

Minutes of Cross Party Group on Human Trafficking

6 March 2013

Theme: Criminalisation of Human Trafficking victims

JM welcomed everyone to the meeting

Graham O'Neil introduced the topic area and raised the following key issues:

- The system is currently penalising persons who have committed acts as a direct consequence to their trafficking predicament
- The driver for not penalising or criminalising victims has been international law , specifically article 26 of the Human Trafficking Convention , and article 28 of the impending Human Trafficking Directive
- The European Court of Human Rights judgment is covered by Article 4 of ECHR
- In the Scottish context the Legal framework has been translated into Procurator Fiscal guidance that was published in Oct 2010. It has not been updated since then and there is currently no public version. This is a gap.
- Scotland needs to be compliant with the impending Directive by 6 April 13. The domestic interpretation regarding the non criminalisation element of international law has been placed into guidance , recognising that prosecuting authorities have **discretion as to** whether to prosecute public interest
- Crown Prosecution Service (English) guidance is excellent in this area , very much pin points the facts, process and mitigation and the Crown Office guidance does not , Scottish Guidance advises that it is *sometimes* appropriate not to prosecute .
- A few members of the CPG wrote to the European Affairs Committee and asked them to look at the issue
- The courts are key , there are leading judgements in England and wales (but no equivalent in Scotland) We need to recognise the power the courts have , it is a reserved power . The courts can state that they feel case has been brought forward that shouldn't have been brought forward , it could say that there has been an abuse of process and decrease the the sentence , or say that the conviction is unsafe if processed , see R v o 2008 , Rr v M 2012 ,relates to sexual exploitation
- There needs to be CLEAR statement on what prosecuting authorities should be doing in cases where indicators of trafficking are present, where pursuing the case is not in the public interest , even if best evidence says it should.
- Need to go back to fundamentals around awareness, must have systematic approach to awareness there is some constructive work being undertaken eg , police aide memoire , which uses the Palermo Protocol definition to inform what trafficking might look like .
- We need to look at interactions and discussions between police and prosecutors
- Key recommendation would be to have a systematic approach to awareness raising ,this doesn't seem to be getting built into summit work streams
- Blue light services are key , there has been discussion around customised training

- There is ongoing and triple victimisation in Scotland victims are being forced to commit criminal acts , not identified and then criminalised .

JM thanked GM for excellent summary and opened the discussion :

JM – there are really serious issues about how police treat victims of cannabis cultivation, tend only be released from detention through the intervention of other agencies, support agencies who question whether victim should be locked up or not . Often feel like “pig in middle” between UKHTC and two or three branches of police - local division and trafficking unit. Feels there is clearly no communication and understanding of what trafficking is. Feels that it is good that Palermo Protocol is used to guide police but needs to reach every police officer. There is not focussed training on trafficking- has been told it is just a 20 minute session, only a very small part of something else.

BA- difficulty is how to get victims to engage , they hold a fear of disclosing to people in authority , there needs to be clearer guidance about what to do and who to engage when the victim says they have not been trafficked , what to do when about consent when the victims state they had consented to their exploitation even when there are objective indicators of trafficking .

JM advised she had asked to watch role play used in police training but the request was declined , as was felt to be intimidating for trainees

MG- when the council she works for brought together people to produce a protocol ,she was surprised that Environmental Health people were not aware about the indicators that were associated with multi occupancy and when questioned had reported that they couldn't get police colleagues interested , this was a few years ago , situation has now changed for better MG believed that awareness raising needs to be embedded, that it is not just about needing to know , need a bundle of things and tools

SB – need to be aware that cannabis cultivating in Scotland is not a career choice that a young person would make. SB feels that it is portrayed as though young people have willingly travelled across world to enter cannabis cultivation trade and to engage with them at the point of imprisonment is virtually impossible

JL traffickers know where they are from , know their family and where they are . Victims are coerced and threatened to say they have not been trafficked

