Task Force (OCTF), other colleagues in the criminal justice system and the voluntary sector in identifying ways to increase disruption, prevention, investigation and prosecution as well as improving victim and witness care and protection. It is recognised that non-governmental organisations will often have greater experience of victims and their differing needs and that a criminal justice route is not the only way of responding to trafficking; criminal (and civil) law may need to be used in conjunction with support services for victims.

The PPS is a key member of the OCTF and its Human Trafficking Sub-Group. The OCTF is a forum which brings government, law enforcement and a range of agencies together to set priorities for tackling organised crime in Northern Ireland, including Human Trafficking. The Human Trafficking Sub Group includes representatives from the Police Service of Northern Ireland (PSNI), the Department of Health Social Services and Public Safety (DHSSPS), the Department of Justice (DOJ), the Department of Employment and Learning, (DEL) the Home Office, the UK Human Trafficking Centre (UKHTC), the Gangmaster Licensing Authority (GLA) and An Garda Síochána.

The PPS also assists the Department of Justice in ensuring that Northern Ireland is compliant with relevant European Union Directives. It also co-operates with agencies and organisations that are responsible for monitoring the UK's compliance, for example GRETA – the Group of Experts on Action against Trafficking in Human Beings and the Anti-Trafficking Monitoring Group.

Given the inter-jurisdictional aspect of human trafficking the PPS will continue to work closely, when required, with the Crown Prosecution Service in England and Wales and the Office of the Procurator Fiscal in Scotland, as well as obtaining information, when required, from enforcement agencies in other countries. It is recognised that the land border between Northern Ireland and the Republic of Ireland is unique in the UK. The PPS has developed close working relationships, through various fora, with An Garda Síochána and with the Office of the Director of Public Prosecutions, Ireland.

## 2. What is human trafficking?

The Palermo Protocol<sup>1</sup> and the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (the Convention) describe trafficking as:

‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having the control over another person, for the purpose of exploitation’.

Exploitation is defined as including, ‘at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

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

The Convention provides that human trafficking has three constituent elements;

The Act (*What is done*)

Recruitment, transport, transfer, harbouring and receipt of persons.

The Means (*How it is done*)

Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability and giving payments or benefits.

The Purpose (*Why it is done*)

For the purpose of exploitation, including: prostitution of others, sexual exploitation, forced labour, slavery or similar practices, removal of organs and other types of exploitation.

In relation to child victims, the Convention provides that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in human beings” even if it does not include the means referred to above. A child cannot consent to their trafficking and cannot consent to their exploitation and therefore any child moved or recruited into or through a country for the purposes of exploitation is a victim of human trafficking. The Convention provides that a child is a person under the age of eighteen years.

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<sup>1</sup> The Palermo Protocols are made up of three Protocols including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention Against Transnational Organised Crime. The Palermo Protocols were adopted by the United Nations in 2000 in Palermo, Italy and ratified by the UK on 9 February 2006.

Human trafficking is often considered to be organised crime that operates on a large commercial scale and covers a range of criminal activity. However, it can also be committed by an individual who may be known or related to the victim or may be in a position of trust.

The means of trafficking may also be more subtle than those described above. For example, victims may have an emotional attachment to their trafficker and may be psychologically bullied or coerced into a situation of exploitation. Or they may be totally dependent on those who are exploiting them due to age or disability. In some cases traffickers may use the threat of cultural practices such as Juju or Voodoo as a means of controlling and silencing victims.

In Northern Ireland, the main offences relating to human trafficking are contained in the following legislation:

### **The Sexual Offences Act 2003**

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

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

with the intention of committing a relevant sexual offence<sup>2</sup> on that person or with the belief that another person is likely to commit a relevant sexual offence on that person.

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

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

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

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

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<sup>2</sup> "Relevant Offence" means: an offence under Part 1 of the Sexual Offences Act 2003, an offence under section 1(1)(a) of the Protection of Children Act 1978, an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008, an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998, an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978, or anything done outside England and Wales and Northern Ireland which is not an offence contained within the aforementioned legislation but would be if done in England and Wales or Northern Ireland.

## 2. What is human trafficking?

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

Additionally if a UK citizen or a person who at the time of the offence was habitually resident in Northern Ireland or a body incorporated under the law of a part of the UK arranges or facilitates travel of a person into, within or out of a country anywhere else in the world, knowing or believing that they will be exploited, it is possible where the Test for Prosecution is met, to prosecute that person for offences of human trafficking.

It is also an offence to attempt to commit a trafficking offence, to participate as an accomplice in a trafficking offence or to organise or direct others to commit a trafficking offence.

Further legislation and other provisions relevant to human trafficking and related offences are contained at Annex 3, page 54.

The types of exploitation are wide ranging and can include the following:

### **Sexual**

This is frequently through prostitution where victims are placed into brothels or forced to work on the streets. Victims are forced to provide sexual services to many individuals and receive little or no money. They regularly suffer sexual and physical violence and abuse. Whilst it predominantly affects women, young girls, boys and men can also be the victims of sexual exploitation. Sexual exploitation can also occur within debt bondage. Victims are trapped in prostitution through the use of unlawful "debt" purportedly incurred, for example for their transportation or recruitment which exploiters insist they must pay off before they can be free. Victims may also be sold from one exploiter to another.

### **Forced labour and domestic servitude**

Trafficking for forced labour or domestic servitude covers a wide spectrum of exploitative situations. Such situations range from those who have been locked up or severely restricted in their freedom of movement, and physically and/or sexually abused, to those who are deceived about the conditions of their contract, receive little or no financial rewards and reside and work in poor conditions. This may involve being forced to work very long hours and hand over any wages they may earn to their



traffickers or controllers. Violence and threats are used against victims or against their families in their home country if they fail to comply. Threats are sometimes made to expose the worker to the authorities, for example, because of the worker's immigration status. Where they hold a passport this is often confiscated thus restricting their movements. Many victims are also in debt bondage.

The International Labour Organisation (ILO) has suggested that factors which may indicate forced labour include:

- threats or actual physical harm;
- restriction of movement and confinement to the workplace or to a limited area;
- debt bondage;
- withholding of wages or excessive wage reductions that violate previously made arrangements;
- removal/retention of passports and identity documents; and
- threat of reporting to the authorities where the worker is of illegal status.

Victims of domestic servitude live and work in households where they are forced to work through threats of serious harm and physical and/or sexual assaults. There is often restriction of liberty and movement and victims cannot leave their accommodation. Victims are economically exploited, totally dependant on other individuals and cannot end the relationship of their own volition. In essence it is a form of slavery.

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

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

The PPS will continue to work with other agencies, such as the GLA, to build strong cases to ensure effective prosecution of exploitative employers.



## 2. What is human trafficking?

### **Enabling others to acquire benefit**

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

### **Children**

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

### **Organ harvesting**

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

Indicators of human trafficking are set out on the Blue Blindfold Campaign (the international fight against human trafficking) website at [www.blueblindfold.co.uk](http://www.blueblindfold.co.uk).

Trafficking of human beings should not be confused with 'smuggling' of human beings. The next section explains some of the differences.

## 3. What is smuggling?

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

Victims who are trafficked have little choice in what happens to them, and it is generally against their will or under some form of false pretence. People smuggling generally takes place with the consent of the person being smuggled, although some may feel that they have no choice but to seek to be smuggled as they may have to flee from persecution or conflict. Other reasons for persons seeking to be smuggled may include employment and economic opportunity. Once persons have been moved across international borders, the relationship with those assisting in the smuggling ends upon arrival at their destination. Smuggling is a crime which involves the illegal entry into a country of which that person is not a national or resident either clandestinely or through deception, such as the use of fraudulent documents.

Factors which assist to distinguish between smuggling and trafficking are:

### **Consent**

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

### **Exploitation**

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

### **Profits**

These are derived primarily from transportation and facilitation of illegal entry in to another country, whereas traffickers profit primarily from the exploitation of their victims.

However, in some cases the distinction between smuggled and trafficked persons will be blurred. A victim may have started out being smuggled into the country, but during their journey or when they arrive at their destination they could become the victim of trafficking. This can happen if someone has started their journey to the UK as a willing participant, perhaps travelling to the UK to work in a new job. However, either during their journey or when they arrive, they become vulnerable to traffickers and are exploited. They may be subjected to unsafe conditions whilst travelling to their destination, subjected to sexual or physical abuse or be forced to participate in other criminal activities. It is important to examine all the circumstances to determine whether someone has been smuggled or trafficked.

## 4. The role of the Public Prosecution Service

The Public Prosecution Service is the principal prosecuting authority for Northern Ireland.

The aim of the PPS is to provide the people of Northern Ireland with an independent, fair and effective prosecution service, which observes international human rights standards.

### **Independence**

The Prosecution Service is wholly independent from both police and government. Its decisions are based on an impartial and professional assessment of the available evidence and the public interest.

### **Fairness**

All actions are undertaken with complete impartiality, to the highest ethical and professional standards. All persons, including those accused of offences, will be treated fairly. All victims and witnesses will be treated with respect and sensitivity.

### **Effectiveness**

All prosecution decisions are taken and every prosecution conducted in an effective and efficient manner. The PPS will provide value for money, while delivering a timely and quality service.

### **Human Rights**

The PPS is committed to observing international human rights standards. It is a member of the International Association of Prosecutors (IAP) and promotes the standards of professional responsibility adopted by that association:

‘Prosecutors shall, in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be affected, and seek that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible.’

(IAP Standards para 4.3b)

The PPS is a public authority and must act in a manner compatible with the human rights enshrined in the ECHR.

The PPS in exercising its functions will ensure that it complies with the binding obligations of international law ratified by the UK, including the principles of the

European Convention on Human Rights set out in the Human Rights Act 1998, the UN Declaration of Basic Principles of Justice for Victims of Crime (and Abuse of Power), relevant EU Directives and Conventions and relevant case law. These commitments apply to the rights of victims, witnesses and accused persons.

