

Child Trafficking and “County Lines”

06

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“The purpose of this guide is to assist advocates to assess their approach to children and young people who they may be asked to represent or prosecute and who may also have been trafficked. This guide will take you through the issues that you will need to consider where these factors are present. Finally, this guide highlights the core duties of advocates in these types of cases and what disclosures may or may not be made.”

‘County lines’, gangs and child victims

‘County lines’ involves the transportation of illegal drugs from one area to another by urban gangs and organised crime groups. This is done to extend their drug-dealing business into new areas including market and coastal towns. They use mobile phone ‘lines’ (a single dedicated telephone number on a PAYG phone) for customers to order their drugs. They tend to use a local property, generally belonging to a vulnerable person, as a base for their activities (this is known as [‘cuckooing’](#)).¹ ‘County lines’ are one of the main generators of gang-related exploitation of children.²

Children are exploited to store and/or deliver drugs along [county lines](#).³ Gangs typically use intimidation, debt bondage and violence to coerce children to do this. The fact that children are sent to different locations, even though these are generally within the UK, to carry out tasks for the gangs means that this type of CCE falls within the legal definition of trafficking under the Modern Slavery Act (‘MSA’) 2015 (see section 4). There is further authority to support that movement only within a small tight-knit community will be sufficient.⁴

The extent of the problem

The total number of children being exploited in this way is currently unknown, partly because of failures to identify victims. [The 2021 Government Report on Modern Slavery](#) states that the number of potential victims referred to the NRM has risen from 2,340 in 2014 to more than 10,000 in 2020. [The ONS Report on Child victims of modern slavery in the UK dated March 2022](#) states that since April 2009, 24,675 potential child victims of modern slavery (under the age of 18 years at the time of exploitation) have been referred to the NRM.

Vulnerable children targeted by ‘county lines’ gangs

Gangs prey on vulnerable children because they are cheaper, more easily controlled, less likely to get picked up by the police and, if arrested, they receive lighter sentences than adults.⁵ Gangs specifically target vulnerable children, such as those with special educational needs, young carers, children with mental health problems or disabilities or children who do not have support networks looking out for them. This was [exacerbated](#) during Covid-19 as children lost access to key services.

¹ NCA County Lines Violence, Exploitation & Drug Supply 2017, page 12, para 6

² Detective Inspector Brittany Clarke, Trident Metropolitan Police at Westminster Briefing on 29 June 2017

³ NCA County Lines Violence, Exploitation & Drug Supply 2017, page 6 & NCA Intelligence Assessment 2018

⁴ R v Ali & Anor [2015] EWCA Crim 1279, paragraph 80

⁵ Although practitioners should be aware of the three strike minimum sentence to be applied under section 313 Sentencing Code for Class A drug trafficking offences.

The [Home Office Guidance](#) includes the following factors as indicators of vulnerability:

- having prior experience of neglect, physical and/or sexual abuse;
- lack of a safe/stable home environment, now or in the past (domestic violence or parental substance misuse, mental health issues or criminality, for example);
- social isolation or social difficulties;
- economic vulnerability;
- homelessness or insecure accommodation status;
- connections with other people involved in gangs;
- having a physical or learning disability;
- having mental health or substance misuse issues;
- being in care (particularly those in residential care and those with interrupted care histories);
- being excluded from mainstream education, in particular attending a Pupil Referral Unit.

Gangs look for emotional vulnerability, such as children from families experiencing marital discord, absent/busy parents or families suffering a bereavement; they seek to fill that emotional void for the child and become 'their family'.⁶ Male children are most commonly exploited. It is thought that 15-17 years is the most common age group but the [data received by the NCA](#) indicates that there are children below the age of 11 years being used. Peer grooming is commonly employed, often within schools.⁷ Gangs are increasingly looking to recruit "clean skins" i.e. children with no previous criminal record who are unlikely to be stopped by the police.

Looked after children are especially vulnerable

Gangs target 'looked after' children, particularly those in residential children's homes and children in pupil referral units. Children who have been placed out of their home area are especially vulnerable.

