



**Consultation on the CPS Public Policy Statement on
Prosecuting cases of Human Trafficking
July 2010**

Response Form

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www.cps.gov.uk/consultations/ht_index.html

If you are a member of the public or from an organisation (including a statutory body) please fill in the following details:

Your name	Immigration Law Practitioners' Association
Any organisation you represent	This is a joint response from the Immigration Law Practitioners Association (ILPA) and the Anti-Trafficking Legal Project (ATLeP)
Postal address	Lindsey House, 40-42 Charterhouse Street, London EC1M 6JN
Contact telephone number	0207 251 8383
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If you are a member of CPS staff please fill in the following details:

Your name	N/A
Your Area, Group, HQ Division, or Directorate	
Contact telephone number	

1. Does the introduction explain the reason for the document clearly and show how much importance the CPS places on tackling human trafficking? If not, please suggest how we could make this clearer.

The introduction to the *Statement* does set out the CPS intention to prosecute cases of human trafficking. ILPA and ATLeP's concern is that the introduction, and the document as a whole, fail to highlight that the primary concern must always be the proper protection and treatment of people who have been trafficked.

It is essential that the trafficked person is the priority, not only for humanitarian reasons, but also because unless people who have been trafficked are identified and protected at an early stage, it is unlikely there will be a prosecution.

The first contact the police have with a person who may have been trafficked is often in situations where that person has committed a *prima facie* criminal act, for example, the use of false documents or work as an operative in a cannabis factory. That person is very unlikely to say "I am a victim of trafficking". Unless the police are fully trained and alert to factors that identify a person who may have been trafficked, and unless such persons are seen as victims rather than criminals, then "how we prosecute cases of human trafficking" will see the trafficked persons prosecuted rather than the perpetrators of trafficking.

The introduction needs to emphasise that the first step is for all police officers to receive full training in the procedures set out in

- (1) Home Office Guidance on Victims of Trafficking, including the Home Office UK Border Agency Enforcement Guidance and Instructions Chapter 9 *Identifying Victims of Trafficking*;
- (2) Home Office Child Trafficking Assessment Form and Guidance (Operational Policing) and
- (3) HM Government's "Working together to safeguard children - Safeguarding Children who may have been Trafficked".

It is also critical that prosecutors give effect to the CPS Policy on Human Trafficking and Smuggling. Until that has been achieved, it will be impossible effectively to prosecute cases.

2. Is the description of trafficking and smuggling legislation explained clearly?

There is no legislation set out this section. The offences which may be prosecuted in the UK are not set out in this section but listed further on. If they are not to be contained in this section, then it would be helpful to indicate here where they are contained in the guidance.

The view of ILPA and ATLeP is that trafficking and smuggling are not adequately described. We recommend using the internationally accepted definition contained in the Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (United Nations, Treaty Series, vol. 2237, p. 319; Doc. A/55/383, New York 15 November 2000, the 'Palermo Protocol') to the UN Convention against Transnational Organised Crime (adopted by General Assembly resolution 55/25 of 15 November 2000), and adopted by the Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe Treaty Series No. 197, opened for signature Warsaw 16 May 2005) to define trafficking. It should be set out early on this section that the UK has signed and ratified the Palermo Protocol.

The description as it stands of the three constituent elements of trafficking is abbreviated and misleading. In particular: under the heading "*The Act*", the use of the word "and" is misleading. All five elements described under the heading '*The Act*' are not required. The word "or" should be substituted for 'and' in the list of elements.

Under the heading "*The Means*", the text should read "giving **or receiving** of payments or benefits".

It is also vital to state at this stage to make reference to the position of children. Article 3(c) of the Palermo Protocol states:

"(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;"

The trafficking of children requires only the matters dealt with under the heading '*The Act*' (subject to the comments above) and '*The Purpose*' to be present to be considered trafficking.

It is also important that the narrative make clear that the purpose does not have to have been achieved for there to have been an offence of trafficking. If the three constituent elements are present and the chain of events is disrupted before the exploitation actually commences, this still constitutes trafficking. The narrative must therefore distinguish between trafficking which comprises the three elements and exploitation which is the end purpose of trafficking.

The list of types of exploitation must indicate that it is not an exhaustive list. It would nonetheless be helpful if it also made reference to forced marriage. To list "children" simply as a bullet point may be an attempt to capture Article 3(c) of the Palermo Protocol (as described above) but this is perhaps too laconic. It may be helpful to make specific reference to the exploitation of children under, for example, the bullet point on '*criminal enterprises*' (examples being children exploited in cannabis farms or where they are exploited to undertake pocketing).

It should be made clear in the list of types of exploitation that children are particularly vulnerable to exploitation and that they are vulnerable to all of the types of exploitation listed. It is misleading to say that many child victims of trafficking are unaccompanied asylum seeking children. People who have been trafficked may have been vulnerable to trafficking because they have had a real need to escape their country or region of origin. In such cases, it is their need to leave which makes them prey to deception and coercion. This is not exclusive to children.

It is not sufficiently emphasised in this section that many persons who have been trafficked victims will have entered the UK unlawfully, whether knowingly or unwittingly, and that the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings require that victims of trafficking are protected, whether they have entered the UK unlawfully or not.

There is an internationally accepted definition of people smuggling, set out in

Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air (UN Doc. A/55/383) to the United Nations Convention Against Transnational Organised Crime (see above) as:

"...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national."

It is helpful that the description of people smuggling notes that distinctions between smuggling and trafficking can be blurred but misleading to state that trafficking requires exploitation by the smugglers of their victims once they reach their destination. Trafficking requires that victims are transferred for the purpose of exploitation, not that they are subjected to exploitation. It is the intention of the perpetrators, rather than the intention of the victim that will determine whether a chain of events constitutes trafficking or smuggling.