The following rights are potentially engaged:

Article 2 The right to life;

Article 3 The prohibition of torture or inhuman or degrading treatment or punishment;

Article 4 The prohibition of slavery, servitude and forced or compulsory labour;

Article 6 The right to a fair trial;

Article 8 The right to respect for family & private life.

Actions engaging human rights should always be lawful, necessary and proportionate to the legitimate aims of preventing crime or protecting the rights and freedoms of others.

### **The Structure of the PPS**

The PPS is headed by the Director of Public Prosecutions for Northern Ireland.

In addition to the Director and the Deputy Director, the PPS is comprised of Public Prosecutors and administrative staff.

Public Prosecutors are individual members of staff of the PPS who have been designated by the Director to act on his behalf in the conduct of criminal proceedings including exercising the right of audience to prosecute in court.

Public Prosecutors are either a barrister at the Bar of Northern Ireland or solicitors of the Court of Judicature.

External barristers in independent practice may be instructed to prosecute cases at court on behalf of the PPS. The term prosecutor includes Public Prosecutors and external barristers instructed on behalf of the PPS.

Decisions in respect of prosecutions in cases of human trafficking are taken by Public Prosecutors who are qualified lawyers of appropriate seniority and experience. The PPS will ensure that any external barrister instructed in a case involving human trafficking is experienced and skilled in the conduct of such cases and efforts will be made, wherever possible, for the same barrister to deal with the case at all stages.

The PPS is a regionally based organisation. There are four regions each coterminous with one or more court divisions. Each of the four regions is headed by a Regional Prosecutor who is accountable to the Director.

Each Regional Prosecutor has overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in the region with the exception of those files which are considered by Public Prosecutors centrally (for example, files requiring specialist prosecutors such as complex fraud cases).

#### 4. The role of the Public Prosecution Service

A map depicting the locations of the PPS regional offices and contact details for the regional offices is provided at Annex 1, page 49.

##### **Relationship with the Investigator**

In Northern Ireland the PSNI and the Serious Organised Crime Agency<sup>3</sup> (SOCA) are the main agencies responsible for investigating cases of human trafficking and for gathering the evidence.

When an investigator has obtained evidence that an identifiable individual may have committed a criminal offence, he or she is required to send a file to the PPS who will decide whether or not to prosecute and for what offences. The decision whether or not to prosecute is often a difficult decision and may involve the consideration of complex evidence which may derive from other jurisdictions where the rules of evidence may differ from Northern Ireland. Investigators submit cases to the PPS in two ways, by charging a person or by submitting a report on a person. On receipt of a case from an investigator the Public Prosecutor may request further investigation into any particular matter where it is considered that additional information is required in order to take a fully informed prosecution decision.

The PPS also provides investigators with prosecutorial advice on the prosecution of offences and pre-charge advice in accordance with the provisions of the Justice (Northern Ireland) Act 2002, such as the quality and admissibility of evidence, the evidence required to support the prosecution or whether the assets of a person under investigation should be made the subject of a High Court Restraint Order. This advice may be requested by the investigator at any stage of an investigation and early consultation may take place between the prosecutor and the investigator.

Due to the fact that cases of human trafficking often involve the trafficking of victims across borders, inter-jurisdictional issues often arise. The PPS will work closely with the police and other law enforcement agencies both locally and, where necessary, in the countries where the victim has been trafficked to make sure that all available evidence from all sources is gathered to prove the case. Within the European context, the organisation Eurojust, can assist in these cases in bringing all relevant agencies together.

When police to police enquiries to gather evidence from overseas cannot be used, a formal request for assistance from abroad must be made through an International Letter of Request in accordance with the Crime (International Co-operation) Act 2003. The prosecutor will issue a Letter of Request when it becomes apparent that evidence is required from outside the UK.

Prosecutors will also work closely with financial investigators to restrain and confiscate the financial assets of traffickers. Prosecutors will, where appropriate, apply for orders to restrain and confiscate any assets and property traced by investigators and, where appropriate, will prosecute for offences under the Proceeds of Crime Act 2002. More detailed information on the financial powers available and the ancillary or additional orders which may be imposed is contained in sections 17 and 18, pages 42 and 43

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<sup>3</sup> It is anticipated that SOCA will be incorporated within the National Crime Agency from 1 October 2013.

## 5. Prosecution decisions

It is the responsibility of the investigator to investigate alleged offences and to gather evidence about what has occurred. When the investigator has obtained evidence that an identifiable individual may have committed an offence, they send a file to the PPS to decide whether or not to prosecute and for what offences.

### **The Test for Prosecution**

The Code for Prosecutors provides guidance on how the Public Prosecution Service makes decisions about whether or not to prosecute.

Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. This is a two stage test as follows;

- i. The Evidential Test: the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction; and
- ii. The Public Interest Test: prosecution is required in the public interest.

The Public Prosecutor must analyse and evaluate all of the material submitted in a thorough and critical manner. The Evidential Test must be passed before the Public Interest Test can be considered. Each of these Tests must be separately considered and passed before a decision to prosecute can be taken.

### **The Evidential Test**

Public Prosecutors determine whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each offence.

A reasonable prospect of conviction exists if, in relation to an identifiable individual, there is credible evidence which can be adduced before a court upon which evidence an impartial jury or judge properly directed in accordance with the law, may reasonably be expected to find proved beyond reasonable doubt the commission of a criminal offence by the person who is prosecuted. It is necessary that each element of this definition is fully examined when considering the Evidential Test for each particular case. Further details in respect of the terms used in this paragraph are included at Annex 2, page 52.

## 5. Prosecution decisions

The Public Prosecutor will consider the evidence carefully and make a decision as quickly as possible. If necessary the Public Prosecutor may have to seek further information from police to enable a decision to be made.

Prosecutors will be aware when dealing with a case of human trafficking that the victim may not only be a victim of the offence of trafficking. Victims may have been subjected to other offences committed during the different stages of their journey and also during their exploitation. For example, a victim of sexual exploitation may have also been raped and threatened by their trafficker over a period of time. Or a victim of forced labour may have been falsely imprisoned, assaulted and threatened with violence or death. This is often done as a means of gaining and maintaining control over the victim.

Prosecutors will consider all potential offences which may be prosecuted in addition to offences of human trafficking if the available evidence meets the Evidential Test in respect of any offence.

### **The Public Interest Test**

If a case passes the Evidential Test, the Public Prosecutor must decide if a prosecution is required in the public interest.

Illustrative lists of Public Interest considerations for and against prosecution are contained in the Code for Prosecutors.

When considering the Public Interest Test, an important factor that Public Prosecutors should always take into account is the consequences for the victim of the decision whether or not to prosecute and any views expressed by the victim. These may include factors which may militate against a prosecution, for example the fact that a prosecution is likely to have an adverse effect on the victim's physical or mental health.

Careful consideration is given to the interests of the victim when deciding where the public interest lies. However the PPS prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. Striking this balance can be difficult. The views and interests of the victim are important, but prosecutors must form an overall view of the public interest when deciding on prosecution.

There is a presumption that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration in each individual case. Human trafficking is a serious offence and, while each case is considered on its own circumstances and merits, where the Evidential Test is met, a prosecution will usually take place unless there are strong public interest factors against prosecution which clearly outweigh those in favour of prosecution.

Prosecutors are under a duty to keep the Test for Prosecution under review throughout the duration of a case and prosecutors must take account of any change in circumstances. Whenever any additional evidence or information is referred to the prosecutor, it is reviewed to make sure that the Test for Prosecution is still met and therefore that the prosecution should proceed.

### **The burden and standard of proof**

At any criminal trial the burden of proof rests with the prosecution. It is for the prosecution to prove the case so that the jury is sure that the defendant is guilty.

For there to be a conviction in the criminal court, the prosecution has to prove the defendant's guilt beyond a reasonable doubt. This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Victims should not assume that a defendant has been acquitted because their evidence has not been believed.



## 6. Victims and Witnesses<sup>4</sup>

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

Loss of freedom is a defining feature of trafficking. For example, trafficked victims are often not allowed to leave the premises where they are held or if they do, they are accompanied by a trafficker. Victims suffer frequent and severe abuse, both physical and psychological. Violence and physical harm are the hallmarks of trafficked women in particular. Prosecutors are aware that victims can also suffer other forms of coercion; their freedom may not be so constrained, they are given some 'payment' from their earnings, they may be deceived into believing they are coming here for a better life.

Prosecutors recognise that victims often face barriers in coming forward and giving evidence. Often they are in fear of the consequences of giving evidence against their traffickers because of the threat of what might happen to them or to their families. They may also distrust the authorities due to experiences with authorities in their own country. They may have a vulnerability which may make accessing services difficult and they may have experienced prejudice in the past which may result in them being reluctant to participate in the criminal justice process.

Prosecutors recognise the diversity of victims. Victims' experiences of trafficking are undoubtedly different and affected by their ethnicity, age, immigration status, religion, disability and culture. For example, child victims or vulnerable adults may not fully understand what is happening to them or may be, or feel, wholly dependant on their trafficker. Prosecutors will consider the needs of each victim on an individual basis and will ensure that, where appropriate, legal measures are sought, and pre-trial consultations are held to protect and support the victim(s). Some of these measures are explained in Section 14, page 33.

### Child Victims<sup>5</sup>

The Trafficking Convention provides that a child is any person under eighteen years of age.