Violence, grooming and coercion

Gangs often use threats, coercion and violence to force children to do their bidding. 70% of police areas reported that gangs were being violent to other gang members when they made mistakes or were accused of stealing.⁸ Children are given targets for selling and punished if these are not met.⁹ 'County lines' gangs are linked with extremely violent activities including stabbings; anal injuries using spoons and jagged objects; knife injuries to hands, legs and buttocks; and acid-filled drinks bottles taken into schools.¹⁰

⁶ Sheldon Thomas, Consultant on gangs and serious youth violence, Gangsline at Westminster Briefing on 29 June 2017

⁷ APPG on Runaway and Missing Children and Adults (2017) Briefing report on the roundtable on children who go missing and are criminally exploited by gangs. London APPGRMCA

⁸ National Crime Agency (2016) County lines gang violence, exploitation and drugs supply. London: NCA

⁹ Disley, E. and Liddle, M. (2016) Local perspectives in Ending Gang and Youth Violence Areas. Perceptions of the nature of urban street gangs. London: Home Office

¹⁰ Presentation by Margate Multiagency Taskforce



Gangs can employ much subtler approaches to draw children in. Peer grooming is common and can take place in schools, youth clubs and via social media. Music videos on YouTube are being used to glamourise gangs and to draw in children from wider social and geographical areas. In addition, children can be recruited by offering money or material possessions.

Rituals such as 'juju' are also used where a victim is subjected to the taking of an oath and believing they cannot break the bond of the relationship with the adult trafficker for fear of the threat being carried out. These are belief systems passed down through generations which are a powerful form of psychological control. The belief system is itself abuse by the spiritual leaders to make it more like institutional sexual abuse. This type of coercion stems from West Africa.

High numbers of British children trafficked

In 2022, 2,281 county lines referrals were flagged, accounting for 13% of all referrals received in the year, the majority (75%; 1,710) of these referrals were for male children - [UK Government Statistics on Modern Slavery - NRM and Duty to Notify Statistics 2022](#).

CCE not widely understood

There is poor understanding around CCE and victims are often mistakenly regarded as having made a 'choice/consented' to engage in criminal behaviour. This is exacerbated by the victim's inability to perceive themselves as a victim.

Children exploited by gangs, for their criminal purposes, are victims and they should be safeguarded, not criminalised. This principle has been enshrined in UK law following the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings 2005 ('ECAT') which states at Article 26 that: "Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."

Identifying victims of 'county lines' CCE

If you suspect that a child may be the victim of 'county lines' gangs, you will need to consider the child's legal position and their welfare needs. You may find these duties are in conflict. Below are the relevant duties under the Code of Conduct:

CD2 - you must act in the best interests of each client.

CD3 - you must act with honesty and integrity such that care should be given to ensure that the interests of vulnerable clients are taken into account and their needs are met (oC14).

In accepting instructions under Rule rC21.8, 'competency' and experience includes the ability to work with vulnerable clients (gC71).

How to identify CCE

It may not be easy to identify that a child is the victim of gang exploitation. There are a number of factors which could alert advocates to the possibility that a child might be a victim of trafficking, such as, if a child is:¹¹

- charged with possession with intent to supply of significant quantities of drugs, particularly heroin and/or crack cocaine;
- arrested away from their own home area;
- leaving home/care without explanation;
- arrested on public transport, particularly a train;
- arrested in a 'cuckooed' address;
- in care, particularly residential care;
- a young carer;
- carrying a weapon when arrested;
- suffering from an unexplained injury, possibly caused by a knife;
- arrested with or accompanied by or relationships/associations with older males;
- persistently missing school or home;
- subject to parental concern;
- acquiring unexplained money, clothes or mobile phones;
- receiving excessive texts, calls and/or in possession of multiple handsets;
- suffering from a significant decline in school results/performance;
- showing characteristics of gang association or isolation from peers or social networks;
- self-harming or showing significant changes in emotional wellbeing.