GON- At point of initial identification, case needs to be taken forward by specialists used to working with people in vulnerable situations . We have those professionals in Scotland, there is a specialist approach and it is needed , particularly in certain sectors , particularly in criminal justice , and it may be that a single police force will help with this . Work of the post - summit working groups will hopefully be helpful in making sure it happens

JL - How appropriate is it for UK Borders Agency to be involved at all in identification , major issues around UKBA are being responsive to victims needs and who they contact

BI - Agreed with need for specialists to be brought to look at each case, and on the cases' individual merits , training programmes are needed and there needs to be a lot more understanding within the

Asian communities where it is quite common for forced marriages to take place, the police don't understand

JM thanked everyone for participating in the discussion and sought key points /action.

Marsha said she was happy to contact Maria Vassiladou

JM suggested there is a big jurisprudence question, particularly over mitigation, this is something that seems to be very complicated having spoken to prosecuting solicitors.

BA- there is an issue about why people say they have been trafficked, there is a fear, a myth that people will abuse the system and say they have been trafficked to avoid removal, that needs to be unpacked, in more than twenty mins of training, it requires in-depth training which relies on specialism

NH- The children's hearing, in theory is better set up if child referred on offence ground, because of the overarching principle of looking at the child in the round. There are two challenges, making sure that reporters are sufficiently aware of trafficking and what information is likely to be available to the reporter to allow the reporter to make an assessment. There may well be very little information because first contact child might have is when they are with the police so may well be very little information which would therefore impede a sophisticated assessment. NH asked whether the hearing system could respond more effectively

SB - these are serious offences, the idea that a 17 year old comes over and buys millions pounds worth of plants is bizarre, who brought them over is not been looked into, in a raid police should look for trafficker and not penalise young person,

CM – Within the Scottish Guardianship Service a third of young people being supported by Guardians are thought to be the victims of trafficking, but they need to be under 16 to be referred to panel

BA – in England a serious criminal case review have put a call for cases to be referred where people are either trafficked and claiming asylum or have been found undocumented and have been believed to be the victims of trafficking and yet prosecuted

PR- Research has found that young people who have been trafficked years ago, because of their experience end up in offending in future. Often the offending has nothing to do with trafficking but because of our responses to young people and because we don't identify and work with people they may well go into offending and will go on offending. This pattern is also well evidenced in criminology but is an issue that is being overlooked generally in this debate

The discussion drew to a close and the following potential actions were discussed

JM wished to write on behalf of CPG to Scottish serious cases review and ask if they would consider something similar

JM feels there is a lot of evidence around Vietnamese victims ending up in Polmont but believes many outside the room would not believe this happens in modern day Scotland. JM will write as CPG to the Justice committee and ask for an inquiry

JL felt it was a good idea if CPG write to look at the issue of Foreign National Detainees FND , how many FND in Dungavel are thought to be the victims of trafficking

JM agreed 4 Action points

Actions :

- JM to write on behalf of group to the Justice Committee to seek an inquiry re criminalisation of victims
- JM to write to Kenny MacAskill seeking a timeline
- JM to seek to clarify the role of the external action service to see what their policy on trafficking is
- Law Society in England and Wales have written a practice note on trafficking for defence solicitors- could Law Society of Scotland do something similar , advising Scottish solicitors on how to handle cases involving trafficking (Ross- Im not sure if Jenny said she would take this on or were we looking for someone else to take this on)

AOB

BA- Update on ATMG report – this is written by a group of NGO's - their latest report is focussing on prosecutions and is likely to be published April / May , research team could come up and could talk to CPG .

Also anti trafficking monitoring group are going to start campaigning for national rapporteur .Currently the , interdepartmental ministerial group are seen as the UK rapporteur . ATMG think there be questions raised about how a Government can scrutinise Gvt , so ATMG are going to start to campaign and have offered to come up and talk about it.

Next meeting

The next meeting **June 13th 2013**

JM thanked everyone for attending and closed the meeting