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4 Additional information regarding the "Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking" can be found at:  
[www.dojni.gov.uk/.../working-arrangements-for-the-welfare-protection-of-adult-victims-of-human-trafficking-oct-2012.pdf](http://www.dojni.gov.uk/.../working-arrangements-for-the-welfare-protection-of-adult-victims-of-human-trafficking-oct-2012.pdf)

5 Additional information regarding the "Working Arrangements for the Welfare and Safeguarding of Child Victims of Human trafficking" can be found at:  
[www.dhsspsni.gov.uk/oss\\_working\\_arrangements\\_for\\_the\\_welfare\\_safeguarding\\_of\\_child\\_victims\\_of\\_human\\_trafficking.pdf](http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf)

Children who are trafficked are exploited through various types of control such as violence, the threat of violence, sexual abuse, alcohol and drug abuse, emotional abuse, manipulation through distorting cultural practices and imprisonment to suppress victims and ensure their compliance. Some are sold by family members or are in debt bondage, others may be coerced through more subtle means.

They may come to the attention of the authorities as unaccompanied asylum seeking children identified at ports of entry or children identified by children's services or local authorities. Children are also vulnerable to being exploited by criminal gangs and made to engage in criminal activities such as acting as pick-pockets (theft) or working in cannabis factories and therefore may come to the attention of police due to being suspected of having committed a criminal offence.

Children living in the UK can also be targets for traffickers. Children (and adults) can be trafficked within the UK for sexual exploitation. They can be moved from house to house or city to city for the purpose of sexual exploitation. For some this abusive sexual relationship may begin and end with their 'exploiter friend' but more often it will lead to coercion into sexual activity with a wider group of abusers.

All children who are suspected of having been trafficked will therefore be considered by the relevant Health and Social Care Trust (the Trust) to be children in need of care and protection under the Children (Northern Ireland) Order 1995.

If a child is identified by police during operations, the Trust should be notified by police immediately so that a child protection plan is put into place and a strategy discussion co-ordinated. It is important that the Trust is made aware of any decision affecting the welfare of a child victim under their care during the decision making and prosecution process.

### **Age disputes**

Some young people may not be in possession of official documentation confirming their date of birth or may have been told to lie about their age to evade attention from the authorities. A young person under the age of 18 years found in a brothel, for example, may have been told to state that he or she is an adult. Other people may have been told to claim they are under 18 years.

The United Nations Convention on the Rights of the Child (UNCRC) states, "when the age of the victim is uncertain and there are reasons to believe that the victim is or may be a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age". The PPS will act in accordance with the UNCRC should such an issue arise in a case.

## 6. Victims and Witnesses

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

A Merton compliant assessment normally includes a face-to-face meeting; investigation of the general background of the applicant; and ensuring adherence to standards of fairness. The Merton judgment, handed down by Judge Burnton in the case of *R(B) v London Borough of Merton* [2003] EWHCA 1689, provided "guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years". The Court of Appeal case of *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59 brought clarity to the way age dispute claims should be handled by both local authorities and the Court. The Court of Appeal affirmed the guidelines set down by Judge Burnton and further outlined what fairness demands in an age assessment case.

### **The National Referral Mechanism**

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

The Council of Europe Convention on Action against Trafficking in Human Beings, which was implemented on 1 April 2009 to prevent and combat trafficking in human beings, creates mechanisms to identify and protect victims of trafficking and to safeguard their rights. It created provisions for support to victims through a recovery and reflection period for all identified victims and one-year renewable residence permits in circumstances where they assist the authorities or support criminal proceedings. The Convention provides for a recovery and reflection period of at least 30 days. The UK have provided for a 45 day recovery and reflection period where there are reasonable grounds to believe that the person is a victim of Human Trafficking.

For potential victims of trafficking a First Responder will make a referral to the UK Human Trafficking Centre (UKHTC). The UKHTC will decide which competent authority (itself or the Home Office) should determine the case.

A number of agencies have been designated as First Responders. In relation to potential adult victims this role is, primarily, carried out by the PSNI in Northern Ireland. In the case of children, the First Responder may be a Home Office officer (if the child is recovered at a port of entry) or a Trust social worker.

The potential victim's case is considered and, if approved, the victim is given the 45 day reflection period during which time they are entitled to a range of support services, and will not be removed from the UK. In Northern Ireland accommodation and support is provided through Migrant Help and their delivery partner Women's Aid under contract with the Department of Justice (DOJ). Child victims are usually accommodated by Social Services.

At the end of the reflection period, a conclusive decision will be made and if the victim does not have any leave to remain in the UK, they will be considered for a residence permit based on whether the victim is to support criminal proceedings, or whether their personal circumstances warrant a grant of leave to remain in the UK.

The prosecutor will have regard to any information provided by the investigator relating to the NRM.



## 7. Prosecuting suspects who might be trafficked victims

The PPS is aware that adults and children may be investigated by the police for offences despite being a trafficked victim. This can arise if they have been trafficked or smuggled into Northern Ireland to commit criminal offences, for example, organised pick-pocketing or commercial cannabis cultivation, but can also arise in circumstances where they are escaping from their trafficking situation, for example immigration offences.

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (the Convention) states “Each Party shall in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims of human trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so”.

The PPS cannot offer blanket immunity from prosecution for trafficked victims who may commit criminal offences. The statutory obligations placed on the PPS by the Justice (Northern Ireland) Act 2002 require public prosecutors to review each case received from the investigator in accordance with the Code for Prosecutors to determine whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should continue.

The Convention does not provide for immunity from prosecution for trafficked victims but it does require that careful consideration must be given as to whether the public interest requires prosecution in such cases.

In the Court of Appeal case of *R v LM* [2010] EWCA 2327 the court stated that prosecutors must consider the public interest in prosecution when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled to commit it.

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 mitigating against prosecution. Where there is clear evidence that the person has a credible defence of duress, the case should be discontinued on evidential grounds.

In order to enable the prosecutor to consider such factors they must be provided with the information from police or other sources who suspect that the person may be a victim of trafficking. Further, this is only relevant where the criminality is as a direct consequence of the trafficking situation. There must also be consideration of the extent to which the victim was compelled to undertake the unlawful activity.

The Court of Appeal in the case of R v O [2008] EWCA Crim 2835 highlights the need for prosecutors and defence practitioners to take all reasonable steps to identify victims of trafficking and to be pro-active in causing enquiries to be made.

Where the circumstances of the arrest or information provided to a prosecutor suggest that someone may have been trafficked, the prosecutor will request the police to make further enquiries. These enquiries may include obtaining information from an appropriate organisation that supports trafficked victims.

Prosecutors will take into consideration all relevant information provided by police and other agencies, including any decision arising from the NRM when deciding where the public interest lies in relation to prosecution.

## 8. The views and interests of the victim

As with all crime, the PPS recognises the central role of victims and witnesses in achieving successful prosecutions. The victim's account in court or statement to the police of what happened to them is evidence and is important to the case in proving each element of the offence of trafficking.

The PPS is committed to ensuring that the interests of victims are considered at every stage of the criminal process. This commitment is set out in detail in the PPS Victims and Witnesses Policy.

The PPS prosecute cases on behalf of the public at large and not just in the interests of any particular individual. However, the Public Prosecutor will always give careful consideration to the interests of the victim when deciding where the public interest lies. The views and interests of the victim are very important but they cannot be determinative in respect of a decision as to prosecution and must be considered along with the interests of wider society including the risks to other individuals.

Prosecutors acknowledge that victims of human trafficking will require specialist support and will consider how best to ensure that they can give their best evidence in light of the often close and controlling relationship between the defendant and victim and the increased likelihood of victim intimidation. However, sometimes trafficked victims may be reluctant to support criminal proceedings, they may be frightened or may not wish to come to court.

### **What happens if the victim withdraws support for the prosecution?**

Sometimes after a victim has made a statement of complaint to police he or she will ask the police not to proceed any further with the case or will ask to withdraw the complaint or indicate that they no longer wish to give evidence. This does not necessarily mean that the case will be stopped.

As a general rule the PPS will prosecute all cases where there is sufficient evidence and prosecution is required in the public interest.

If the victim has decided to withdraw support the Public Prosecutor will seek to find out why before deciding what action to take. This may involve applying to the court to adjourn the case to investigate the facts and decide how best to proceed.

**The PPS will take the following steps:**

- the Public Prosecutor will ask the police to take a written statement from the victim explaining the reasons for withdrawing support, stating whether the original complaint was true and whether the victim has been put under pressure to withdraw support and providing any other relevant information;
- the Public Prosecutor will ask the police for their views about the case and, in particular, to carry out a full assessment of the risks to the victim and any other person's safety and wellbeing if the case were to continue and to include details of what support is available to the victim;
- the Public Prosecutor will also ask the police how they think the victim might react to being required to attend court to give evidence.

If the Public Prosecutor suspects that the victim has been pressured or frightened into withdrawing the complaint, he or she will ask the police to investigate this. If necessary the PPS will ask the court to delay any hearing so that a thorough investigation can take place before a decision is taken about the future conduct of the case.

If the victim confirms that the complaint is true but still wants to withdraw the complaint, the Public Prosecutor will consider whether it is possible to continue with the prosecution without the victim's evidence. The Public Prosecutor will again apply the Test for Prosecution and will consider what other evidence is available which may be adduced at court and whether that evidence is sufficient to afford a reasonable prospect of a conviction. If this Evidential Test is still passed the Public Prosecutor will again consider whether the public interest requires prosecution taking into account the victim's withdrawal of support for the prosecution.

The Public Prosecutor will explore all of these options fully before deciding whether or not to proceed with a prosecution. The safety and wellbeing of the victim will be a prime consideration in reaching a decision.



## 8. The views and interests of the victim

### **What happens when a decision is taken to continue with a prosecution against a victim's wishes?**

Where it is concluded that a case should continue and that the victim's evidence is necessary to prove the case, the Public Prosecutor has to decide:

- whether the victim should be required to give evidence in person in court; or
- whether an application to use the victim's statement of complaint as evidence without the victim having to give evidence in court is likely to succeed.