¹¹The Home Office Guidance, 'Criminal exploitation of children and vulnerable adults: county lines' is incorporated in the below.

Child victims of exploitation are extremely vulnerable and likely to be under the control of the exploiters at the time of arrest and throughout the criminal process.¹² Attempts may be made to coerce or abduct the child. The child may be in danger and advocates must be alert to the possibility that steps taken in an effort to assist a child might increase the danger the child is in, e.g. gangs may respond violently to the possibility that a child is being encouraged to provide evidence against them. Professional discretion is required to assess such risks and to avoid placing the child, or anyone else, in danger.

If you suspect that a child is the victim of exploitation, you could make further enquiries when speaking to the child. They may not be aware that they are being exploited and many children who have been groomed by gangs are likely to vehemently deny that they are victims of exploitation. There is some evidence that children are trained by the gangs to 'handle' contact with the police and other agencies, for example, by saying 'no comment' and refusing to speak. Their fear of recriminations from gang members will far outweigh their willingness to disclose how they became involved. As noted by the [NCA's 2018 report](#), victims face threats of kidnap and serious violence against them and their families. Sexual abuse has also been used as a method of control, particularly against females.

Eliciting information

It may be possible to carefully elicit helpful and relevant information from a child in the course of your general enquiries, without making them aware that you suspect they are the victim of CCE. It would be useful to know about their current well-being, accommodation status, level of familial support, school attendance record, whether or not they receive any educational or pastoral support at school and their friendship groups. All of this should be done with subtlety, tact and great care. This information could lead an advocate to confirm suspicion that a child is being exploited or trafficked.

Further relevant information may be obtained from parents, carers, family advocates (if involved with the child) or through YOTs.

Referral to NRM

If a child is, or is suspected to be, the victim of trafficking for the purposes of exploitation by 'county lines' gangs for criminal purposes, advocates should first consider a referral to the NRM.¹³ Often it is the case that the police have missed an opportunity to refer, hence why the child has been prosecuted.

The NRM is a framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. It deals with internal trafficking and exploitation by 'county lines' gangs. The consent of the child would not be required for a referral to be made.

They in turn go to the Single Competent Authority (SCA). The SCA handles all referrals and makes the reasonable and Conclusive grounds decisions.

There is sometimes a need to slow down the court process to await the outcome of the NRM - see *R v AFU* [2023] EWCA Crim 23 and *R v D* [2018] EWCA Crim 2992.

¹² Practitioners should be aware, for example, of any potential influence from any co-Defendants etc.

¹³ Advocates cannot make a referral themselves as referrals can only be made by a 'first responder organisation' such as a police force, local authority, Barnardo's, NSPCC etc. The new referral process is done digitally via an online form.

Independent Child Trafficking Guardians (ICTG)

ICTG are an independent source of advice for children subjected to modern slavery and somebody who can speak up on their behalf. In certain areas, a child is considered to be a potential victim of modern slavery including trafficking, a first responder must be informed and, in turn, they must notify the ICTG service.

The definition of 'trafficking'

Under section 2 of the MSA, human trafficking is defined as arranging or facilitating the travel of another person with a view to that person being exploited. It is irrelevant if the individual consents.¹⁴

This is a wide definition, and a child could be the victim of trafficking even if they have never been out of the UK.¹⁵ The nature of 'county lines' activity means that children who have committed offences for gangs may well fall within this definition.

The definitions of 'arrange' and 'facilitate' include the following activities: recruiting, transporting or transferring, harbouring or receiving, or transferring or exchanging control over the individual.¹⁶

In a case dealing with the predecessor to the MSA the Court of Appeal considered that arranging would also include buying a ticket for another and that facilitating would include making easier. However, it emphasised there is no fixed list, and it is a question of fact in each case.¹⁷

Client confidentiality

Barristers are bound by strict rules regarding client confidentiality which prevent them from revealing any confidential information to a third party without their client's express consent. The Code of Conduct sets out at gC42: The duty of confidentiality (CD6) is central to the administration of justice. Clients who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a court. CD6, rC4 and Guidance gC8 and gC11 to gC13 provide further information.

