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Prosecuting Human Trafficking - Progress in the UK

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Abstract

This paper examines the United Kingdom's approach to prosecutions and convictions of modern slavery and human trafficking offences. It focuses on the UK's journey and the progress that it has made thus far, from having no legislation by which to tackle this crime to the newly enacted Modern Slavery Act (2015). The paper observes the low numbers of prosecutions leading to convictions as well as the difficulty in effective data collation and recording of trafficking offences. The paper focuses on a non-governmental organisations experience of working with victims and law enforcement agencies, using a sample of seventy four case files to record interactions with the criminal justice process. Further the paper suggests that in order for the Modern Slavery Act (2015) to obtain successful convictions, prosecution should only be seen as part of the solution and not the whole solution. It will only be a successful part of the UK narrative if it is used in conjunction with effective, long-term victim support and prevention efforts.

Investigation, prosecution and conviction of perpetrators are crucial elements of tackling the issue of trafficking and slavery. Prosecution has to be part of an effective national response. However it will not be effective in isolation and attention has to be paid to other vital components, such as victim protection, long term reintegration and prevention strategies if we are to truly tackle this crime. The definition of modern slavery in the UK is based upon the definitions given in the Modern Slavery Act (2015)¹. The enactment of the Modern Slavery Act has widened the definition of slavery to incorporate the following elements;

- human trafficking,
- forced and compulsory labour,
- slavery,
- servitude.

Slavery is not only a human rights issue, it is also an economic one. In order to identify, prosecute and convict we need to not be solely focusing on the testimony of traumatised victims, but be innovative in the way we approach the

¹ HM Government *Modern Slavery Act 2015* <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

issue. Initially, in a UK context, the relationship between the National Crime Agency, Police and Crime Commissioners, Regional Organised Crime Units and local policing needs to be firmly established. Law enforcement should implement covert tactics, proactively engage in financial investigations, work in partnership with other agencies, work across borders (both in terms of international, country borders and those we have established locally between force and local authority jurisdictions), look beyond crimes committed whilst in a situation of trafficking, look beyond immigration status and to begin to see slavery as a normal part of everyday policing business. Law enforcement agencies and officers have to be prepared to invest the appropriate time, energy and resources required to understand the crime, its reach, the impact it has on individuals, communities and economy in order to ultimately be in a position to effectively prosecute and convict the perpetrators. If prosecutions are a primary aim and intention behind the Modern Slavery Act (2015) law enforcement agencies needs to be in receipt of appropriate allocation and amounts of funding from central government to invest in this area of business.

This task should not be under-estimated. It is not easy, especially in a time of austerity. Resourcing for law enforcement is based solely upon statistics, evidence, intelligence and numbers, Police Crime Commissioner priority planning and local crime reporting levels - it is understandable that for so long we have been able to hide behind the rhetoric of 'it is not a problem here.' This is purely because the stone has not been lifted, the issue not understood and victims have been misidentified. The crimes associated with slavery are complex, hidden, under-reported and poorly recorded. This has to change if we are to understand and tackle the systemic drivers of this illicit trade and convict those who profit from it. There are a number of internationally agreed understandings of human trafficking and modern slavery. The adoption of the United Nations Palermo Protocol² in 2000 was the first internationally binding instrument to define human trafficking, providing an agreed interpretation of the term, and establishing the protection to be afforded to victims. It also recognises the severity of human trafficking classifying it as an organised crime. The Council of Europe Convention on Action against Trafficking in Human Beings (the Convention) was agreed in 2005³, in order to help Member States to develop a consistent policy against human trafficking. The UK ratified the Convention in 2008 and brought it into force in April 2009. In 2010, the EU Directive on preventing and combating trafficking in human beings

² United Nations, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime*, 2000, retrieved 14 June 2015, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

³ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, retrieved 14 June 2015, <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.

and protecting its victims (the Directive) introduced further measures including a more serious approach to prevention and prosecution and the protection of victims' rights. It also included specific measures for child victims⁴. It is worth noting until 2003 there were no specific trafficking related offences in the UK. Offences pertaining to the facilitation of illegal entry, kidnap, false imprisonment or living of immoral earnings⁵ were used.