It would also be helpful to emphasise in this section that there may be more than one person or group of people involved in facilitating the travel and entry of victims if trafficking who may be passed from person to person and bought and sold more than once in the course of their journey.

3. Is the role of the CPS and the explanation of how we make decisions to prosecute clear? If not, please suggest ways in which we could make these two sections clearer.

The CPS must work with many other agencies if prosecutions are to be effective.

The Statement asserts “we also work closely with other agencies such as the UK Border Agency, the UK Human Trafficking Centre and the Vulnerable Persons team”.

It is the experience of ILPA members and ATLeP that unfortunately this is often not the case. It is important that the Statement acknowledges the practical difficulties of working with other agencies, and identifies procedures that will result in better co-ordination between the agencies. Unless there are very clear practical steps identified, the laudable aspiration of multi-agency co-operation will not be put into effect.

4. Have we provided enough explanation of how we build prosecutions in human trafficking cases? Is there enough explanation of the victim's role and what can be done to support victims and witnesses?

Unless the focus is on identifying persons who have been trafficked at an early stage, rather than treating them as criminals, the vast majority of prosecutions will not even get to the stage identified in this document. For example, take the scenario of the police arresting a teenager who speaks no English and is found working in a cannabis factory. S/He is interviewed and refuses to say anything. With proper training and support, the police will identify this as a classic example of a potential trafficked person and the appropriate referrals will be made. Given the appropriate care and support, that trafficked person may be able to assist in the "building" of a case against his/her trafficker. Unfortunately, it is the experience of ILPA members and ATLeP that all too such a case is often this is seen by the police, prosecutor, defence counsel and court as an open and shut case of cultivation of cannabis. The trafficked person is all too often charged and advised to plead guilty and is sentenced to a prison sentence. The traffickers escape.

It is this first step that needs to be highlighted: it is the experience of ILPA members and ATLeP that the many police officers (the "first responders") are not fully aware of the existing voluminous policy documents relating to people who have been trafficked of trafficking. In far too many cases, the trafficked persons find themselves moving rapidly through the criminal justice system towards conviction and sentence. Whilst the support identified in the document (special measures, code of practice for victims) is important, a case cannot be built and victims cannot be protected unless they are identified at an early stage.

For this reason, the *Statement* needs to highlight the evidential importance of identifying trafficked persons at an early stage rather than the pursuit of convictions of trafficked persons for document offences or cultivation of cannabis. The tasks of identifying a person who may have been trafficked, making the appropriate referrals, spending time interviewing the person to get appropriate evidence and/or intelligence information, and then proceeding to apply the support provisions identified in the *Statement* may be laborious. However, only if both the policies for identifying/protecting persons who have, or may have been, trafficked and the measures identified in the *Statement* are rigorously enforced will it be possible to build successful prosecutions of the

traffickers.

5. Do we show clearly how we will deal with children as victims and witnesses and our policy where a child may face charges for offences they are forced to commit whilst in a coerced situation? If not, please state ways in which we could do so.

The document states:

“...the prosecutor will give consideration to discontinuing a prosecution, on either evidential or public interest grounds, where information or evidence has been obtained to support that”.

The difficulty with this statement is that in the majority of cases there will be little evidence of trafficking other than the account of the trafficked person. It is only if the appropriate indicators of trafficking are recognised by the first responder and the appropriate referrals made will a child be identified as a trafficked person and therefore become a potential witness.

Further, it is important that prosecutors appreciate that the consent to the exploitation of an individual has no significance if the individual is under 18. See also the response to question two above. It needs to be made absolutely clear that there does not need to be specific evidence of coercion for a child to be a trafficked person and indeed that even if there was ‘consent’ by the child, s/he remains a victim.

The Home Office UK Border Agency Enforcement Guidance and Instructions Chapter 9 *Identifying Victims of Trafficking* states:

“Any child moved into a situation of exploitation, or for the purposes of exploitation, is considered to be a trafficked victim, whether or not they have been forced or deceived. This is because it is not considered possible to give informed consent. Even when a child understands what has happened, they may still appear to submit willingly to what they believe to be the will of their parents or accompanying adults”.

The experience of ILPA members is that many victims of trafficking continue to be criminalised, whether for the use of false documents or for their role as “gardeners” in cannabis factories. Until that changes the protections contained in the *Statement* cannot be put into effect.

6. Is the role of prosecutors in their acceptance of pleas and sentencing clear? Do we need to provide more information to explain other means of disrupting traffickers?

We should encourage the interests of the victims to be considered when making use of orders to deprive the traffickers of their profits: If cash seizure and forfeiture is pursued, the police should have in mind the “victim” provisions in section 301 of the Proceeds of Crime Act 2002 that allow a person who has been deprived of their cash by unlawful means to make an application for the seized money to be released to them. If the focus is only on depriving the trafficker of his/her assets, money that rightly belongs to the victim may also be subject to the irreversible order for forfeiture. It is also essential that the judge considering confiscation proceedings is also aware of any corresponding claim for compensation so that an order can be made under section 13(6) of the Proceeds of Crime Act 2002 can be made so that the compensation is paid out of the confiscated assets.

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7. Any other comments about the document?
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It should be re-iterated in the *Statement* that there should be a concerted effort to ensure that all Crown Prosecutors at all levels are aware of the *Statement* and are trained to give full effect to its provisions.

Please do not hesitate to get in touch with us if you require further clarification of the comments of ILPA and ATLeP as set out in this document.

Where to send your completed form
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Email them to	<u>consultations@cps.gsi.gov.uk</u>
Post them to	Human Trafficking Consultation Strategy and Policy Directorate Crown Prosecution Service Rose Court 2 Southwark Bridge London, SE1 9HS

All replies must be received by Sunday 31 October 2010