If a child reveals information which indicates continuing sexual or other physical abuse but refuses to allow disclosure of such information, there may be a conflict between the duty of confidentiality and the duty to act with integrity (CD3). If you consider that the threat to the child's life or health, physical or mental health, is sufficiently serious then, before you consider any breach of confidentiality, you must take advice from the [Bar Council Ethical Enquiries Service](#): by telephoning 020 7611 1307 between 09:15-17:15 Monday-Friday or by emailing Ethics@BarCouncil.org.uk for a response within four working days. The Bar Council also has [Bar Ethics & Practice Hub](#).

¹⁴ Section 2(2), Modern Slavery Act 2015

¹⁵ Section 2(5), Modern Slavery Act 2015

¹⁶ Section 2(3), Modern Slavery Act 2015

¹⁷ R v K [2018] EWCA Crim 1432 at paragraphs 46-47

Consequences of disclosure

Disclosures to the Local Authority may result in care proceedings.

Disclosure to one of the 20 first responder agencies, which includes local authorities and the police, can lead to referral through the NRM.

There are two stages of investigation which may follow referral. The results of these investigations will affect a child's case.

Stage one – "Reasonable Grounds". The NRM team has a target date of 5 working days from receipt of referral in which to decide whether there are reasonable grounds to believe the individual is a potential victim of human trafficking or modern slavery. This may involve seeking additional information from the first responder or from specialist NGO's or social services. The threshold at the Reasonable Grounds stage for the trained decision makers is; "from the information available so far I believe but cannot prove" that the individual is a potential victim of trafficking or modern slavery. A positive decision triggers a 45-day reflection and recovery period.

Stage two – "Conclusive decision". During the 45-day reflection and recovery period the SCA gathers further information relating to the referral from the first responder (i.e. the authority that made the referral) and other agencies. During this period child victims will be supported by local authorities under their statutory safeguarding duties.¹⁸

The trained decision maker's threshold for a Conclusive decision is that on the balance of probabilities "it is more likely than not" that the individual is a victim of human trafficking or modern slavery.

If, after investigation, there is clear evidence that a defence might apply, the custody officer may decide not to charge.

Where there are no grounds for disclosure

If you suspect a child has been exploited or trafficked but you do not have sufficient grounds for disclosure it would be advisable to make a detailed contemporaneous note.

Further reading: [ECPAT: "Better support, better protection: Steps lawyers and guardians can take to better identify and protect trafficked children"](#)

In respect of cases referred to the CPS for a charging decision and for which a defence under section 45 could apply, a prosecutor will require proper information to inform a decision on charge and make an assessment on the availability of the defence.¹⁹

¹⁸ CPS Legal Guidance, Human Trafficking, Smuggling and Slavery (30 April 2020)

¹⁹ The CPS cannot make a referral to the NRM and would do this through the police if they conclude that a suspect should be referred

CPS guidance, the statutory defence and relevant case law

Information and evidence relevant to an assessment of whether a section 45 defence may apply should include any credible evidence to support all the elements of the defence, including:

- whether the suspect is a victim of trafficking or slavery. This could include a Conclusive grounds decision on their trafficking/slavery status under the NRM; and
- evidence of relevant characteristics of the suspect which will be considered for the reasonable person test.

The CPS guidance sets out a 4-stage approach to the prosecution decision:

1. Is there a reason to believe that the person is a victim of trafficking or slavery?
2. If so, is there clear evidence of a credible common law defence of duress?
3. If not, is there clear evidence of a statutory defence under Section 45 MSA?
4. If not, is it in the public interest to prosecute?

Application of the four stages is important.

N.B. even if offences to which MSA does not apply, the CPS is still obliged to review the case. If a suspect is a credible Victim of Trafficking, the CPS must apply their own guidance but may need prompting to do so.

Remember that duty to review is a continuing one – you may wish to make further requests for review/written representations once outcome of NRM process is known.