In the UK human trafficking offences were contained in two separate Acts: the Sexual Offences Act 2003⁶ which criminalises trafficking for the purposes of sexual exploitation and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004⁷ which criminalises trafficking for forms of non-sexual exploitation. A further offence which criminalises holding another person in slavery or servitude or requiring them to perform forced or compulsory labour without the need to prove trafficking was then introduced under the Coroners and Justice Act 2009⁸.

Despite the introduction of the new offences, the number of prosecutions and convictions for offences of human trafficking, in the UK (England, Wales and Northern Ireland) remained low. There is on-going suggestion that there is an inability to effectively track the number of prosecutions and convictions in the UK⁹. At the time of writing this article, official statistics regarding the number of investigations, prosecutions and convictions for 2014 were unavailable publicly from the Ministry of Justice (MoJ). The Home Office states that the data available has been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data sets are used¹⁰.

⁴Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, retrieved 14 June 2015, https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en.

⁵ House of Commons Library, *Human Trafficking: UK Responses* SN/HA/4324, 13 January 2014, retrieved 13 June 2015, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04324#fullreport>.

⁶Crown Copyright, 'Section 57, 58, 59, *Sexual Offences Act 2003*', retrieved 14 July 2015 <http://www.legislation.gov.uk/ukpga/2003/42/part/1>.

⁷ Crown Copyright, 'Section 4, *Asylum and Immigration Act 2004*', retrieved, 14 July 2015 <http://www.legislation.gov.uk/ukpga/2004/19/section/4>.

⁸ Crown Copyright, 'Section 71, *Coroners and Justice Act 2009*', retrieved, 14 July 2015 <http://www.legislation.gov.uk/ukpga/2009/25/part/2>

⁹ Centre for Social Justice 'It Happens Here Report' London, 2013, p. 151.

¹⁰ UK Parliament, Written Questions: Human Trafficking 225481, 25 February 2015, retrieved 14 June 2015, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-25/225481/>.

Due to the varied collection and recording methods, different governmental departments have employed, statistical evidence of prosecutions and convictions for trafficking offences it is not possible to effectively compare them. A report focused on Human Trafficking legislation¹¹ states when prosecuting suspected traffickers, the prosecution authorities in the UK (the Crown Prosecution Service (CPS), and the Crown Office and Procurator Fiscal Service) will consider all available evidence and the full range of options in any particular case. The figures on human trafficking convictions therefore do not tell the whole story. Indeed, traffickers who are brought before the courts are often prosecuted for one of a number of possible offences and not just trafficking offences. These prosecutions and convictions will not appear on national statistics as convictions for human trafficking. So, whilst the number of prosecutions and convictions for trafficking offences may appear low, compared to the number of potential victims identified, there are many more convictions of persons involved in trafficking on other related offences. The figures therefore do not take account of the number of cases prosecuted under other legislation, prosecutions for conspiracy to traffick, and cases where UK law enforcement and prosecutors work to support prosecutions in other jurisdictions. By not recording these offences as human trafficking data capture as to the true nature and scale of the crime will not be accurate.

*'The MoJ often record the additional offences on the indictment, along with human trafficking, such as rape and kidnap. On conviction, offences of rape and kidnap are classified as the more serious offences than human trafficking; therefore convictions are shown on the principle offence (i.e. the most serious offence). Whilst this was clearly good in increasing conviction rate for rape, it doesn't reflect the number of convictions for trafficking.'*¹²

The available figures¹³ show from 2005-2011¹⁴, 129 defendants were found guilty of trafficking offences and that these were predominantly for sexual exploitation. Further data¹⁵ shows the number of successful convictions, specifically for trafficking offences from 2009-2011 totalled 49. These convictions were split between sexual exploitation (41) and non-sexual exploitation (8). These figures relate to persons for whom trafficking offences were the principal offences for which they were dealt with. However, during the same time period (2010/11)

¹¹ HM Government, 'Report on the internal review of human trafficking legislation' London, 2011, pp.7-8.

¹² Interview. CPS Employee, London, 14 June 2015.

¹³ HOC SN/HA/4324, p. 8.

¹⁴ The author has been unable to locate statistics relating to prosecutions and convictions during 2012 from MoJ sources.

