

Evidence of Wilson Solicitors LLP: Experiences of Victims of Trafficking in the Criminal Justice System

Wilson Solicitors LLP was established in 1989. Our Immigration and Public Law departments provide extensive representation to victims of trafficking and modern slavery (VOTs). As such we have frontline experience of representing victims of trafficking who have been falsely criminalised or who are (or are considering) assisting the police with enquiries into their experiences of trafficking. We recently provided written¹ and oral evidence² into the Home Affairs Select Committee Modern Slavery Enquiry.

We consider there are two main areas of failure in the Criminal Justice System as it concerns the rights of VOTs. Firstly, it is our experience that many VOTs continue to be criminalised by the law enforcement agencies who are obliged to identify and protect them. Secondly, we do not consider there to be sufficient or appropriate support in place to enable VOTs to assist the police potential prosecutions, and as such many traffickers are not held accountable for the crimes they have committed.

The criminalisation of victims

The police are on the front line of detecting and combatting trafficking. Yet, clear trafficking indicators are routinely missed by the police. We welcome recent efforts to increase training for front line officers³. However, VOTs continue to go undetected despite the police being NRM first responders and having a statutory duty to refer potential victims into the NRM for identification and support.

We are contracted by the Legal Aid Agency to provide immigration advice in immigration removal centres (IRCs) by offering immigration advice at regular legal advice surgeries to people detained under immigration powers. We have represented numerous clients who present with clear indicators of trafficking but who are facing deportation, due to convictions for crimes clearly linked to their trafficking situation. There is legal protection against criminalisation of VOTs set out in the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings and the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims⁴. The Modern Slavery Act 2015 introduced a statutory defence under section 45 of the Modern Slavery Act 2015. Despite these legal protections, the police and CPS continue to fail to recognise VOTs as victims.

1 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/written/91492.html>

2 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/oral/95163.pdf>

3 National Audit Office Report - Reducing Modern Slavery – December 2017 (<https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>)

4 <https://rm.coe.int/168008371d> - Article 26 – Non-punishment provision - 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.

& Directive 2011/36/EU, Article 8 - Non-prosecution or non-application of penalties to the victim - Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Instead potential VOTs are arrested and prosecuted in contravention of the UK's non-punishment obligations. Our crime department (in operation until 2016) represented victims who were prosecuted for offences committed due to their trafficking situation or who sought permission to appeal those convictions. There remains a lack of awareness amongst law enforcers that the UK has a duty not to punish and prosecute where the offence is closely connected to the exploitation suffered by a VOT⁵.

Wilson Solicitors LLP was also previously contracted to provide telephone advice to people who were arrested and awaiting immigration enforcement action at police stations across the country. Within minutes of these short telephone advice sessions our lawyers would frequently recognise clear trafficking indicators from the instructions taken. However, on make oral submissions to the OIC or custody sergeant it often became apparent that they had never heard about the NRM identification and support system for VOTs. One solicitor outlined that out of the four years providing advice at least once a month, only on one occasion did a police officer know about the NRM, others said they never came across any officer who knew about the NRM.

Prosecutions of traffickers

The Modern Slavery Act 2015 (MSA) was aimed at preventing this abhorrent crime and making the UK a global leader in the fight against it⁶. The focus of the MSA was to bolster law enforcement and combat trafficking through the criminal justice system. However the National Audit Office review in 2017 confirmed that there have been few prosecutions or convictions as a result of the MSA.⁷

Trust is a key issue for VOTs as their capacity to trust has often been repeatedly exploited. Building trust in the authorities is crucial in order for victims to be able to escape their trafficking situation and come forward to seek help and report the crimes that they have experienced.

There remains a lack of understanding and awareness of trafficking within front line staff within the criminal justice system. For example, there is extensive literature covering the widespread trafficking of boys and young men from Vietnam to work in cannabis farms and who are often subject to debt bondage⁸. Despite, an increase in awareness of this issue we continue to see VOTs in IRCs facing deportation, due to convictions for cannabis cultivation. Trafficking indicators were or should have been evident at the time of their arrest and many were children whose age had been unlawfully disputed. This illustrates how these failures run all the way from the police, through to prosecution, judiciary and immigration enforcement. We have had one case where a criminal judge has stopped a criminal prosecution that he was presiding over, he recognised that the defendant was a VOT and required appropriate legal advice. In that particular case the judge had sat as an immigration judge and had experience of hearing cases of VOTs from that context.

There is a clear need for a shift in mentality so that victims of trafficking are viewed as victims of crime. Instead authorities continue to question their credibility and believe they are

5 <https://www.wcmt.org.uk/fellows/reports/fight-against-modern-slavery-and-human-trafficking>

6 National Crime Agency statistics (<http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanismstatistics/2018-nrm-statistics>)

7 National Audit Office Report - Reducing Modern Slavery – December 2017 (<https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>)

8 Council of Europe Convention on Action against Trafficking in Human Beings

simply immigration offenders. VOTs should be seen as potential witnesses to provide evidence against traffickers in order to obtain a higher rate of prosecutions of traffickers which the UK government has apparently made a priority. If victims can trust authorities to protect and support them, they can engage with the prosecution process, they can become key witnesses and help bring about trafficking convictions.