The law allows the victim's statement to be used as evidence without calling the victim to court, but only in very limited circumstances. The court ultimately makes the decision whether to allow such a statement to be used in this manner and only does so if it is convinced that it is in the interests of justice to do so.

If the victim is the only witness to the offence it may be very difficult to satisfy the court that justice is being served when the defence cannot cross-examine the only witness against the defendant.

In cases where it is necessary to call a victim against his or her wishes the decision will only be taken by an experienced prosecutor after consultation with the police and with the safety and wellbeing of the victim as a prime consideration.

Where the victim makes no complaint or report to the police it may still be possible to proceed with a prosecution for human trafficking. However, this will only be possible if there is other evidence which is sufficient to pass the Evidential Test.

The prosecutor will also consider other offences which could still be prosecuted without the victim's evidence, such as smuggling, money laundering, forged or false document offences, controlling, causing or inciting prostitution for gain.

## 9. Consultation

In cases involving human trafficking the Public Prosecutor may request to consult with the victim prior to taking a decision as to prosecution. In some cases a barrister who has been instructed by the PPS may also be present.

Consultations will be properly organised and conducted in a professional manner with sensitivity, courtesy and understanding.

The first face-to-face point of contact between the PPS and a victim or witness is often at a consultation. The victim or witness will not be left to find their own way to the consultation room. The PPS will arrange with the investigating police officer to bring the witness to the consultation room having collected them from home or a police station or other location acceptable to the witness. If two or more witnesses travel to the consultation together the police officer will be asked by the PPS to remind the witnesses not to discuss details of the case, so as to avoid any allegation of conferring.

The consultation will be held, where possible, in a properly equipped consultation room. It will be held at a time and venue taking into account the comfort and convenience of the victim or witness.

Victims may bring a supporter with them. The supporter must not be a witness in the case or a potential suspect. The prosecutor will have the final discretion on who can attend the consultation. The name of the supporting person should be provided to the police officer prior to the day of consultation to enable the officer to confirm whether the supporter is connected with the case in some way.

At the beginning of the consultation the Public Prosecutor will explain to the victim or witness the identity and role of all persons present and the purpose of the consultation. Where it is a consultation which is held before the decision as to prosecution has been taken, it is essential that the victim be told that no decision has yet been made regarding whether or not a prosecution will be brought.

The consultation will be conducted in a manner appropriate to the case and where necessary the manner of questioning employed and the purpose of the questions asked will be explained to the witness.

## 9. Consultation

All victims and witnesses will be treated with respect, sensitivity, courtesy and understanding at all times, particularly as it may be necessary to ask uncomfortable or probing questions.

A police officer will remain present throughout the consultation. In some cases, for example, in the case of a female victim where the consultation requires discussing matters of a personal nature, the Public Prosecutor will consider whether it is appropriate to have another female present, if the victim would otherwise be the only female present. In such cases, it may be appropriate to ask a female police officer to attend also.

In the case of victims and witnesses for whom English is not their first language, the PPS will seek advice from police as to whether the witness requires the use of an interpreter at the consultation. 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.

The PPS have a contract with the Northern Ireland Council for Ethnic Minorities (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 a selection criteria in terms of specified qualifications and experience.

The PPS will make arrangements for the provision of sign-language interpreters at the consultation for victims and witnesses who are deaf or hard of hearing.

# 10. Victim and Witness Care Units

The PPS is committed to improving the experience of victims & witnesses involved in the Criminal Justice System by ensuring that victims are kept informed of the progress of the cases in which they are involved and have access to information when required.

The PPS, in joint working with the PSNI, has established dedicated Victim and Witness Care Units (VWCU) which are staffed by PPS and PSNI staff who have access to both PPS and PSNI information systems.

The VWCU provides a dedicated Case Officer for each case to act as a single point of contact for victims and witnesses, at all stages from receipt of police investigation file through to the conclusion of court proceedings.

The VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victim's preferred means of communication, eg, phone, email, letter (to a safe address if necessary) and where practical at their preferred time of day.

The VWCU will also conduct a Three Tier Needs Assessment for each victim and witness at key stages of the process. The initial assessment will be conducted when a file is received. An enhanced assessment will be conducted when a decision to prosecute is taken and the case is to be listed for trial. A final assessment will be conducted prior to the trial commencing.

The purpose of the assessments is to ensure that the particular needs of victims and witnesses are met as far as possible, and to identify as early as possible whether a victim or witness may require the assistance of special measures to enable them to give their best evidence at court, or other measures such as a Witness Anonymity Order (see section 14).

The PPS will ask the court to have regard to the availability of victims and witnesses when the court is fixing a date for trial. Victims and witnesses will be contacted by the VWCU and consulted about what dates they are available to attend court. A requirement to attend court will be sent to the victim and witnesses advising them of the date(s) that they are required to attend court to give evidence.

## 10. Victim and Witness Care Units

Every attempt will be made to arrange a date that is convenient to victims and witnesses and they will be given as much notice as possible when a date has been fixed.

Victims will be notified by the PPS of the outcome of the prosecution. Victims will also be notified of any appeal by the defendant against conviction or sentence and the date of such hearing.

VWCU case officers provide guidance to victims & witnesses throughout the case and co-ordinate support and services. Case officers will signpost victims and witnesses to Victim Support NI (VSNI) or to the NSPCC who can provide support service or make referrals to appropriate agencies. The VWCU can also refer victims and witnesses to VSNI Witness Service or NSPCC Young Witness Service. These services provide support to victims and witnesses before, during and after trial. For more information on the VSNI Witness Service or NSPCC Young Witness Service see Section 14.

The VWCU can also advise victims of the information schemes offered by the Probation Board for Northern Ireland (PBNI), and Northern Ireland Prison Service (NIPS) as appropriate after conviction and sentence. For more information in the PBNI and NIPS information schemes see Section 14.

# 11. Giving of reason(s) for no prosecution decisions

The giving of reasons for not prosecuting is a complex issue and a balance must be struck between the proper interests of the victim and other concerns, such as damage to the reputation or other injustice to an individual, the danger of infringing upon the presumption of innocence or other human rights including the risk of jeopardising the safety of individuals.

The PPS recognises the importance of informing victims of the reason(s) for a decision not to prosecute and is fully committed to providing as much information as possible within the confines of the law.

The policy of the PPS is to give reasons for decisions in all cases albeit in the most general terms. For example, in a case in which there is a technical defect, such as the unavailability of evidence to prove an essential aspect of the case, the PPS would normally indicate that it has concluded that there was insufficient evidence to afford a reasonable prospect of a conviction. In a case in which the evidence was sufficient but the decision was taken not to prosecute, for example, given the age and infirmity of the prospective defendant, the reason given would be that it was not in the public interest to prosecute.

Victims can request to be provided with more detailed reasons for the decision if they wish and can also request to speak to or meet with the Public Prosecutor to discuss the decision.

The PPS policy on giving reasons also provides that in certain categories of offences and where a victim is considered to be vulnerable, where a decision has been taken not to prosecute, detailed reason(s) for the decision will be provided to the victim without a request being made. In cases involving human trafficking the victim will be regarded as vulnerable and therefore detailed reasons will be provided pro-actively. The PPS will also offer to meet with the victim to explain the reason(s) for a decision. Such a meeting will take place unless there is a justifiable reason for not doing so.

## 12. Review of decisions

A victim or other person acting on their behalf may request a review of a decision not to prosecute. The approach taken will depend upon whether or not there is any new evidence or information available.

### **If no new/additional evidence or information**

If no additional evidence is provided connected to the request for a review, the case will be considered by a prosecutor other than the prosecutor who initially took the decision now under review. The prosecutor conducting the review will consider the evidence and information reported in the police investigation file. There are two potential outcomes of such a review:

- i. If the prosecutor concludes that the decision was within the range of decisions that a reasonable prosecutor could take in the circumstances, then the initial decision will stand and the review is dealt with on that basis.
- ii. Alternatively, if the prosecutor concludes that the original decision was not within the range of decisions that could reasonably be taken in the circumstances, then that prosecutor will apply the Test for Prosecution and reach a fresh decision in the case.

### **If new/additional evidence or information available**

If additional evidence is provided in connection with the request for a review of the decision not to prosecute, the case will be reconsidered by the prosecutor who initially took the decision with a view to deciding whether or not the evidence now available provides a proper basis on which to change the original decision. There are two potential outcomes of such a review:

- i. If the prosecutor concludes that there is sufficient basis for changing the original decision, that prosecutor will apply the Test for Prosecution and reach a fresh decision in the case.
- ii. Alternatively, if the prosecutor concludes that there is no sufficient basis for changing the original decision then the case will be referred to a different prosecutor who will conduct a review of the decision.

The Code for Prosecutors sets out the PPS policy in relation to the review of decisions in greater detail.

## 13. Bail

If a suspect has been charged by police with an offence(s) involving human trafficking the police will take the decision as to whether it is appropriate to release the suspect on police bail to attend a court hearing within a short period of time. However police may decide to keep the defendant in custody so that he or she may appear at the next available Magistrates' Court, usually the next day, for a remand hearing. At the court hearing the defendant is entitled to make an application to be released from custody on bail.

Where the police have charged a person then, prior to the defendant's first appearance at the Magistrates' Court, the charges will be reviewed by a Public Prosecutor to determine whether the charges should be presented to the court. If a person has been detained in police custody, the Public Prosecutor must, in addition to considering the charges to be presented to the court, also consider any continuing need to remand that person into custody.

There is a presumption in favour of granting bail. The court can only refuse bail if it is satisfied that there is a risk that the defendant would fail to surrender to custody (abscond), the defendant would interfere with witnesses or the course of justice, the defendant would commit further offences or there is a threat to the preservation of public order (by the defendant or others).

The District Judge (Magistrates' Courts) will decide whether bail is appropriate after he or she has heard representations from both the prosecution and the defence. In order to enable the prosecutor to make representations to the court, police will have provided relevant evidence and information to the prosecutor.

If bail is granted the prosecutor may ask the court to impose conditions on the defendant's bail. Conditions that the court can impose include requirements not to make contact with any named person, to report to a named police station on fixed days or to surrender any passport held. In deciding what submissions to make to the court regarding bail, the prosecutor will take into account information provided by the police about the fears a victim or witness may have. Some examples of common bail conditions and what happens if bail conditions are breached are set out in Annex 4, page 56.

### 13. Bail

The District Judge is required to give reasons in open court if he or she grants bail to a defendant. If he or she does not give reasons, the prosecutor will ask him or her to state the reasons.

If the prosecutor opposes bail, but the District Judge grants bail, the prosecutor will make a decision about whether or not to appeal that decision. If an appeal is made, the defendant will be kept in custody until a judge at the High Court hears the appeal.

If the District Judge refuses bail, the defendant can appeal against this decision in the High Court.

If the defendant makes an application to the court to vary any bail conditions the PPS will, where appropriate, ascertain from police the views of the victim about any proposed change.

The Code for Prosecutors sets out this process in more detail.

# 14. Helping victims and witnesses to give evidence

Giving evidence can be a traumatic experience for victims. Victims of human trafficking may be particularly vulnerable or intimidated.

The early identification of a vulnerable or intimidated witness by the police and early discussion with the prosecutor are essential to the conduct of the case. The police have the primary responsibility for alerting the prosecutor that the case involves a vulnerable or intimidated witness.

## Special Measures

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

The special measures currently available are:

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

#### 14. Helping victims and witnesses to give evidence

- the victim or witness while giving evidence, may be provided with such device as the court considers appropriate, with a view to enabling questions or answers to be communicated by or to the victim or witness.

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

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

The PPS will discuss with police what special measures might assist the victim or witness to give evidence in court and then, if appropriate, make an application to the court to grant these. The views of the victim or witness are taken into account with regard to whether they want the assistance of special measures and what special measure(s) may be most appropriate. Ideally, early decisions should be taken about special measures to assist victims and witnesses. However, circumstances might change and it is always possible to apply at any stage of the proceedings. If necessary a meeting can be arranged with the victim or witnesses to discuss what special measures would be appropriate. If the victim or witness is a child, their evidence is video recorded and played in court unless the court considers that it is not in the interests of justice for this to be done.

The PPS will ensure that victims and witnesses are made aware that they can change their minds about special measures. In some cases victims or witnesses initially state that they do not require special measures and may subsequently realise that they do but are afraid to say so.

Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the name of their accuser. Most criminal proceedings are held in public, and information about the identity of the witness will become a matter of public record.

However, it is acknowledged that some victims and witnesses are concerned about their safety and fear that personal details or information about them might become public knowledge and place them at risk of further attack or harassment. The PPS is aware that the issue of anonymity may be of particular concern to victims of human trafficking.

The PPS will not disclose addresses of victims or witnesses to the defendant and, unless already known or if required for evidential purposes, these will not be mentioned in the court proceedings.

There are also legislative provisions which exist to protect victims who have concerns about their identity or personal details becoming known to the defendant or becoming a matter of public record.

### **Anonymity**

Provision is made by the Coroners and Justice Act 2009 for a witness to give evidence anonymously where the court is satisfied: that this is necessary to protect the safety of the witness; that it is consistent with the fair trial of the defendant and that it is in the interests of justice for the witness to give evidence. Prosecutors will apply for a witness to be permitted to give evidence anonymously only when these conditions are met.

### **Reporting Restrictions**

Prosecutors can apply for reporting restrictions under section 46 of the Youth Justice and Criminal Evidence Act 1999 to restrict media coverage of cases that reveal a witness's identity and may create safety issues.

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

### **Giving evidence from another country via video-link**

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

However, whilst it is the prosecutor's role to make an application to the court for these measures, it is for the judge to decide whether to grant the application.

### **Interpreter provision/translation**

In the case of victims and witnesses for whom English is not their first language, the PPS will seek advice from police as to their capability to give and understand oral evidence in English or whether the witness requires the use of an interpreter. The PPS will attempt to ensure that the interpreter engaged is familiar with the particular dialect or regional variation of the foreign language which the witness uses.

The PPS is working with police and the Northern Ireland Courts and Tribunal Service (NICTS) to improve the provision of interpreters at court. At the investigation stage, the police will make arrangements for interpreter services . The PPS will work with NICTS to ensure that an interpreter is available for the court appearances.

The PPS have a contract 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 a selection criteria in terms of specified qualifications and experience.

## 14. Helping victims and witnesses to give evidence

Interpreters must be independent of the witness, their family and of the investigation.

In addition, interpreters or translators may be required to translate correspondence if necessary or to interpret for victims at meetings with the prosecutor if no prosecution is directed.

The PPS will make arrangements for the provision of sign-language interpreters for witnesses who are deaf or hard of hearing.

The PPS can also provide telephone interpretation, written word translation and transcription services.

### **Witness Service and Young Witness Service**

There are two witness support schemes available in courthouses in Northern Ireland. One for adult witnesses (the Witness Service) provided by Victim Support NI (VSNI) and one for younger witnesses under the age of 18 (the Young Witness Service) (VSNI), provided by VSNI. VSNI and the NSPCC aim to support victims and prosecution witnesses before, during and after the experience of attending court to give evidence.

Referrals to the Witness Service are made with the consent of the victim or witness. As it is important that the referral to the Witness Service is made as far in advance as possible, in order that pre-trial support can be offered and delivered in an effective manner, the PPS will take steps to make the referrals as soon as possible. This is done by informing the victim or witness of the service in the same correspondence which encloses the "Requirement to Attend Court" and offering an opt-out to the victim or witness if they do not want their details to be passed to the Witness Service. Where the victim's or witnesses's details are passed to the Witness Service, their specially trained staff endeavour to make contact in advance of the court date to offer their assistance.

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

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

**Support during the trial:**

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

**Support following the trial:**

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

The Witness Service does not:

- discuss the details of the case with witnesses; nor
- provide transport to and from court for witnesses.

**The Young Witness Service**

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

The PPS makes referrals to the YWS where consent is given to do so. Again the PPS advises the victim or witness of the availability of this service in its correspondence enclosing the “Requirement to Attend Court” documentation. The parent or guardian, or person with parental responsibility for the child or young person has the opportunity to opt out of having their details passed to the Young Witness Service. Where the details are passed to the YWS, their specially trained staff make contact and explain the services they offer.

**The service YWS offers include:**

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

## 14. Helping victims and witnesses to give evidence

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

Further information about meetings with vulnerable or intimidated witnesses and services provided to victims and witnesses at court is contained in the PPS Victims and Witnesses Policy.

### **Assistance for Victims or Witnesses with a Disability**

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

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

In addition to these measures that can be made available in appropriate cases, PPS staff treat every person they come into contact with as an individual and are sensitive to their needs. The PPS is committed to training its staff in this regard and will engage with specialist agencies for this purpose as appropriate.

In terms of physical access, the PPS offices are designed and constructed to facilitate access for people with mobility needs. The PPS will make appropriate arrangements to facilitate a person's access to the PPS offices for the purposes of attending a consultation. Consultation presents an opportunity for the victim or witness to meet the prosecutor and discuss any concerns a person with a disability may have about the court process.

In addition, the PPS, depending on the nature of the disability and the views of the person concerned, will consider making an application for appropriate special measures to maximise the quality of the evidence which can be given in court.

When a case goes to court, the PPS will work in conjunction with NICTS to make the necessary arrangements to ensure ease of access for wheelchair users, or persons with other disabilities who need assistance in accessing the court to give evidence.



# 15. Acceptance of pleas

The general principle is that the decision to prosecute, and the offences to be prosecuted, should not be altered, unless there is a proper reason.

However, the adversarial nature of the criminal justice system, whether in this jurisdiction or elsewhere, means that the defence may on occasion approach the prosecution with an offer to plead guilty to only some of the offences that they are facing or to a lesser offence. The prosecution is under a duty to consider any such formal offer from the defence.

In this context the PPS recognise that there is considerable public misunderstanding with regard to the circumstances in which the prosecution considers an offer by the defence to plead guilty to a different or lesser offence. However it should be understood that “plea bargaining” has no place in the practices or procedures of the PPS. The term is frequently, and indeed generally, liable to be understood as implying the seeking of some improper or at least questionable arrangements between the prosecution and the defence. Both the term and what it implies are therefore objectionable. There must be no such improper or questionable arrangement and no practice is permissible which reasonably suggests that there may be.

Circumstances can arise between the time when the offences were originally decided by the prosecutor and the time of trial which may make it appropriate for the prosecution to accept a guilty plea from the defendant to a different or lesser offence. This might arise, for example, if a defendant pleads guilty to some but not all of the offences or because the victim may not wish to proceed or because new evidence comes to light.

The acceptance by the prosecutor of such an offer from the defence must be consistent with the evidence and the information available at the time to meet the requirements of justice.

When considering whether to accept a plea of guilty to a different, and possibly less serious offence, the PPS will make every effort to consult with victims so that the position can be explained and their views and interests taken into account.



## 16. Sentencing

Sentencing is a matter for the court. If a defendant is convicted of an offence of human trafficking or other offence(s), the judge determines the sentence which he or she considers appropriate.

A judge, in sentencing a defendant, takes into account any guidance given by the Court of Appeal, identifies any features that aggravate the offence and any features that mitigate the offence. The judge then decides on a sentence that reflects the need to punish, to deter others, to protect the public and to rehabilitate the defendant.

Prosecutors must not attempt to influence the court with regard to sentence. Prosecutors will assist the judge by drawing his/her attention to any aggravating or mitigating factors relevant to the case and, if required, to any statutory provisions and to any relevant guidelines as to sentence laid down by the Court of Appeal as well as any ancillary orders that may be available to the court. Ancillary Orders which may be applied for or imposed are explained in section 17, page 37.

The prosecutor will make sure that the judge has all the information he or she needs to determine the appropriate sentence.

In some cases the judge may request a Victim Impact Report to be prepared. This is a specialist report prepared by an appropriately qualified professional, such as a psychologist or psychiatrist, outlining the impact of the crime on a victim or the family of the victim. In contrast, a Victim Impact Statement, or Victim Personal Statement, is a statement made by a victim or the family of a victim in which they describe the effect the crime has had on them. This can be presented to the judge before sentence is passed. If a victim has prepared a Victim Personal Statement, they can pass it to the prosecutor who will hand it into court.

The defendant is entitled to enter a plea in mitigation of sentence. This may include information in respect of previous good character or other factors the defendant wishes to be considered prior to a sentence being imposed. Ultimately these issues are a matter for the judge to consider as part of his/her decision in respect of sentencing. The prosecutor will challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory.

### **Unduly Lenient Sentences**

Parliament has provided that for certain offences the Director of Public Prosecutions has the power to ask the Court of Appeal to review a sentence which has been imposed by the Crown Court if he considers it to be unduly lenient. The power exists in relation to a range of serious offences including offences of human trafficking, causing or inciting prostitution and sexual offences against children.

An application to review a sentence must be made within 28 days from the day when the sentence was imposed.

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

The Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.

If a victim is concerned about a sentence that has been imposed they can contact the PPS directly or through a public or legal representative and request that the Director considers the sentence. The request should be made to the Director of Public Prosecutions at PPS Headquarters. The full address is set out in Annex 1, page 49.

## 17. Ancillary or additional orders

Prosecutors will, where appropriate, apply to the court for ancillary orders. Ancillary or additional orders can be used to address the harm caused by offenders and ensure that effective measures are put in place to prevent repeat victimisation and future offending. They can be used at different stages of the investigation or prosecution process or be applied for at the sentencing stage.

Ancillary Orders that may be applied for which are relevant to human trafficking include:

- Serious Crime Prevention Order (SCPO) is an order which may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime;
- Risk of Sexual Harm Order (RSHO) is a preventative order used to protect children from the risks posed by adults engaged in sexual activity with a child;
- Sexual Offences Prevention Order (SOPO) is an order which the court may make for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
- Registration on the Sex Offenders Register;
- Deportation Order is an order which the court may make providing that a foreign national who is subject to immigration control be deported if he or she has been convicted of an offence;
- Deprivation of Property Order is an order which enables the court to deprive an offender of property, used, or intended to be used to commit an offence, for example a vehicle;
- Restraining Order is a civil order which may contain such restrictions or prohibitions as the court considers appropriate to protect a person from harassment by the defendant;
- Financial Reporting Order includes for example, requirements to submit a report every six months setting out details of income, assets and expenditure. The Order may include requirements to submit copies of all bank statements, credit card accounts or other documentation detailing financial transactions, including tax returns and business accounts; and
- Compensation Order is an order whereby the defendant is required to pay monetary compensation to a victim(s) for any distress, personal injury or financial loss that they have suffered.

## 18. Financial powers

In addition to prosecuting traffickers and others who make financial gains from the exploitation of their victims, investigators and prosecutors will, where appropriate, also disrupt their criminal activity by stripping them of their assets.

Offences of human trafficking and smuggling are 'lifestyle offences' for the purposes of the Proceeds of Crime Act 2002. This means that the court can assume that all the assets the defendant has acquired over the last six years are from crime, unless the defendant is able to prove otherwise. This enables applications to be made to the High Court, where appropriate, to confiscate the defendant's money and remove assets from a defendant following conviction. Applications can be made to the court under the Proceeds of Crime Act 2002 to restrain assets at an early stage of the investigation.

Seizure under the Proceeds of Crime Act 2002 is a civil power that allows the police to seize cash where the amount is over £1000 where they have reasonable cause to believe it has come from crime or is intended to be used in the furtherance of crime.

Forfeiture involves the seizure of items used to commit a crime. For human trafficking this includes the power to seize and forfeit land vehicles, ships and aircraft which may have been used to traffic victims.

The Proceeds of Crime Act 2002 also creates offences of money laundering. These offences may not involve money, their essence is the movement and use of 'criminal property'.

An agreement between the police and the PPS clarifies the roles and responsibilities of police and prosecutors and sets out the working arrangements for these powers. However prosecutors will always provide early advice to the police concerning the investigation, preservation of assets, obtaining and enforcement of confiscation orders and confiscation matters generally and will make restraint and confiscation applications to the Court as appropriate.

# 19. Services available after sentencing

The PPS is not usually directly involved after the sentencing stage. However services are available from other agencies to assist.

Victim Support NI offer advice and assistance before, during and after the court hearing and NSPCC for young witnesses.

In addition three separate victim information schemes have been implemented and are managed by the Probation Board for Northern Ireland (PBNI), Northern Ireland Prison Service (NIPS) and the Department of Justice respectively. These operate at the post sentencing stage as follows:

## **i. Probation Board for Northern Ireland – Victim Information Scheme**

PBNI Victim Information Scheme (VIS) became operational on 25 October 2005. It is a statutory scheme provided for by the Criminal Justice (NI) Order 2005.

Its objective is to ensure that victims receive information, on request, about what it means when someone is sentenced to an Order which requires supervision by PBNI.

The Scheme is available to any person (or agreed representative) who has been the direct victim of a criminal offence for which the offender received a Probation Supervised Sentence.

A Protocol has been established to ensure the effective operation of the Scheme. The parties to the Protocol are PBNI, NIPS, PPS and PSNI.

The PPS co-operates by providing to PBNI the information required to assist them in operating the Scheme.

If following conviction the perpetrator of the offence receives a Probation Supervised Sentence, the victim of the offence will be advised about the Scheme.

### **The VIS operates as follows:**

- General information can be provided about PBNI's supervision of offenders on Probation; Community Service; Combination Orders; Supervised Sex Offender Licence; Custody Probation Orders or Juvenile Justice Centre Orders.

- Information can be provided in writing; by phone; or face to face with a PBNI Victim Liaison Officer.
- Information can be provided, if appropriate, about any organisation which may be able to offer specific support.

For reasons of confidentiality the Scheme cannot provide any personal information about the offender.

### **ii. Northern Ireland Prison Service – Victim Information Scheme**

The NIPS has introduced a Victim Information Scheme which enables a victim to find out when the offender in the case they were involved in is due to be released from prison at the end of their sentence or on temporary release.

A victim may make representations to the prison authorities about an offender who is eligible for temporary release.

Participation in the Scheme is entirely voluntary. A victim does not have to receive this information and they can opt out of the Scheme at any stage if they change their mind. If a Victim wishes to receive information about a prisoner's release date or to contribute to the temporary release process they should contact the NIPS Victim Information Scheme directly. The contact details are at Annex 5, page 58.

### **iii. Mentally Disordered Offenders – Victim Information Scheme**

The Department of Justice administers a Scheme to provide victims of offences committed by mentally disordered offenders with information. The Scheme operates where the Court has made a defendant the subject of a Hospital Order with a Restriction Order, or where a defendant is given a transfer direction and a restriction direction while he or she is serving a sentence of imprisonment. The Scheme applies only to mentally disordered offenders sentenced in Northern Ireland.

Under this Scheme, victims of mentally disordered offenders, who wish to, will receive information about:

- the granting of leave of absence to the offender;
- the discharge, conditional or absolute of the offender; and
- any relevant conditions which the offender is subject to.

Participation in the Mentally Disordered Offender Information Scheme is entirely voluntary. It is for the victim to choose if they wish to obtain this information or contribute to the process of granting leave of absence or discharge. The contact number for the Scheme is provided at Annex 5, page 58.

## 20. Avoiding unnecessary delay

The PPS recognises the impact that delay in progressing cases can have on victims and therefore works closely with its criminal justice partners to improve the progress of cases through the criminal justice system.

Where possible, the PPS will make sure that cases involving human trafficking are not delayed without good reason and will ensure that the victim is kept informed of the reason for any significant delay in the proceedings.

The VWCU is responsible for ascertaining the availability of victims and witnesses to attend court prior to the cases being fixed for trial. This is checked in advance of the case being listed for trial. As a result, trials are more likely to proceed on the date fixed.

Adjournments may also be sought by the defence for a variety of reasons including the availability of their witnesses and seeking time to prepare their case. The decision in respect of any adjournment sought is ultimately a matter for the District Judge (Magistrates' Courts) or Judge (Crown Court).

Often, decisions about the progress of a case may be taken at court. If so, victims will be informed about those decisions when they are at court by the prosecutor. If they are not at court they will be informed as soon as possible afterwards either by the PPS or by the police.

The PPS works with other criminal justice agencies and the Criminal Justice Board to identify areas of delay in the criminal justice system and to take action to address them.



# 21. Training and quality assurance

## Training

All PPS staff are trained to professional standards.

This Policy will be promoted within the PPS to ensure that it is implemented in an effective manner and training will be provided to all relevant staff to ensure that the staff have the knowledge and skills required to effectively prosecute cases of human trafficking.

Public Prosecutors are also trained in the application of special measures and the other matters outlined in this policy.

External barristers instructed to prosecute on behalf of the PPS are subject to the PPS standards as to level of service. They must have a clear understanding of the Policy and are required to have regard to and act in accordance with the Policy.

## Quality Assurance

There will be periodical quality assurance evaluations of the implementation and operation of this Policy to ensure that it is being properly applied. Should any issues be identified these will be addressed appropriately.



## 22. Conclusion

Trafficking in human beings is a serious crime which demeans the value of human life.

The PPS is committed to playing its part in improving the way that cases involving human trafficking are dealt with in the criminal justice system. This will enable victims and witnesses to have confidence in the way in which it takes decisions and progresses cases.

The PPS will continue to work in effective partnership with other criminal justice agencies to improve the services provided to victims and witnesses.

The PPS recognises and welcomes the valuable advice, emotional support and practical help and information that may be offered to victims and witnesses by support agencies and will continue to work with the voluntary and community sector to help develop best practice.

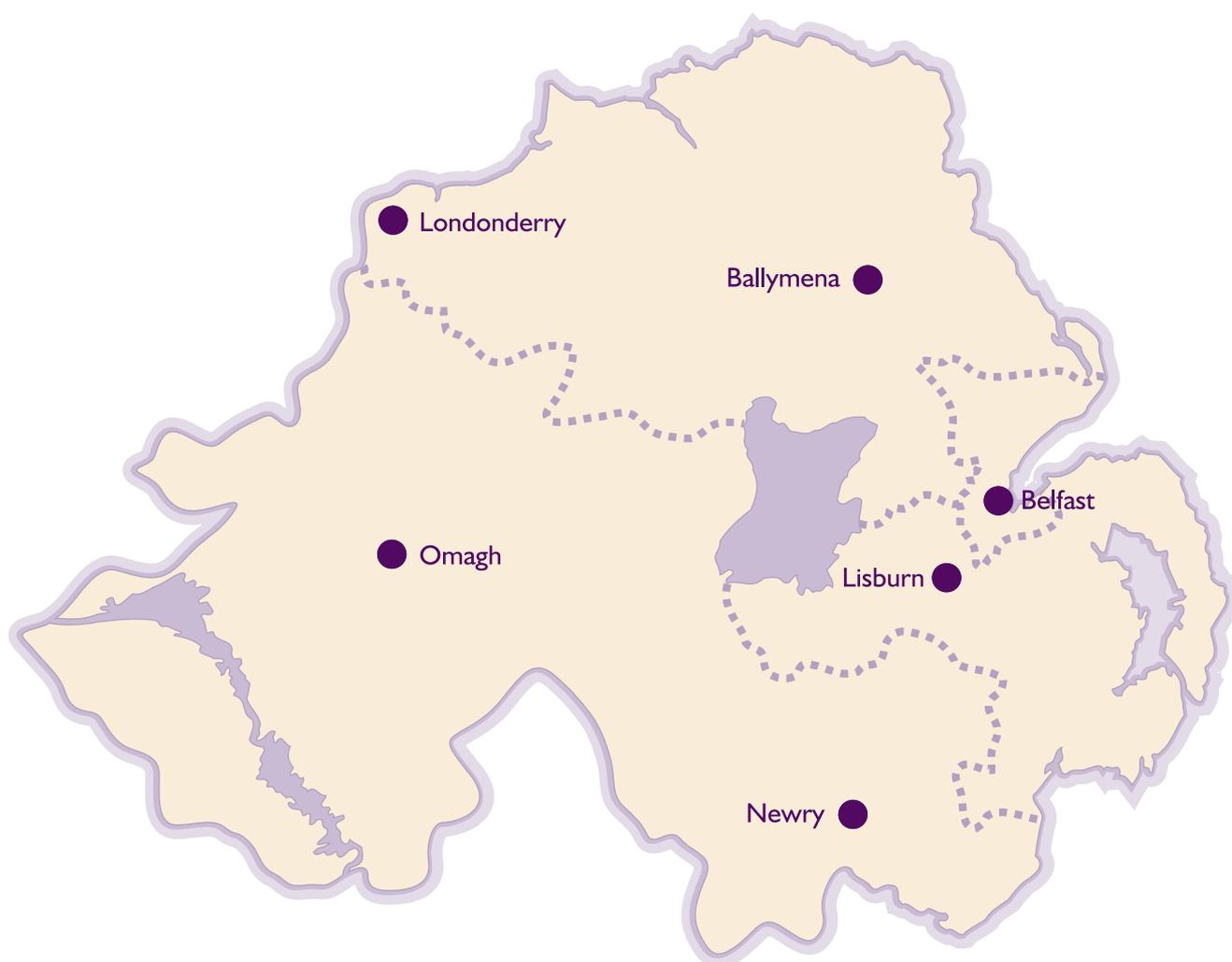
The PPS publishes this document to help victims of human trafficking and the public to understand the work of the PPS, how decisions are made, the different stages of the prosecution process and the services provided by the PPS.

The PPS will review this policy regularly so that it reflects current law and good practice and welcomes any comments and feedback that will help in doing so.

# Annex 1: PPS regional offices and contact details

## Regional Offices

The locations of the PPS regional offices (see map below) were selected after consideration of a range of factors including workload, court locations, targeting social need and accessibility.



## Regional Offices Contact Details

From January 2014 the Victim and Witness Care Unit (VWCU) will extend to service all of Northern Ireland and Community Liaison Branches will become incorporated in the regional VWCU. Online versions of this Policy will be amended to include updated contact details when required.

### Public Prosecution Service (Headquarters)

Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR  
Tel 028 90 897102  
Email: [info@ppsni.gsi.gov.uk](mailto:info@ppsni.gsi.gov.uk)  
Website: [www.ppsni.gov.uk](http://www.ppsni.gov.uk)

### Victim and Witness Care Unit Belfast

Linum Chambers  
2 Bedford Square  
Bedford Street  
BELFAST BT2 7ES  
Tel: (028) 90 544797

### Community Liaison Branch Eastern Region

Lisburn Chambers  
Linen Hill House  
23 Linenhall Street  
LISBURN BT28 1FJ  
Tel: (028) 92 625509



**Community Liaison Branch Northern Region**

Ballymena Chambers  
4 Parkway  
BALLYMENA BT43 5ET  
Tel: (028) 25 666562/3

**Community Liaison Branch Northern Region**

Foyle Chambers  
35 Limavady Road  
LONDONDERRY BT47 6LP  
Tel: (028) 71 340648

**Community Liaison Branch Western Region**

Omagh Chambers  
2 Townhall Square  
OMAGH BT78 1BL  
Tel: (028) 82 248733/6

**Community Liaison Branch Southern Region**

Newry Chambers  
1 Downshire Close  
NEWRY BT34 1FD  
Tel: (028) 30 832568



## Annex 2: Explanation of terms used in section 5 in respect of the evidential test

**identifiable individual** - There will often be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. Prosecution can only take place where the evidence sufficiently identifies a particular person responsible. Where no such person can be identified, there can be no prosecution.

**credible evidence** - This means evidence which is capable of belief. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. It may be that a witness is likely to be so discredited that no court could safely act on his/her evidence. In such a case it may be concluded that there is no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably act on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account.

Public Prosecutors must therefore make an assessment of the quality of the evidence. Where there are substantial concerns as to the credibility of essential evidence, criminal proceedings may not be proper as the Evidential Test may not be capable of being met. There will be many cases in which the evidence does not give any cause for concern. There will also be cases in which the evidence may not be as cogent as it first appears.

**evidence which the prosecution can adduce** - Only evidence which is available and legally admissible can be taken into account in reaching a prosecution decision.

There are technical legal rules concerning whether or not particular types and pieces of evidence are admissible in court. For example, a court may refuse to admit evidence that has been obtained improperly, irregularly or unlawfully. If evidence is inadmissible then that evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction.

Public Prosecutors must therefore seek to anticipate whether it is likely that evidence will be admitted or excluded by the court. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, Public Prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.

**an impartial jury (or other tribunal)** - The test is not whether a particular jury or a particular judge or magistrate will convict. If such a test was adopted then prosecution might depend upon an assessment of how different juries in different parts of the country reacted or different judges reacted. This would be wrong. The test must be how an impartial jury or judge is likely to conclude.

**may reasonably be expected to find** - It is impossible to know with absolute certainty whether or not a conviction will be obtained in a particular case. What is required by the evidential test is that there is a reasonable prospect of a conviction on the evidence. The weighing of evidence is not a mathematical science but rather a matter of judgment for the prosecutor.

**beyond reasonable doubt** - The evidence available to the prosecutor must be sufficient to reach the high standard required by the criminal courts. It is necessary for the prosecution to establish its case beyond reasonable doubt.

**commission of a criminal offence** - This requires that regard is had to the law in order to identify what offence or offences may have been committed and to consider the evidence against each of the ingredients which establish the particular offence.

# Annex 3: Legislation & international instruments

## Sexual Offences Act 2003:

section 57 Trafficking into the UK for sexual exploitation  
section 58 Trafficking within the UK for sexual exploitation  
section 58A Trafficking outside the UK for sexual exploitation  
section 59 Trafficking out of the UK for sexual exploitation  
section 52 and 53 Causing or inciting and controlling prostitution for gain

## Asylum and Immigration (Treatment of Claimants etc) Act 2004:

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

## Immigration Act 1971:

section 25 facilitation of immigration law (smuggling)

## Sexual Offences (Northern Ireland) Order 2008:

Article 5 Rape  
Article 37 Paying for the sexual services of a child  
Article 38 Causing or inciting child prostitution or pornography  
Article 39 Controlling a child prostitute or child involved in pornography  
Article 40 Arranging or facilitating child prostitution or pornography  
Article 62 Causing or inciting prostitution for gain  
Article 63 Controlling prostitution for gain  
Article 64 Keeping a brothel used for prostitution  
Article 64(A) Paying for sexual services of a prostitute subjected to force

## Coroners and Justice Act 2009:

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

## Offences against the Person Act 1861:

section 16 Threats to kill

## Common law:

Kidnap  
False imprisonment

Proceeds of Crime Act 2002:  
sections 327, 328 and 329 Money laundering

Violent Crime Reduction Act 2006:  
section 54 Forfeiture to seize and forfeit land vehicles, ships and aircraft used for the trafficking of human beings

Forgery and Counterfeiting Act 1981:  
section 1 Making or controlling a false instrument

Identity Cards Act 2006:  
sections 25 or 26 Possession of false identity documents

Criminal Attempts and Conspiracy (Northern Ireland) Order 1983:  
Article 9 Conspiracy to commit offences here and abroad

### **International Instruments**

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

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

Council of Europe Convention on Action Against Trafficking in Human Beings

Palermo Convention on action against Human Trafficking

Convention on the Elimination of Discrimination Against Women (CEDAW)

United Nations Convention on the Rights of the Child

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

United Nations Convention on the Rights of Persons with Disabilities



# Annex 4: Bail

A court can remand a defendant in custody or grant bail, with or without conditions attached. Before the first court hearing, the police can also retain a defendant in custody or grant bail.

## **Examples of Bail Conditions Imposed by Courts**

A court can impose any condition that seems appropriate in the circumstances of the particular case. Here are some examples of typical bail conditions imposed by courts:

### **The defendant must not contact, either directly or indirectly, a named person or persons, for example the victim**

This means no contact whatsoever, including by telephone, fax or letter or through another person.

### **The defendant must surrender their passport**

### **The defendant must not go to a named place**

This is usually a specific address, but may also be a street, a town, or an area. Sometimes the court will say that the defendant must not go within a specified distance of a place, e.g. within half a mile of Victoria Road.

### **The defendant must reside at a named address**

This means live and sleep each night there.

### **The defendant must report to a named police station on a given day or days at a given time**

For example, every weekday morning at 10.00 am

**The defendant must provide a security to the court**

If it is thought that the defendant might not attend the next court hearing, the court can order that a set sum of money be paid into the court. If the defendant does fail to attend the next hearing then the money can be forfeited.

**The defendant must provide a surety**

A friend or relative must agree to ensure that the defendant attends court, or the friend or relative could lose a specified sum of money.

**The defendant must abide by a curfew between certain specified hours**

This means remain indoors, for example, from 9pm until 8am. This will usually be accompanied by a condition that the defendant must present him/herself when police call to the door of the property during the hours of curfew.

**Electronic Monitoring**

A person under curfew must stay at a specified address for between 2 and 12 hours a day. The hours of the curfew will vary depending on the individual's circumstances but most curfews are at night. Electronic Monitoring (EM), often known as "tagging", uses an electronic tag and a monitoring unit to monitor a person's compliance with their curfew.

**Breaching bail conditions**

If the defendant breaches bail conditions, the police can arrest the defendant and the court will re-consider the issue of bail and bail conditions.

## Annex 5: Contact details for some Northern Ireland support/advice organisations

Additional details of the support which is available to victims of human trafficking can be found on the NI Direct Website, which is the official government website for Northern Ireland, at: [www.nidirect.gov.uk](http://www.nidirect.gov.uk).

The following agencies provide support and/or advice to victims of human trafficking:

### **Migrant Help**

Tel: 077 6666 8781 or 013 04203977

Email: [mhl@migranthepline.org](mailto:mhl@migranthepline.org)

Web: [www.migranthepline.org.uk](http://www.migranthepline.org.uk)

*Provide accommodation and support to victims of human trafficking*

### **Women's Aid Federation Northern Ireland**

24 hour Domestic & Sexual Violence Helpline

Tel: 0808 802 1414

Email: [24hrsupport@dvhelpline.org](mailto:24hrsupport@dvhelpline.org)

Text **support** to 07797 805 839

*Open to all women and men affected by domestic and sexual violence*

Freephone from all landlines and mobiles

Translation services available

Web: [www.womensaidni.org](http://www.womensaidni.org)

*Provide accommodation and support to female victims of human trafficking*

### **Other support providers include:**

#### **The Rowan**

#### **Sexual Assault Referral Centre**

Tel: 0800 389 4424 (free phone 24 hrs, 7 days per week)

Web: [www.therowan.net](http://www.therowan.net)

*A specialist regional centre which provides a range of support services for victims of sexual violence and abuse*

**Barnardo's Northern Ireland**

Tel: 028 90672366

**Disability Action**

Tel: 028 90297880

**Lifeline (delivered by Contact Youth)**

Tel: 0808 8088000

*Free confidential 24 hour counselling helpline available to people of all ages across Northern Ireland. Deals with a range of issues including suicide, abuse, self harm, trauma, depression and anxiety.*

**NEXUS Institute**

Tel: 028 90326803 (Belfast)

Tel: 028 71260566 (Londonderry)

Tel: 028 38350588 (Portadown)

Tel: 028 66320046 (Enniskillen)

Email: [info@nexusinstitute.org](mailto:info@nexusinstitute.org)

Web: [www.nexusinstitute.org](http://www.nexusinstitute.org)

*Counselling and support for adult survivors of sexual abuse*

**Rape Crisis and Sexual Abuse Centre**

Tel: 028 90329002 (10am – 6pm Mon to Fri).

Web: [www.rapecrisisni.com](http://www.rapecrisisni.com)

*Counselling and support for male and female survivors of sexual violence and abuse*

**Salvation Army**

24-hour confidential Referral Helpline: 0300 3038151

**Samaritans**

Tel: 028 90664422 or national helpline 08457 909090

*Emotional support to people who are distressed or in despair (24 hour helpline)*

**Victim Support NI**

Tel: 028 90244039 (9am – 5pm Mon to Fri)

Tel: 0845 3030900 (National Support Line 9am – 9pm Mon to Fri)

*Support for individuals affected by crime. Criminal Injuries Compensation service and witness support at court*



### **Northern Ireland Council for Ethnic Minorities**

Tel: 028 90238645

Email: [jolena@nicem.org.uk](mailto:jolena@nicem.org.uk)

Web: [www.nicem.org.uk](http://www.nicem.org.uk)

*Provides one stop shop services with bi-lingual staff*

### **The Rainbow Project**

Tel: 028 90319030 (9am – 5pm Mon to Fri)

Web: [www.rainbow-project.org](http://www.rainbow-project.org)

*Support for gay and bi-sexual men*

### **Law Centre NI**

Tel: 028 90844401

E mail: [admin.belfast@lawcentreni.org](mailto:admin.belfast@lawcentreni.org)

Web: [www.lawcentreni.org](http://www.lawcentreni.org)

*Provides legal advice, including immigration advice*

### **Childline**

Tel: 0800 1111 (24 hours)

*Telephone counselling and advice service for children and young people in trouble or danger.*

### **Children's Law Centre**

Tel: 028 90245704

*Advice about law and policy affecting children and young people in NI*

### **NSPCC National Child Protection Helpline**

Tel: 0808 800 5000 (Freephone 24 hours)

*Child protection and welfare of children*

### **Young Witness Service (NSPCC(NI))**

Tel: 028 94487533

*Information and support for young people and children who may have to give evidence in criminal courts*

### **Compensation Services**

Tel: 0300 200 7887

Web: [www.compensationni.gov.uk](http://www.compensationni.gov.uk)

*Administers five statutory compensation schemes in Northern Ireland including for people who have suffered criminal injuries*

## **Health and Social Care**

### **Health and Social Care Board**

Tel: 028 90321313 (Belfast)

Web: [www.hscboard.hscni.net](http://www.hscboard.hscni.net)

### **Public Health Agency**

Tel: 028 90523737 (Belfast)

Web: [www.publichealth.hscni.net](http://www.publichealth.hscni.net)

### **Belfast Health and Social Care Trust**

Tel: 028 90960000

Web: [www.belfasttrust.hscni.net](http://www.belfasttrust.hscni.net)

### **South Eastern Health and Social Care Trust**

Tel: 028 90553100

Web: [www.setrust.hscni.net](http://www.setrust.hscni.net)

### **Northern Health and Social Care Trust**

Tel: 028 9446 5211

Web: [www.northerntrust.hscni.net](http://www.northerntrust.hscni.net)

### **Western Health and Social Care Trust**

Tel: 028 71345171

Web: [www.westerntrust.hscni.net](http://www.westerntrust.hscni.net)

### **Southern Health and Social Care Trust**

Tel: 028 3833 4444

Web: [www.southerntrust.hscni.net](http://www.southerntrust.hscni.net)

## **Victim Information Schemes**

### **Northern Ireland Prison Service Victim Information Scheme**

Tel: 028 90321973

Freephone: 0845 2470002

Web: [www.niprvis.gov.uk](http://www.niprvis.gov.uk)

### **Mentally Disordered Offenders Victim Information Scheme**

Tel: 028 9032197

Freephone: 0845 2470002

Web: [www.nidirect.gov.uk](http://www.nidirect.gov.uk)

### **Probation Victim Information Scheme**

Tel: 028 90321972

Email: [victiminfo@pbni.gsi.gov.uk](mailto:victiminfo@pbni.gsi.gov.uk)

Web: [www.pbni.org.uk](http://www.pbni.org.uk)

### **For further information about the PPS, please contact:**

Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR  
Website:

Tel: 028 90897100  
Fax: 028 90897030  
Textphone: 028 90897011  
E-mail: [info@ppsni.gsi.gov.uk](mailto:info@ppsni.gsi.gov.uk)  
[www.ppsni.gov.uk](http://www.ppsni.gov.uk)

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For further information about the PPS, please contact:

Public Prosecution Service  
Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR

Tel: 02890 897100  
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E-mail: [info@ppsni.gsi.gov.uk](mailto:info@ppsni.gsi.gov.uk)  
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