¹⁵ HM Government, London, 2011, pp.7-8.

CPS recorded a total of 116 prosecutions¹⁶. In 2013, 144 prosecutions were taken forwards, on both principle and all offence basis, 67 convictions (46%) were gained.¹⁷ In 2013 convictions for principle offences for trafficking totalled 19¹⁸.

Since April 2010, the CPS has flagged and monitored all cases of human trafficking. The volume of human trafficking referrals from the police rose to 171 in 2013-14 – a rise of 30.5% from 2012-13. 103 (60.2% of these referrals) were charged, a similar volume to 2012-13 (102). The volume of human trafficking prosecutions completed in 2013-14 reached 226 - a rise from 139 in 2012-13. There was a rise in the volume of successful human trafficking outcomes from 99 in 2012-13 to 155 in 2013-14 (71.2% in 2012-13 fell to 68.6% in 2013-14; mainly linked to a rise in jury acquittals).¹⁹

Information from The Violence against Women and Girls Crime Report²⁰ shows that 86% of all defendants with recorded gender were men. The majority of defendants were aged 25-59 years. Perpetrators are prosecuted and convicted for serious offences other than trafficking, where there are links to trafficking including, for example, conspiracy to traffic, false imprisonment, controlling prostitution for gain and rape. Alternative offences may be more accurate to the actual offending, carry more serious penalties and are a lot easier to explain – particularly to juries.²¹

According to CPS records there were 226 human trafficking flagged convictions in 2013- 2014. Of these, 155 resulted in a successful conviction (67%).²² In the same time period comparing human trafficking prosecutions with other similar crime types shows that successful conviction rates are comparable, however the number of cases being brought forward for human trafficking are significantly lower than other crime types. For example; child abuse prosecutions for 2013-2014 totalled 7,998 with a successful conviction rate of 76.2%²³, domestic violence prosecutions equalled 78,071 with a successful conviction rate

¹⁶ HM Government, *Human Trafficking: the Government Strategy*, 2011, p. 6.

¹⁷ UK Parliament, Written Questions: Human Trafficking 225481, 2015.

¹⁸ UK Parliament, Written Questions: Human Trafficking 225481, 2015.

¹⁹ Crown Prosecution Service, *Violence against Women and Girls Crime Report: 2013-2014*, London, 2014, p. 71.

²⁰ CPS, London, 2014, p. 71

²¹ CPS, London, 2014, p. 71

²² CPS, London, 2014, p. 71.

²³ CPS, London, 2014, p. 67

of 74.6%²⁴ and 3,891 rape prosecutions were brought forward with a successful conviction rate of 60.3%.²⁵

In the UK, have begun to see the start of change in this sector. Over the past 2 years the UK Government has prioritised the issue of modern slavery and has made commendable efforts to tackle it as a crime. The introduction of the Modern Slavery Unit at the Home Office (2013)²⁶, the launch of a Modern Slavery Strategy (2011 and updated 2014)²⁷, the publishing of research in to the scale of Modern Slavery (2014)²⁸, a review of the National Referral Mechanism (NRM, 2014)²⁹ and the creation and enactment of the Modern Slavery Act (2015)³⁰, the first Act of its kind in Europe, all provide clear indication as to the intent and importance the UK Government place on this issue.

The Modern Slavery Act reached Royal Assent in March 2015 and a number of the provisions within it came into force between March and July 2015. How the law is to be effectively enacted and put into workable policy³¹ is still being navigated but the intention has been clearly stated and recognition for this proactive stance and forward movement needs to be given. Whilst it is the first dedicated legislation on modern slavery bringing together all of the criminal offences under one Act it is viewed by some as largely law-enforcement focused and, failing to provide sufficient protection for survivors³². The Modern Slavery Act clearly states its intention to give law enforcement the tools to tackle modern slavery, ensure that perpetrators can receive suitably severe sentences for these appalling crimes, enhance support and protection for victims, and ensure large businesses report annually on what they doing to stop modern slavery occurring in their operations.

²⁴ CPS, London, 2014, p. 24

²⁵ CPS, London, 2014, p. 45

²⁶ The Home Office Speech, '*Modern Slavery*', 16 December 2013, <https://www.gov.uk/government/speeches/modern-slavery>.