A recent report by Nusrat Uddin of our Public Law Team⁹, *The Fight Against Modern Slavery and Human Trafficking*, covered research carried out in the US, UK and other European countries. It showed that the vast majority of victims fear the authorities and the reasons were that they fear immigration enforcement and deportation back to their home countries where they fear that their trafficker will carry out reprisals or where they will remain at risk of further exploitation on account of their ongoing vulnerabilities. Many VOTs come from countries where corruption pervades law enforcement agencies Traffickers often tell victims that they have links to law enforcement in the UK so in this context victims often start from a place of deep distrust towards the UK authorities. We reiterate the importance of building trust to allow victims to come forward to safety.

Problems also occur when VOTs do report their traffickers to the police. They may have taken time before building the courage to do so and by that point traffickers may have already made false accusations about them and reported to the police first. Police then meet the victim as a suspect rather than a victim undermining any possibility to gain the trust of the victim.

New guidance in 2018, the Chief Constable's Council Paper: Information Exchange regarding Victims of Crime with No Leave to Remain, has been introduced to tackle the issue of immigration enforcement for victims of crime. The key paragraphs are set out here:

4. PROPOSED POSITION

4.1. In the circumstances where a person reporting a crime is also identified, potentially, as a person without leave to remain or to enter the UK, the fundamental principle must be for the police to first and foremost treat them as a victim.

4.2. It is accepted that investigators may carry out PNC or any other intelligence checks on a victim, for a range of reasons including to carry out a risk assessment to inform action to protect the victims, the public, or law enforcement / other responding agencies safety. Intelligence research may be necessary in order to further the investigation, for example where it is unclear who the victim is and who is the perpetrator.

4.3. A PNC check must not be carried out solely to establish if the victim has breached immigration legislation.

4.4. Where police are investigating a crime, and during that investigation, whether on the initial report or subsequently, it becomes apparent that the victim is also suspected of being an illegal immigrant, it is wholly appropriate that the officer in the case should contact Immigration Enforcement at the appropriate juncture, whilst ensuring they are also treated as a victim. The police will share that information with Immigration Enforcement, but will not take any enforcement action in relation to any suspected immigration breaches.

4.5. The Police will share information to ensure effective safeguarding, identify potential exploitation and vulnerabilities, and allow other law enforcement agencies to manage their response to victims.

⁹ <https://www.wcmt.org.uk/fellows/reports/fight-against-modern-slavery-and-human-trafficking>

4.6. It is for the officer to decide if there are other circumstances that merit the detention and arrest of the person initially encountered as a victim, for example where they pose an immediate risk of harm to others.

4.7. On occasions, when police are called to incidents, it will not be clear whether individuals are victims or offenders. In these situations, where police have identified individuals as suspected illegal immigrants, they will treat them as victims first, taking the above advice in 4.1 above until it becomes clear that they are not a victim.

This guidance unfortunately does not provide sufficient protection for victims to approach law enforcement. Worryingly paragraph 4.4 of the guidance sets out that police **should** refer victims for Immigration Enforcement and thus it does not alleviate victims' fears. We refer to another Super Complaint by Liberty and Southall Black Sisters¹⁰ whose concerns we endorse and share in relation to the policies and practices of the police in this area.

Ms Uddin's research highlighted the need for victims to be able to obtain long term immigration status akin to the T-visa in the US which grants four years leave to remain in order for victims to engage effectively with law enforcement and criminal investigations. The Modern Slavery (Victim Support) Bill¹¹ proposes to grant all recognised VOTs 12 months leave to remain, which would be a positive step towards allowing victims to stabilise, obtain support and engage with the police. Indeed there was a Cabinet Office deep dive looking into this issue of why there is a low volume of prosecutions, and it highlighted that lack of sustained support for victims, was a big factor in bringing successful prosecutions.¹²

From our experience through our clients who are engaging with police investigations, the process can be extremely slow and victims are kept in the dark about timeframes or progress. Furthermore, key avenues of investigations are often not fully considered by police. We are concerned that despite the government's commitment to trafficking prosecutions, police forces are inadequately resourced to be able to make real progress. We are often involved in advocating for clients during police investigations and litigating when there are failures. However, we are concerned that the majority of victims do not have specialist advocates who know about the criminal justice system and can identify potential issues.

Ms Uddin's research showed that the US and some Europe countries allow for victims to be legally represented throughout the prosecution of traffickers¹³. It highlighted the benefits of having an advocate who could ensure there is no undue criminalisation and that the victim's rights were represented throughout. It allowed victims to be more confident in approaching the police as they are aware of their rights and entitlements and also assisted the police in maintaining contact with the victims throughout investigations. Allowing VOTs a specialist prosecution advocate gives them a voice through the process, and could facilitate further awareness of the particular needs of victims in the CJS. We submit that this would help improve victims' engagement which in turn would lead to more effective prosecution.

10 <https://www.gov.uk/government/publications/police-data-sharing-for-immigration-purposes-a-super-complaint>

11 <https://services.parliament.uk/bills/2017-19/modernslaveryvictimsupport.html>

12 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/oral/95163.pdf>

13 <https://www.wcmt.org.uk/fellows/reports/fight-against-modern-slavery-and-human-trafficking>