For children, the Crown needs to demonstrate an act that amounts to trafficking for a criminal purposes (unlike with adults where there is no need to identify the ‘means’ e.g., force or fraud). This is important for stage 3.

As to stage 2, practitioners should be aware that duress is a high hurdle to establish. There must be a threat which is to cause death or serious injury; the criminal conduct sought to be excused must have been directly caused by the threats relied upon; and there was no evasive action he/she could reasonably have been expected to take (which is to be assessed objectively).²⁰

²⁰ R v Hasan [2005] 4 ALL ER 685 at paragraph 21.

Furthermore, a defendant cannot rely upon duress if he has voluntarily, by association with others, exposed himself to the risk of such duress (e.g. by joining a criminal organisation or gang).²¹

Stage 3 is addressed below.

In relation to stage 4, prosecutors can still consider the CPS Guidance on suspects in a criminal case who might be victims of trafficking or slavery to decide whether it is in the public interest to prosecute. Crown prosecutors should be reminded of the public interest stage of the Full Code Test of the Code for Public Prosecutors (see, in particular paras 4.9 – 4.14) which requires them to consider whether there are any public interest factors tending against prosecution which outweigh those factors tending in favour of prosecution. A key consideration will be the degree of nexus between their status as a victim of trafficking/slavery to the offence and the severity of the offence.²²

Statutory Defence

Section 45 Modern Slavery Act 2015 provides a statutory defence for child victims of trafficking and slavery:

Where a child commits an offence and they do so as a direct consequence of being or having been a victim of slavery or “relevant exploitation”, then section 45 Modern Slavery Act 2015 may provide a defence.

(4) A person is not guilty of an offence if:

- a) the person is under the age of 18 when the person does the act which constitutes the offence,
- b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
- c) a reasonable person in the same situation as the person and having the person’s relevant characteristics would do that act.

“Relevant exploitation” is exploitation, within the meaning of section 3 of the Modern Slavery Act 2015, that is attributable to the exploited person being, or having been, a victim of human trafficking (section 45(5) Modern Slavery Act 2015).

“Trafficking” occurs where “a person arranges or facilitates the travel of another person (“V”) with a view to V being exploited” (section 2(1) Modern Slavery Act 2015). The definition of trafficking is wide and a child could be the victim of trafficking even if they have never been out of the United Kingdom (section 2(5) Modern Slavery Act 2015).

A child is the victim of exploitation where a person uses or attempts to use them:

- a) to provide services of any kind,*
- b) to provide another person with benefits of any kind, or*
- c) to enable another person to acquire benefits of any kind*

²¹ R v Sharp [1987] QB 853

²² R v GS [2018] EWCA Crim 1824

Once it is established that a child is a victim of trafficking for the purposes of exploitation, the relevant consideration is whether there is a sufficient nexus between the trafficking for the purposes of exploitation and the offence; it is not necessary to go so far as to show there was compulsion to commit the offence as required in the case of an adult.²³

The defence clearly captures children who are used by 'county lines' gangs to transport drugs around the country.

The child defendant will need to adduce evidence to raise each element of the Defence. It will then be for the Crown to prove beyond reasonable doubt that they were not a victim, if this is not accepted; or that the child did not do the act as a direct consequence of been, or having been, a victim; or that a reasonable person in the same situation and with the same characteristics of the child defendant, would not have done that act.²⁴

Advocates should note that [Schedule 4](#) of the MSA lists 140 offences which are exempt from the statutory defence, many of which are common in child trafficking cases, for example arson and firearms. Other offences which are excluded include murder, kidnap and false imprisonment.

Case Law

In [R v O \[2008\] EWCA Crim 2835](#) the Court of Appeal emphasised the duty of both prosecutors and defence advocates to make proper enquiries in criminal prosecutions involving individuals who may be victims of trafficking. The Court of Appeal further emphasised this duty in [L, HVN, THN and T v R \[2013\] EWCA Crim 991](#).