²⁷ The Home Office, '*Modern Slavery Strategy*', 29 November 2014, <https://www.gov.uk/government/publications/modern-slavery-strategy>.

²⁸ The Home Office, '*Modern Slavery: an application of multiple systems estimation*', 29 November 2014, <https://www.gov.uk/government/publications/modern-slavery-an-application-of-multiple-systems-estimation>.

²⁹ The Home Office, '*Review of the National Referral Mechanism*' November 2014, retrieved 30 November 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372960/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf.

³⁰ Crown Copyright, '*Modern Slavery Act*', 26 March 2015 <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

³¹ Home Office Circular, '*Modern Slavery Act 2015*', 9 July 2015.

³² The Human Trafficking Foundation, '*Life Beyond the Safe House*', 2015, p. 10.

The following provisions came into force on 31 July 2015:

1. The consolidation of slavery and human trafficking offences into one Act with a maximum life sentence (sections 1-6).
2. Ensuring the main offences are criminal lifestyle offences for the purposes of the Proceeds of Crime Act 2002 (section 7).
3. Slavery and Trafficking Reparation Orders, providing powers for the courts to use seized assets to compensate victims (sections 8-10).
4. Provisions for law enforcement and the courts to detain and forfeit vehicles, ships etc involved in human trafficking (sections 11-12).
5. Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders (sections 14-34), providing new tools to prevent the harm caused by slavery and trafficking offences.
6. Placing the Independent Anti-Slavery Commissioner on a statutory footing (sections 40-44). The Home Secretary appointed the designate Commissioner, Mr Kevin Hyland, in November 2014.
7. The statutory defence for victims (section 45), which strengthens protections against inappropriate prosecution of victims of slavery and trafficking for crimes committed as part of their exploitation.
8. Special measures for witnesses (section 46), ensuring victims in slavery cases have the benefit of special measures in court in the same way as already applies in human trafficking cases.
9. Access to civil legal aid for slavery victims (section 47). Victims of human trafficking who have received a positive Reasonable Grounds decision as part of the National Referral Mechanism already have access to civil legal aid. In line with the change to the National Referral Mechanism to identify victims of slavery and trafficking; this provision extends civil legal aid access to victims of slavery.³³

The offences have been redrafted to try to provide clarity and focus when investigating and prosecuting those involved in modern slavery offences. On a summary conviction of either Slavery, Servitude and forced or compulsory labour or human trafficking defendants will receive twelve months' imprisonment (to be read as six months until Section 154(1) of the Criminal Justice Act 2003 comes into force) and/or an unlimited fine and upon conviction on indictment – life imprisonment³⁴. A written answer of 14 January 2009 set out the average sentence

³³ Personal Email Correspondence, 'Guidance about the Modern Slavery Act 2015 Modern Slavery Circular' 10 July 2015.

³⁴ Home Office Circular, 9 July 2015. p. 6.

for people convicted of trafficking offences as 4.69 years³⁵, it is hoped the new consolidation of the offences and enactment of the Modern Slavery Act will significantly increase this.

It is also worth noting that The CPS will still prosecute trafficking and slavery cases under other legislation too, such as conspiracy to trafficking, which will carry the same sentence but as its prosecuted and convicted under Section One Criminal Law Act and not the Modern Slavery Act, however under current recording mechanisms this will not show as a conviction for trafficking³⁶. A mechanism of cohesive data capture is required to ensure all cases and offences are correctly recorded.

Practically the data we have about prosecutions and convictions is as reliable as the system that is recording it. From the data shared by CPS, prosecutions did not occur in all of the 43 police force areas in the UK indicating this is not an issue that is receiving strategic priority or resourcing across the board. The Home Office have stated that whilst the Modern Slavery Act ensures police have the powers they need to tackle modern slavery and that the Government will work closely with the Independent Anti-Slavery Commissioner and National Policing Lead for Modern Slavery to improve the police response to modern slavery, including trafficking, is up to individual police forces on the steps they take to implement the changes³⁷. There is currently no 'top down' mandate or agreed process to approaching and dealing with this crime, this has the potential to continue the current post-code lottery system of policing this issue. There are areas and pockets of good practice, but equally there are areas where forces are completely unengaged.

As a non-governmental organisation, Unseen's³⁸ purpose is to work towards a world without slavery. By concentrating efforts on three main areas; supporting, equipping and influencing Unseen use their experience of working on the frontline to inform discussions with partners allowing them to tackle the issue in a systemic way.

Unseen's specialist care is the first step in the fight against slavery, by supporting survivors and giving them a safe place to recover from trauma and rebuild their lives. Unseen's 24-hour safe-house has provided care and accommodation for over 100 trafficked women since opening in June 2011, whilst Unseen's outreach service has supported over 50 survivors since 2013 as they live

³⁵ HOC SN/HA/4324, p. 9.

³⁶ Personal Email Correspondence, CPS Official, 14 July 2015.

³⁷ UK Parliament, Written Questions: Kent, Human Trafficking 6160, 8 July 2015, retrieved 14 July 2015 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-07-08/6160/>.

³⁸ The author of this article founded the organisation Unseen in 2008 and is currently the Managing Director

in the local community. Helping survivors to come to terms with their ordeals and move forward with their lives, Unseen offer access to medical care, assistance to report to law enforcement, legal support, counselling, therapeutic activities and emotional support. Of the survivors worked with 45% have been Eastern European, 30% African and 4% British. Ninety six percent of survivors report wishing to remain in the UK³⁹.

Unseen is an organisation that actively supports and offers victims of trafficking and slavery the opportunity to report to the police, supports them to do so and has dedicated protocols and processes in place with local police forces to ensure victims are appropriately supported and advocated for should they decide to proceed with reporting. It is well evidenced that victims can be reluctant to report their traffickers due to control, intimidation, threats of violence and fear of being punished and deported to their origin country⁴⁰. Similarly, victim self-identification is difficult because of the complex nature of human trafficking. In some cases, trafficking victims may see little benefit in dealing with authorities⁴¹. Unseen's work in this sector would echo this sentiment. Unseen report that some clients refuse to participate in police investigations (n=14). Often victims decide that risking speaking with law enforcement for the promise a 50 day reflection period via the NRM⁴² is not going to provide them with the stability and support they need to protect themselves and their families. Via multi-agency welfare visits to establishments, where intelligence suggests victims may be being harboured (car washes, brothels, hotels, nail-bars), Unseen has encountered numerous potential victims of trafficking and seen many indicators to cause concern, and victims rarely choose to leave their situation of exploitation.

Reviewing a sample (n=74) of Unseen's cases the following information was ascertained from case notes. Of 74 cases arrests were made in 11 (15%). Of these 11, prosecutions took place in 6 cases. This equates to 8% of total number of cases and 55% of those in which arrests had been made. Convictions for a trafficking principle offence occurred in 1 out of 74 cases reviewed. It should be noted that some of the 74 cases may have engaged with law enforcement processes or convictions may have been gained post leaving the support of Unseen. The long-term tracking of cases and their outcomes for victims and in terms of successful

³⁹ Unseen Case Files and Monitoring Sheets, 2009-2015

⁴⁰ Unseen Case Studies, 2011-2015

⁴¹ K Kangaspunta, 'Was Trafficking in Persons Really Criminalised?', *Anti-Trafficking Review*, issue 4, 2015, pp. 80—97, www.antitraffickingreview.org, p. 86.

⁴² National Crime Agency, 'National Referral Mechanism', NCA, 2014, retrieved 15 July 2015, <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>.

prosecutions and convictions is not currently recorded in the UK. It appears from the initial review of cases (n=74) that Unseen cases follow the national trend of low investigation, prosecution and conviction rates for trafficking related offences.

Clients report not wanting to engage because they are too frightened and some because they just want to go home to their family and forget what has happened. Clients and staff further report that working with law enforcement agencies was not always easy. Issues that Unseen staff have reported from interactions with law enforcement agencies include officers having a lack of understanding about trauma faced by victims, a lack of understanding in regards to how trauma may manifest itself, a lack of knowledge and confidence about using the legislation available and generally a lack of communication about the case with the victim.