The principles to be applied in cases where it is alleged the suspect is a victim of trafficking were comprehensively set out, and endorsed,²⁵ by the Court of Appeal in [R v Joseph and Others \[2017\] EWCA Crim 36](#) at paragraph 20. In summary:

- where (a) there was reason to believe the defendant who had committed an offence had been trafficked for the purpose of exploitation, (b) there was no credible common law defence of duress or necessity but (c) there was evidence the offence was committed as a result of compulsion arising from trafficking, the prosecutor has to consider whether it is in the public interest to prosecute;
- the court's power to stay proceedings [now limited by the operation of section 45 MSA], is only to be applied where the prosecutor has not properly applied its mind to the possibility of not imposing penalties on victims;
- the international obligation under Article 26 ECAT does not require a blanket immunity from prosecution for victims of trafficking. Various factors should be taken into account in deciding whether to prosecute; if there is no reasonable nexus of connection between the offence and the trafficking, generally a prosecution should proceed. If some nexus remained, then prosecution would depend on various factors including the gravity of the offence, the degree of continuing compulsion and the alternatives reasonably available to the defendant. Each case is fact specific;

²³ R v VSJ and others (Anti-Slavery International Intervening) [2017] EWCA Crim 36

²⁴ R v MK [2018] EWCA Crim 667

²⁵ R v JXP [2019] EWCA Crim 1280 paragraph 36

- the distinct, and fact sensitive, question for decision in the case of a trafficked defendant is the extent to which the offences with which he is charged (or of which he has been found guilty) are integral to or consequent on the exploitation of which the person was a victim;
- the reason why the criminality or culpability of a trafficked person is diminished or extinguished does not result merely from age but in circumstances where there has been no realistic alternative available to the person but to comply with the dominant force of another individual or group of individuals;
- the decision of the competent authority as to whether a person had been trafficked for the purposes of exploitation is not binding on the court but, unless there was evidence to contradict it or significant evidence that had not been considered, it is likely that the criminal courts will abide by the decision.

In the case of [R v DS \[2020\] EWCA Crim 285](#) considered the status to which a Conclusive Grounds decision is to be given by the CPS and held:²⁶

- a prosecutor must take into account a Conclusive grounds decision by the SCA;
- this must be done in deciding whether the defendant is a victim of trafficking and as to whether the offending has a very close nexus with the exploitation;
- it is legitimate for prosecutors to challenge/scrutinise the decision made by the SCA;
- it will not be an abuse of process for the prosecutor to challenge the Conclusive grounds decision before a jury, even where there is no sound evidential basis on which to do so. However, this may be relevant to any submission of no case to answer;
- It is a matter for the jury whether or not the defendant is a victim of trafficking.

The Court in DS refused to rule on the admissibility of a SCA decision at trial. In [Purvis](#),²⁷ which was not a case dealing with whether the Defendant was a victim of trafficking, the Divisional Court appeared to accept that the concluded decision of an investigating authority will frequently not be admissible.

In [M](#),²⁸ a case in which the Crown accepted the Conclusive grounds decision as an agreed fact and in which it was specifically argued as to whether the SCA decision would be admissible, the Divisional Court held:²⁹

- the question whether someone is a victim of trafficking is not immediately identifiable;
- the tribunal of fact will require evidence to assist in determining that question;
- expert evidence is admissible on matters which the ordinary person without particular experience in the relevant area could not form a sound judgment without the assistance of a witness with such experience;

²⁶ See at paragraphs 41-42.

²⁷ [2020] EWHC 3573 (Admin) paragraphs 65 –

67. ²⁸ [2020] EWHC 3422 (Admin)

²⁹ See paragraphs 45-46 & 54-55.

- factors relevant to trafficking or exploitation are not necessarily matters within the ordinary person's knowledge;
- expert evidence on which factors are relevant must be admissible;
- furthermore, assessment of the significance of a given set of factors present in a particular case may properly be the subject of expert evidence;
- however, the weight to be given to that evidence would be for the tribunal of fact – it will not be determinative of the issue.

The issue was brought before the Court of Appeal in [R v Brečani \[2021\] EWCA Crim 731](#). Contrary to M the Court of Appeal held that a conclusive decision by the SCA would not, usually, be admissible in evidence in a criminal trial.³⁰ The Court accepted that the decision of a case worker would be relevant to the decision the jury had to make but considered that case workers of the SCA were not experts in human trafficking or modern slavery (whether generally or in respect of specified countries) and this could not be inferred from their role. The Court further considered the credibility of the complainant, which was the key issue in this case, was a matter upon which the jury was well placed to decide without the assistance from the case worker and doubted whether the facts upon which the case worker's opinion was formed were admissible.

However, the Court did accept that expert evidence may be admissible in these cases where there was a suitably qualified expert who was able to give evidence relevant to the questions the jury would have to consider and were outside of the jury's knowledge/ordinary experience, such as expert evidence of societal and cultural factors.

VCL & AN v UK [2021] ECHR 132 is the most recent case which considers the UK's international obligations to victims of trafficking. The European Court of Human Rights stated the following general principles (see paragraphs 148 onwards):

- both national and transnational trafficking in human beings falls within the scope of Article 4 ECHR;
- the positive obligation under Article 4 includes prevention, protection and investigation;
- this includes a positive obligation to put in place a legislative and administrative framework to prevent and punish trafficking and to protect victims;
- in certain circumstances it will also include a positive obligation to take proportionate operational measures where State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited;
- these include the protection and prevention measures identified by the ECAT;
- there is no general prohibition on the prosecution of victims of trafficking;

³⁰ See paragraphs 44-62.

- however, such prosecution may, in certain circumstances, be contrary to the State's duty to take operational measures to protect them where they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual has been trafficked;
- as soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual suspected of having committed a criminal offence may have been trafficked or exploited, they should be assessed promptly by trained and qualified individuals;
- any prosecutorial decision on a potential victim of trafficking should, where possible, only be taken after a trafficking assessment has been made, especially where children are concerned;
- after the trafficking assessment has been made, any subsequent prosecutorial decision would have to take this into account. Although the prosecutor is not bound by the assessment, they would need to have clear reasons which are consistent with the definition of trafficking for disagreeing with it.

[R. v L; R. v N \[2017\] EWCA Crim 2129](#), was a case which considered the question of anonymity. The Registrar sought full argument on the issue to fully explore the principle of open justice. It was argued that both young men should be protected by an anonymity order because of the fear of reprisals from traffickers and/or that a consistent approach is necessary across jurisdictions. The court did not give general guidance but admitted practitioner evidence of fear of reprisals from traffickers in the event that anonymity was not granted. The court accepted, in principle, that it would be desirable to follow the practice of the civil division of the Court of Appeal.

Therefore, in considering the two cases before it, and applying the principles in *Khuja v Times Newspapers Ltd and others*, [2017] UKSC 49 the court granted anonymity to both applicants on the basis that it was necessary in the interests of justice as their rights under Articles 2 and 3 of the European Convention on Human Rights were potentially engaged and that a failure to do so would undermine the existing anonymity orders in concurrent jurisdictions.

The case-law has stressed the importance of the international framework including Article 4 European Convention on Action Against Trafficking [ECAT] and Article 4 ECHR. In *R v D* [2018] EWCA Crim 2992 (N.B., references to EU Directives but post-Brexit (31/1/20) the same principles apply from Article 4 ECAT). *D* was approved in [AAD \[2022\] EWCA Crim 106](#) and then [AFU \[2023\] EWCA Crim 23](#) – unsafe conviction where advice was given but the position was not fully investigated – breach of Article 4 ECHR rights.

Further suggested reading

[Criminal Exploitation of children and vulnerable adults: County Lines Guidance](#)

Home Office, September 2017

[Human Trafficking Indicators](#)

United Nations Office on Drugs and Crime, undated

[Heading back to harm - A study on trafficked and unaccompanied children going missing from care in the UK](#)

ECPAT, November 2016

[The Secret Gardeners](#), a film of children trafficked from Vietnam.

ECPAT, undated

[Modern slavery and human trafficking](#)

National Crime Agency

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