It has been observed that the lack of communication can be particularly distressing to this client group and victims have experienced feeling isolated and uninformed about the progress their case is making. Not always having a dedicated officer or team assigned to a case, shift patterns and some officers working unsociable hours can lead to victims feeling isolated and anxious about the process.

Negative feedback about law enforcement agencies recorded in client case notes (n=20) relates mostly due to lack of communication between police and client/staff (i.e. very difficult to get hold of, do not return calls, make unrealistic promises in order to facilitate cooperation, and hostility towards clients and clients being treated as the perpetrator). Also unexplained delays in investigations and not investigating the crime reported as a trafficking offence all add to client frustrations when working with law enforcement. Another reported frustration was law enforcements lack of awareness of discretionary leave. Whilst discretionary leave, a form of temporary resident permit, is available in the UK, it is under-used. One of the situations in which it can be granted is when a victim is co-operating with an on-going police investigation and their presence in the UK is required for this purpose. Unseen's experience has been that application for discretionary leave and the success of applications varies depending on an individual's country of origin, legal representative, the area of the country they are located in and law enforcement's knowledge of the system.

A report from GRETA⁴³ shows that between 2009 and October 2011, of 373 non-EEA victims of trafficking with a positive conclusive grounds decisions, just 25 received residence permits due to their 'personal circumstances'. In the

⁴³ Group of Experts on Action against Trafficking in Human Beings (GRETA), 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom'. Strasbourg: Council of Europe, 2012.

Trafficking in Persons Report⁴⁴ published in 2014 by the US State Department the UK didn't report on the number of discretionary leave permits it issued. It is not a system that is well known, understood, publicised or used. Even when victims are identified, they are be reluctant to cooperate with criminal justice authorities because of lack of trust, fear of being deported or prosecuted for related criminal activity or fear of being stigmatized.

Clients (n=13) also reported, via case notes, that helpful, committed and communicative police officers actively meant less distress for clients. One force used a liaison officer in the local force to facilitate communication between police and client which was very successful and in one case they were particularly proactive (putting out a watch at a local airport for suspect should they try to traffic other victims) which clients describe as reassuring and affirming, having someone on side who believes them is hugely important to the client group.

From an interview conducted with a senior police officer it was suggested that better and longer term protection for victims would provide officers with the ability to take a more sustained approach to win a victims trust and navigate a case through to prosecution more successfully. Currently the system in place in the UK to identify and protect potential victims of trafficking is the National Referral Mechanism (NRM).⁴⁵ Once a potential victim is identified this mechanism grants a minimum 45-day reflection and recovery period. This reflection and recovery period assists the UK to meet obligations under the Convention (2005)⁴⁶ and is how victims in the UK access accommodation, support and a decision as to their trafficking status. At day 45 victims are given a 'conclusive ground decision'⁴⁷ that will determine them to either be a victim or not, at this juncture regardless of a positive or negative outcome support under this mechanism ceases. This process is funded jointly by the Home Officer and Ministry Of Justice and is enacted by the Salvation Army and a group of sub-contractors, who provide accommodation and support to victims across the whole of the UK.

Even if a potential victim wanted to report to police immediately upon referral into support (which is highly unlikely) to engage and then interview the victim, gather intelligence and supporting information, present information to CPS, get a charge, prepare a case, go to court, get a prosecution, a conviction will not happen within a 45 day timeframe. Once a decision has been reached about an

⁴⁴ United States of America State Department, '*Trafficking in Persons Report 2014. USA: US State Department*', 2014.

⁴⁵ NCA, 2014, retrieved 14 July 2015.

⁴⁶ Council of Europe Convention on Action against Trafficking in Human Beings, 2005

⁴⁷ National Crime Agency, *National Referral Mechanism*, <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

individual's trafficking status, there is no automatic entitlement in terms of support or residency, temporary or otherwise. Without discretionary leave, withdrawal of support under the NRM post 45 days means that victims will no longer necessarily be supported to access the criminal justice process. Assistance to attend interviews, support during and after any police activity (interviews, court appearances), understanding of correspondence linked to their case and any necessary advocacy will cease. Police identify that *'we just don't have time with victims of slavery'*.⁴⁸ Police compare trafficking cases with those of child sexual exploitation where it often takes months working with specialist advocates and support networks for victims to even see themselves as victims and build trust in the police and other agencies before even being in a position to think about supporting a police investigation and prosecution. When the support system a victim has relied on is removed after 45 days it makes any on-going police activity a challenge. When asked to comment on the issues with obtaining a successful prosecution the response was:

*'Strategically our force have changed their focus to prioritise resources towards threat, harm, risk and vulnerability. Additionally, we have a much better intelligence picture and much better awareness of what slavery looks like... We appreciate it is very difficult for victims to declare themselves as victims of slavery. This requires us to take different investigative approaches akin to the management of child sexual exploitation and mainstream organised crime group management'*⁴⁹

The number of prosecutions viewed in isolation are not an appropriate measure of the nature and scale of trafficking and slavery for the UK. The numbers of prosecutions may be useful as an indicative measure and indication of how law enforcement react to the issue of slavery and trafficking in human beings. But from Unseen's experience, this is not truly representative. Even when police do want to proceed with a case there are other barriers to overcome, including providing the right level of evidence for CPS and managing the continual engagement with the potential victim post the withdrawal of specialist support. As stated by Kangaspunta⁵⁰, legislation remains a rather symbolic act against trafficking in persons, only signifying a moral standard against the crime, unless it is implemented. For the UK the introduction of the Modern Slavery Act is definitely a step in the right direction, but new legislation will not change the situation

⁴⁸ Interview, Senior Police Officer, Bristol, 14 July 2015.

⁴⁹ Interview, Senior Police Officer, Bristol, 14 July 2015.

⁵⁰ Kangaspunta, p. 86.

overnight nor will it work in isolation. In order to achieve successful prosecutions and for the Modern Slavery Act as effective as possible there is a need to:

- Revisit the systems of support offered and the length of time support is available,
- Invest in long term solutions for victims so they are supported and can decide if they want to be involved in a police investigation,
- Train police and law enforcement staff to understand the new legislation and how to work with support agencies and victims,
- Treat the crime as ‘business as usual’ for law enforcement agencies,
- Look to disrupt the perpetrators and not rely solely on the victims,
- Correctly recording all cases linked to trafficking and slavery (even if this is not the principle offence),
- Ensure victims understand the criminal justice process and are kept informed throughout in a language and way that is understandable to them,
- Increase the use of discretionary leave for those engaging with police,
- Consider what other powers are available to other enforcement agencies in the tackling and disruption of this crime (HMRC, DWP, Local Authorities, Trading Standards, GLA), and
- Investigate how successful investigations, prosecutions and convictions can be achieved without victim testimony.

Prosecution is only part of the story and will only be a successful part of the narrative if it is used in conjunction with effective, long-term victim support and prevention efforts. The UK is at the beginning of a long journey.

Since writing this paper the Modern Slavery Act (2015) has been in action over a year. A recent report⁵¹ has reviewed the implementation of the Act and in regards to prosecution has identified the following in terms of the Acts effectiveness in prosecuting Modern Slavery within the context of England and Wales:

- *Police have recorded 884 modern slavery crimes between April 2015 and March 2016*
- *Prosecutions for modern slavery offences has increased, although it is appreciated that prosecutions before the legislation were low.*
- *In 2015, 117 offenders were prosecuted for modern slavery offences in the UK, 19% higher than the 98 prosecuted in 2014.*
- *Between January 2015 and June 2016, approximately 340 cases have been referred to the Crown Prosecution Service that concerned trafficking and exploitation; approximately 215 of those were charged with convictions in approximately 75% of those cases.*
- *A total of 289 offences were prosecuted in 2015: 27 offences under the Modern Slavery Act (cases ongoing) and 262 under previous slavery and trafficking legislation*

Overall the review finds that:

- *the Modern Slavery Act has set an international benchmark to which other jurisdictions aspire*
- *law enforcement agencies are using the powers in the act to increase the number of prosecutions and to support more victims of modern slavery*
- *there is more to do to deliver greater consistency in how law enforcement and criminal justice agencies deal with the victims and perpetrators of modern slavery*
- *better training, better intelligence and a more structured approach to identifying, investigating, prosecuting and preventing slavery is required.*

⁵¹ The Haughey Review of the Modern Slavery Act https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf