

Inquiry into Human Trafficking in Scotland

Report of the
Equality and Human
Rights Commission

“I was kept in a room with my daughter. The door to my room was always locked and I was not allowed out. When men came [trafficker] would unlock the door and take my daughter away from the room, she would also tell me to get myself ready... When the men came in the room they would tell me what they wanted. I just did it because I had to... While I was with these men I could hear my daughter crying in the other room. It was terrible. When the men were finished they would use the bathroom and then leave. I never saw any money.”

(Interview with trafficking victim)

Contents

Part A: Setting the scene	Page 4
■ Foreword from Kaliani Lyle, Commissioner for Scotland	Page 5
■ Introduction from Baroness Helena Kennedy QC, Investigating Commissioner for the Inquiry	Page 7
Part B: Our Inquiry into human trafficking in Scotland	Page 14
■ The role of the Equality and Human Rights Commission	Page 15
■ Background to and purpose of the Inquiry	Page 15
■ The Commission’s understanding of human trafficking	Page 16
■ Gathering evidence – how the Inquiry worked	Page 18
■ International law and obligations that informed the analysis of the evidence	Page 19
Part C: Summary of what the Inquiry has learned, its findings, and its recommendations	Page 22
■ What the Inquiry learned: nature, extent and causes of human trafficking	Page 23
■ What needs to change: the Inquiry’s pivotal findings and recommendations	Page 24
■ Concluding comments	Page 30
Part D: The nature, extent and causes of human trafficking in Scotland	Page 32
Section 1: Nature of human trafficking	Page 34
Section 2: Extent of human trafficking	Page 45
Section 3: Causes of human trafficking	Page 51
Part E: Taking action: what needs to change	Page 56
Section 4: A Strategic approach to human trafficking	Page 58
Finding 1	Page 58
Finding 2	Page 60
Section 5: Law and human trafficking	Page 63
Finding 3	Page 63
Section 6: Investigating and prosecuting traffickers	Page 67
Finding 4	Page 67
Finding 5	Page 69
Section 7: Disrupting traffickers and regulating markets	Page 73
Finding 6	Page 73
Finding 7	Page 75
Finding 8	Page 78
Section 8: Identifying, caring for, and enabling recovery of victims	Page 81
Finding 9	Page 82
Finding 10	Page 84
Concluding comments	Page 86
Appendix 1	Page 89

Part A

Part A: Setting the scene

Foreword

The Equality and Human Rights Commission has the power under section 16 of the Equality Act 2006 to undertake Inquiries into matters relating to its duties on equality, relations between groups in society, and human rights.

The Commission decided to undertake an Inquiry into human trafficking in Scotland, as we regard trafficking in human beings as inseparable from inequality, and as one of the most severe human rights abuses in the modern world.

The Inquiry investigated human trafficking in all its forms. We had a particular interest in trafficking for commercial sexual exploitation given its often distinctively severe impact on victims. However, we also found other serious trafficked exploitation including forced labour, domestic servitude, and victims being forced to commit crime.

We have been most fortunate in this instance to work with Baroness Helena Kennedy QC, who has been the Investigating Commissioner of the Inquiry.

Her passion and commitment, along with that of the organisations, agencies and victims themselves who have unstintingly assisted us, are testament to the gravity of the subject matter and the urgent need to take action.

We have recently witnessed in Scotland the conviction of two individuals for sex trafficking, the first successful prosecution under section 22 of the Criminal Justice (Scotland) Act 2003. This case demonstrated the effectiveness of multi-agency cooperation in identifying traffickers, and providing support and empowerment for their victims.

We must continue to work together to expose and punish the perpetrators of this crime, and make Scotland a hostile environment for those who traffic.



Kaliani Lyle, Commissioner for Scotland



Introduction from Baroness Helena Kennedy QC, Investigating Commissioner for the Inquiry

Human trafficking is not new. Since the earliest of times people have exploited and enslaved others. However, according to the United Nations Office on Drugs and Crime, it is now the fastest growing international organised crime.

Globalisation and free markets have led to the increased movement of capital and labour. The fall of the Soviet Union was hailed as the prelude to a new world order, where the opening up of markets would take developed nations to new heights of growth and enrichment and the poor of the world would be liberated from their poverty with the spread of opportunities to trade.

Not all the proud claims were true and many of the advances in telecommunications and technology which stimulate the operation of global markets – from the use of mobile phones to connection by email and the internet, from the electronic transfer of money to ease of travel – also feed the dark underbelly of the market with equal effectiveness.

Globalisation has brought in its wake an explosion in international crime with increased trade across borders in arms, drugs, fissile material, human organs, illegal adoption, cheap labour, and the sale

of women and children for sex. There is nothing that cannot be sold.

The International Organisation for Migration describes trafficking as the most 'menacing form of irregular migration due to its ever increasing scale and complexity'.

However, it is the very fact that it is usually linked to illegal migration that militates against effective responses by criminal law enforcement agencies. At a time when so many nations are clamping down on immigration and closing their doors to the influx of peoples from abroad, stringent restrictions and prohibitive immigration laws are brought into force to keep people out, whether they are seeking asylum or economic migration. The antagonisms towards illegal immigrants can blind the public and those in authority to what is, in fact, trafficking, a human rights abuse of terrible consequence.

The topic of human trafficking is riddled with contradictions and anomalies, with deep divisions over how to deal with it amongst national and international organisations. It is tied up with different attitudes to women and the sale of sex, to varying beliefs about the unrestricted market and the value of labour; and it is also

linked to negative views about the 'other' and race.

When these factors are combined, they make for a toxic mix and even advanced democracies are in some ways complicit, in so far as they do not take sufficient responsibility for preventing and tackling human trafficking. It is especially pressing for nations like Scotland, that are mainly 'destinations' in the trafficking chain, to both recognise the complexity of trafficking and acknowledge that they can and should do something against it by leading from the front.

When I was asked to become the Investigating Commissioner for an inquiry into human trafficking in Scotland, people were puzzled. **Why Scotland? Was this a problem of particular magnitude in northern parts or was this a man, or indeed a woman, with a hammer looking for a nail?**

Scotland has already introduced legislation but, unlike other parts of the United Kingdom, and despite evidence of trafficking, to date there has been only one successful prosecution, resulting in two convictions against Scots, secured only in September this year; this compares to over 150 successful prosecutions in England and Wales.

One challenge for the Inquiry was to establish why there was this difference. Was there little or no trafficking in Scotland or were there institutional or perceptual problems which hampered a successful response to such horrifying crimes? We wanted to see whether there were lessons to be drawn from our Inquiry that would lead to the creation of a more effective investigation protocol for trafficking cases throughout the United Kingdom as a whole, as well as in Scotland with its different legal system.

Human trafficking is substantially concerned with sex but by no means exclusively. Modern slavery takes many forms including the exploitation of migrant labour and domestic servitude. I set out on this work knowing I would encounter sex trafficking because of knowledge gleaned through my criminal practice, but nothing prepared me for the disclosures on other forms of abuse.

Scotland produces some of the best soft fruit in the world, with modern technology lengthening the cycles of production. Like the Irish potato howkers of my childhood, many of the planters and pickers come from elsewhere for these ever expanding seasons, many from Eastern Europe and the Far East, where wages are so low that the silky tongues of gangmasters easily persuade them that they will make their fortunes in sunny Scotland. The reality may be very different.

Their wages may be below the minimum wage and they can lose significant parts of what they earn in commission to the gangmaster, as well as repaying exorbitant charges for being conscripted and brought in.

They may also be charged for living accommodation in insanitary, dangerous portakabins in the countryside, crammed to the seams with other workers.

After the harrowing deaths of the Chinese cockle-pickers in Morecambe, the UK Government established the Gangmasters Licensing Authority (GLA) to regulate the employment of migrant labour and maintain humane and decent standards. To the frustration of GLA personnel, mostly former police officers with considerable experience, the gangmasters can induce the workers to claim self-employed status so that British landowners, farmers, factory and restaurant owners may, if they so wish, have no risk of legal consequences when they use such cheap labour.

Another problem is that the remit of the GLA is currently confined to the oversight of labour in the food and agricultural sectors, while exploited foreign labour may now be found in the service and construction industries as well as in care homes. In our evidence-gathering it became clear to us that there seemed to be no good reason for the vital work of the GLA not being expanded to include these other sectors and to cover other forms of contract employment and outsourced work, and that employers who used such labour should hold some responsibility for wages and conditions.

Like the rest of the United Kingdom, Scotland has enjoyed waves of immigration over the centuries. It has been greatly enriched in the last fifty years by the arrival of immigrants mainly from Pakistan, Bangladesh, Hong Kong and China, as well as more recently from Central Europe. These people have set up businesses and become embedded in national life.

There is nothing new in immigrant communities bringing others from their native land to join them in their new home. If you are establishing a business, it is natural that you will want your workforce to speak the language in which you are most comfortable giving instructions. It makes perfect sense that they will bring specialist skills, which are not available in your chosen country. There is nothing more instinctive than wanting your children to be cared for by people who know your cultural practices and traditions and who will provide a link with your country of origin.

However, as with every other aspect of human behaviour, there can be corruptions of essentially positive practices. In receiving evidence, we heard from Asian workers brought to Scotland as cooks and skilled workers who were used as skivvies, housed like animals and bought off with promises of payment at some uncertain future date.

We met with domestic workers, taken into employment back in Bangladesh and brought to Scotland to care for the family of a well-to-do restaurant owner, who were then beaten, not allowed out of the house and expected to be available day and night to work for nothing or mere pennies.

The common feature in all the cases is that the passports and travel documents of the workers are removed so that they cannot easily escape their situation. The other hallmark is fear, induced by violence and threats of violence to the employee, but also threats of loss and harm to their family back home.

But it is sex trafficking that is the most prevalent and pernicious manifestation of human enslavement.

Women and young persons are brought to the UK by many different means: by abduction or other coercions, by false promises of hotel or nursing work and a better life. They are transported to a strange place where they have no friends and usually do not speak the language. They lose their freedom and are abused, battered and forced into the daily service of countless punters. Not surprisingly they live in a state of constant mental anguish.

Hearing the tragic stories of the women who are prepared to talk about their trauma is excruciating. There was no invention in the shaming detail given to us by the women with whom we met. No question as to the truth of their victimisation was tenable. I have listened to people lie too often in courts not to recognise honest recounting of searing events.

What was shocking was the culture of disbelief some victims claimed to have met from immigration officialdom, which informed our belief that there should be an independent system with a *raison d'être* to decide whether or not someone has been

trafficked. Another shock is that women are often inducted into this subterranean world by boyfriends, parents and family members, all willing to take an 'introduction' cut. And most alarming of all is that many of the traffickers are themselves women.

It is important to distinguish between trafficking and smuggling of migrants. There are many people who will give their life-savings to be transported across the world in the interstices of vehicles so that they can make a life elsewhere, evading the complications of visa requirements.

The Chinese migrants found suffocated in a secret compartment within a container lorry paid the ultimate price for the smuggling of human beings.

Many of those who boarded the lorry perhaps did so with the belief that they were heading to a better life. Tragically, they lost their lives and the conditions they were found in were appalling.

However, trafficking is fundamentally different. Those who are trafficked are owned like commodities by those who bring them here. Even if the trafficked woman initially consented to travel, she does so under false illusions of what will be on offer. Once in the country she remains a victim of exploitation, often sold on from owner to owner.

The industry generates huge sums of money with commissions at every level. Profits have been estimated by the International Labour Organisation at between \$12 billion and \$17 billion per year.

Many of the trafficked women we met had not been trafficked directly into Scotland, but had either been transferred here or were escapees who had miraculously received help from a client or mere acquaintance to flee their captors. There was also some

evidence that Scotland was becoming an initial destination for sex trafficking.

It is inevitable that trafficking of all kinds operates below the radar and is kept there through fear. However, sex trafficking is also covered with the taboos of shame and dishonour that blight the investigation of almost all sexual crimes. For many of these women, mere exposure of their lives as prostitutes will make it impossible for them ever to return to their communities back home.

One young woman tearfully described the revulsion expressed by her brother at her being engaged in prostitution and his outrage at the shame she would visit on the family, despite the police confirming her status as a victim of desperate cruelty. The stigmatisation of victims is one of the factors that make it so difficult for them to testify.

It is also important not to underestimate the power of traffickers. At the top end of the scale are large criminal networks, Chinese snakeheads or Eastern European mafias, who are also involved in blackmarket drugs and arms. Then there are the smaller more localised cartels. But all are ruthless in dealing with informants or their family members. Their victims are left in no doubt as to their capacity for violence and as a result are terrorised into silence.

Police who had investigated trafficking cases spoke about the near impossibility of securing courtroom testimony from witnesses, especially when their immigration status was uncertain, and they could face deportation back to their countries of origin at the end of the process.

Scottish prosecutors also face an additional hurdle as there is a requirement in Scots law for corroboration in criminal cases; this raises the evidential bar for a successful

prosecution even higher than in other parts of the UK or abroad.

Trafficked women are found working as prostitutes in saunas, brothels, clubs, bars and massage parlours. They are also set up by pimps in private flats with clients finding them via the internet. A travelling sales executive only has to enter the name of a town in Scotland and up come details of sex workers with a whole prospectus of sexual offerings.

Posing as punters, the police have on occasion been able to break into the rings which run the women. However, lack of clarity as to which agency leads the next stage of an investigation – police or immigration officers – can diminish the prospect of successful prosecution.

Even within women's organisations there are different attitudes about how to deal with trafficking. Some women's organisations have been campaigning to criminalise the buying of sex for many years. They argue that sex trafficking is simply the furthest end of the spectrum of prostitution, which is in itself a fundamental human rights violation. For them, the simple solution is the banning of prostitution and the criminalising of the demand side, namely the men.

On the other hand there are those who argue that there is a difference between forced and voluntary prostitution, and that sex work can be a choice made by some women which should not be penalised either morally or legally. For this group, banning is off limits.

The key difference is what is meant by coercion and whether women ever really consent to sex work or are forced to do so out of poverty, violence or some level of self-loathing. I take the view that the vast majority of women do indeed become

prostitutes out of complex combinations of negative experiences, but for me the law should not make the judgement that, when a woman claims autonomy, she is in fact misguided.

From the outset, I made clear to all organisations that banning was not going to be included in my recommendations, as in my view it was both unworkable in law and in practice. Coercion and deception are central to the UN's definition of trafficking in the Palermo Protocol and central to the Inquiry's recommendations.

The Inquiry found it impossible to establish the extent of trafficking in Scotland. Reliable figures are impossible to come by and some support organisations give numbers that are hard to verify. However, trafficking undoubtedly exists and any level has to be taken seriously. The question is how should it be effectively countered?

Scotland should be taking steps to make it clear that it has established an environment which is totally hostile to trafficking and that the police, border agency and all other parts of the state apparatus are geared up to stamp it out.

It is important that this is done well in advance of the Commonwealth Games, which will take place in Scotland in 2014. Such international sporting events can be magnets for traffickers because of the huge numbers of male attendees who seek out prostitutes whilst away from home.

A number of questions arose for us as we traversed the terrain of trafficking in Scotland. Many of the questions coalesced around the fundamental issue of awareness of the signs of human trafficking amongst professionals, amongst punters and those that benefit from trafficked labour, and amongst the public:

Inquiry into Human Trafficking in Scotland

- Do the police recognise trafficked women and children in a household when they are involved in a drugs raid or when they enter a massage parlour or sauna?
 - Are their antennae sufficiently well developed to query the nature of power relationships?
 - Do they understand that women traffick other women?
 - Do they recognise trafficking as a crime and not just an immigration issue ?
 - Do they understand that sensitivities about race must not cloud assessments about exploitation?
 - Do the police have adequate resources and training to deal with the issue?
 - Is there a problem with attitudes to prostitution and assumptions that most women 'on the game' do so through choice?
 - Has the attempt in Scotland to end street prostitution driven the provision of sex work into flats and suburban houses, therefore making the investigation of sex trafficking more difficult? How should policing change to reach such women?
 - Are other professionals such as health workers, social workers etc. alert to the signs that someone with whom they have contact is in fact a trafficked person?
 - Are members of the public sufficiently aware of the phenomenon of trafficking to recognise that a woman living in an adjacent flat might be subjected to enforced prostitution?
 - Do men who use prostitutes contemplate that the young Asian or Eastern European woman providing them with pleasure is in fact doing so because she is owned?
 - Does it occur that the au pair or nanny or other home-help fleetingly seen around a neighbours home is in fact living in domestic servitude, sleeping on a mat in the kitchens of comfortable suburbia?
 - Is the Border Agency so alert to the issue of illegal immigration that a culture of disbelief is the default position when hearing the accounts of those who may have been trafficked?
 - Are the prosecution authorities equipped to deal with the cases that do come to light or does the law need to change?
 - Were there shortcomings that explained the fact that, until very recently, there had been no convictions or were there deeper explanations?
- As a result of our Inquiry we have come to some clear conclusions as to why there has been only one successful prosecution for trafficking in Scotland. We have also determined that there is lack of clarity as to whether this is essentially an immigration or a policing issue. The answer is that trafficking is primarily a criminal and human rights issue. Uncertainty amongst police about who leads on cases where trafficking is suspected may undermine the opportunity to gain the confidence of those who have been trafficked. And it is this carefully won confidence that give trafficked people the courage to confront their abusers.

There is now more information and debate about those who are trafficked. However, there is less discussion about the users – the employers whose profits are increased by exploitation of cheap labour or the men who pay for sex with little thought of whose pocket will ultimately be lined and whose lives destroyed.

According to police, the new phenomenon of easy foreign travel to exotic places, from Eastern Europe to Thailand, often for stag nights, and the proliferation of pornographic and sex sites on the internet, introduces large cohorts of young men to prostitution who had never before contemplated the purchase of sex. Men have to be faced with the effects of their conduct and their role in maintaining the profitability of this vicious trade.

Trafficking largely operates in an underworld of failing economies, poverty, discrimination, patriarchal attitudes, corruption and violence.

Confronting it involves collaboration: collaboration internationally between governments and nationally between agencies.

It also involves a determined effort to engage with deeply held attitudes to women, labour relations and cultural practices.

It is also crucial that those discussions come out into the public domain.

Human trafficking is one of those pressing contemporary issues which speaks to the nature of our societies. It tests the value we attach to the humanity of others.

That is why it is so important to develop effective strategies to combat trafficking. It speaks to who we are as a people.

I am hoping that Scotland will pioneer a zero-tolerance approach to human trafficking, leading the way with new strategies, legislation, and the kinds of multi-agency cooperation that enables both the punishment of the traffickers and the identification and recovery of the victims; all underpinned by a comprehensive public awareness campaign about the true nature of this egregious human rights abuse.



Photo by www.alisterthorpe.com

Baroness Helena Kennedy QC

Part B

Part B: Our Inquiry into human trafficking in Scotland

This part of the report sets out the role of the Equality and Human Rights Commission (the Commission) generally and in relation to the Inquiry. It also: outlines the background to and the purpose of the Inquiry; details the Commission's understanding of human trafficking for the purpose of this Inquiry; describes how evidence was gathered; and highlights the international law and obligations that informed the analysis of evidence.

The role of the Equality and Human Rights Commission

The Commission has a statutory remit to promote and monitor human rights and to protect, enforce and promote equality across the nine "protected" grounds – age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

Section 16 of the Equality Act 2006 gives the Commission the power to conduct Inquiries into matters relating to its duties in respect of equality and diversity, human rights and groups¹.

In Scotland, this power is limited in relation to the Commission's human rights remit. The Commission cannot take human rights action where the Scottish Parliament has legislative competence to enable another body to take such action. The Scottish Parliament has created the Scottish Human Rights Commission (SHRC) with whom the Commission works closely. As this Inquiry considered both reserved and devolved human rights issues, the Commission sought and received the consent of the SHRC before finalising the Terms of Reference².

Background to and purpose of the Inquiry

The Commission undertook to inquire into the nature and extent of human trafficking in Scotland focusing mainly, but not exclusively, on trafficking for the purpose of commercial sexual exploitation. Other main purposes such as forced labour, domestic servitude and criminal exploitation were also investigated.

The Commission also sought to inquire into the factors that give rise to human trafficking in Scotland. The role played by

1 *Equality Act 2006* <http://www.legislation.gov.uk/ukpga/2006/3/contents>

2 The full terms of reference for the Inquiry can be found at Appendix 1

demand for cheap and exploitable labour, particularly relating to commercial sexual exploitation, along with push factors such as poverty and inequality in source countries, was therefore central to the Inquiry.

The Inquiry further considered how policy and practice in Scotland compared to international anti-trafficking obligations, particularly in relation to:

- The investigation, prosecution, and monitoring of traffickers
- The identification and treatment of victims
- The extent and quality of statutory and specialist services and accommodation for victims

Finally, the Inquiry sought to identify good practice, particularly in relation to prevention and prohibition of trafficking, prosecution of traffickers, and protection of victims.

The Inquiry's findings led to a series of recommendations detailed within this report. These recommendations, aimed at the various institutions and agencies with a role to play in tackling human trafficking in Scotland, are designed to help prevent human trafficking and improve responses to it.

The Inquiry also suggests that institutions and agencies have regard to two other recent reports on trafficking in Scotland. These are the report in December 2010 of the previous Equal Opportunities Committee, 'Inquiry into Migration and Trafficking', and 'Scotland: a safe place for

child traffickers' by Scotland's Commissioner for Children and Young People, published in March 2011.

The Commission's understanding of human trafficking

It was important to identify at an early stage what is meant by human trafficking for the purposes of this Inquiry. As such the Commission adopted the definition in the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (the CoE Trafficking Convention)³:

"Trafficking in human beings shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

"Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The CoE Trafficking Convention's view is that there are three essential elements of human trafficking: action, means, and purpose.

3 Article 4(a): Council of Europe Convention on Action against Trafficking in Human Beings 2005, (the CoE *Trafficking Convention*)

“Trafficking in human beings is a combination of these constituents and not the constituents taken in isolation. For instance, “harbouring” of persons (action) involving the “threat or use of force” (means) for “forced labour” (purpose) is conduct that is to be treated as trafficking in human beings.”⁴

In addition to the definition used above, prior to the Inquiry the Commission identified a number of key elements of human trafficking that were used to inform our work. These are:

- *Human trafficking is a violation of a person's dignity and human rights*

The recognition that human trafficking violates a person's dignity and human rights is well established in both the international law of human trafficking⁵ and in related human rights treaties⁶.

- *Exploitation is the lived experience for victims of human trafficking*

Victims are exploited from when control is established, irrespective of whether victims actually suffer the abuses intended for them.

- *Trafficking is distinct from other ill treatment sitting at the severe end of a continuum or spectrum of exploitation*⁷

Human trafficking is a mechanism to move labour into exploitation. It operates at the severe end of a spectrum of human exploitation and is related to, but remains distinct from, other mistreatment such as smuggling.

- *Human trafficking relies on and is perpetuated by material and status inequalities at the global, state and national levels*

Inequality is intrinsic to human trafficking. It may be based on poverty or identity-based discrimination, but it always involves abuse of power. Equality analysis is therefore central to an effective anti-trafficking strategy.

- *Human trafficking embodies and enables serious crimes often perpetrated by organised crime groups for profit*

The link between human trafficking and organised crime is reflected in the international law of human trafficking,

⁴ Paragraph 75: Explanatory Report of the CoE *Trafficking Convention* 2005.

⁵ This recognition is reflected by the United Nations in its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000 (UN *Trafficking Protocol*), and its Recommended Principles and Guidelines on Human Rights and Human Trafficking 2002 (UN *Trafficking Principles*), as well as in both the CoE *Trafficking Convention* 2005, and the European Union's *Trafficking Directive* 2011 (*the EU Trafficking Directive*).

⁶ Article 6: United Nations Convention on the Elimination of All Forms of Discrimination against Women 1979.

⁷ Skrivankova, K., (2010) *Between decent work and forced labour: examining the continuum of exploitation*. The paper is available at <http://www.jrf.org.uk/work/workarea/contemporary-slavery>.

notably the United Nations' Trafficking Protocol 2000, the Council of Europe's Trafficking Convention 2005, and the European Union's Trafficking Directive 2011.

- *Human trafficking thrives in hidden communities where people are either unable or unwilling to speak.*

Hidden communities include underground economies comprising sweatshop factories, domestic servitude, and private 'sex' flats as well as groups like users of sex services or organised crime networks.

- *Responses to human trafficking need to be strategic, coordinated, and focussed on human rights and crime prevention.*

Human trafficking is shaped by many factors including global inequalities, migration regimes and labour standards.

Therefore, to deal effectively with the problem, it is important that government-led anti-trafficking strategies incorporate a wide range of policy areas including international development, law enforcement, labour market regulation, regulation of the sex industry, and health and victim services. While states can lead on those areas within their competence, cooperation is clearly required on wider matters.

Gathering evidence – how the Inquiry worked

The Inquiry's findings and recommendations are based on analysis of a wide range of written evidence and face-to-face interviews. These included:

- Statements from 13 victims of human trafficking who experienced forced labour, domestic servitude, commercial sexual exploitation, or had committed criminal offences under duress
- Research by Dr. Helen Easton and Professor Roger Matthews, London South Bank University, for the Inquiry: *'Investigating the experiences of people trafficked into commercial sexual exploitation in Scotland'*, including primary and secondary evidence from 10 adult women who were victims of sex trafficking in Scotland⁸
- Responses from the 22 public authorities who were sent a formal Notice requiring the provision of information and documents in terms of Schedule 2 of the Equality Act 2006
- Written evidence from a range of organisations in response to the Inquiry's call for evidence, targeted at mainly Scotland's civil society, its health boards, and its local authorities

To complement and support this evidence the Inquiry gathered information through:

- Roundtable events with stakeholders in June 2010 in Aberdeen, Edinburgh and Glasgow

⁸ Easton, H. and Matthews, R., (December 2011) *Investigating the Experiences of People Trafficked into Commercial Sexual Exploitation in Scotland* (Equality and Human Rights Commission). This research can be found at www.equalityhumanrights.com/humantraffickingfi

- A roundtable event on good practice with mainly London-based experts in February 2011
- Meetings between stakeholders and the Inquiry's Investigating Commissioner and its Manager throughout the course of the Inquiry
- A seminar, in May 2011, led by the Investigating Commissioner, on the causes of human trafficking, with participants from a diverse range of organisations

International law and obligations that informed the analysis of the evidence

The Inquiry's analysis was informed not only by its own Terms of Reference and the Commission's understanding of human trafficking set out above, but also by the international legal framework on trafficking⁹.

While the problem of human trafficking is not new, the emergence of an international response is. There are now international legal instruments dedicated to anti-

trafficking. In Europe these are the excellent CoE's Trafficking Convention 2005, and, most recently, the European Union's Trafficking Directive 2011¹⁰.

Moreover the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (the HRA) contain protections that are relevant to trafficking victims. Most notable is Article 4 of the Convention which prohibits slavery and forced labour. This is now also a stand-alone criminal offence in Scotland¹¹ and in England and Wales¹². There have also been a number of cases taken in the UK that engage the ECHR and involve human trafficking¹³.

This international legal framework includes obligations on states which necessarily vary in how they can be met. Some allow for discretion on how and when they are implemented, while others are more immediate, precise, and action-oriented.

For example, there is an obligation to criminalise trafficking¹⁴, which is more binding and prescriptive than the requirement to provide for the possibility of not prosecuting or penalising victims for offences related to their trafficked status¹⁵.

⁹ Particular regard was given to the (a) the CoE *Trafficking Convention* (b) the EU *Trafficking Directive* (c) the UN *Trafficking Principles*, and (d) the UN *Trafficking Protocol*.

¹⁰ *Op. cit.*

¹¹ Section 47 *Criminal Justice and Licensing (Scotland) Act* 2010.

¹² Section 71 *Coroners and Justice Act* 2009.

¹³ These include three cases of trafficking and domestic servitude: (a) *F.A. and Y.K. v UK* related to removal from the UK; (b) *Kawogo v UK* related to lack of remedies; and (c) *C.N. v UK* also concerned a lack of remedies.

¹⁴ Article 18: CoE *Trafficking Convention*, and Article 2: EU *Trafficking Directive*.

¹⁵ Article 26: CoE *Trafficking Convention*, and Article 8: EU *Trafficking Directive*. These are pioneering obligations in affirming the principle that states should not prosecute or impose penalties on trafficking victims for unlawful acts committed either as a direct result of their trafficking situation or that were committed under duress.

The various obligations sit in the three main areas of the international law against human trafficking. They apply to the UK State and, consequently, to the Scottish Government for devolved matters including criminal justice, health, and local government. The main obligations concern:

- *Protecting and supporting victims*, which includes obligations relating to identification¹⁶, non-prosecution¹⁷, detention¹⁸, care and recovery¹⁹, rights to remain²⁰, repatriation²¹, appropriate treatment in criminal and other proceedings²², and remedies and compensation²³
- *Criminal justice responses to human trafficking and organised crime*, which encompasses issues of criminalising trafficking²⁴, investigating, prosecuting, and punishing the crime²⁵, and disrupting the traffickers and their criminal finance through an effective asset recovery regime²⁶
- *Preventing human trafficking* by increasing awareness, knowledge, and evidence about, as well as training on, human trafficking²⁷; addressing the underlying factors giving rise to the human vulnerability at the core of trafficking, such as inequality, poverty, and identity-based discrimination²⁸, as

16 Article 10: CoE *Trafficking Convention*.

17 See Footnote 15.

18 Article 12(2): CoE *Trafficking Convention* and Guideline 6.1: UN *Trafficking Principles*

19 Article 12: CoE *Trafficking Convention* and Article 11: EU *Trafficking Directive*.

20 Articles 13 and 14: CoE *Trafficking Convention* and Article 7: UN *Trafficking Protocol*.

21 Article 16: CoE *Trafficking Convention*, Article 8: UN *Trafficking Protocol*, and Principle 11 and Guidelines 6.7 and 4.6: UN *Trafficking Principles*.

22 Article 28: CoE *Trafficking Convention*, Article 12: EU *Trafficking Directive*, and Article 6(2): UN *Trafficking Protocol*.

23 Article 15 and 23(4): CoE *Trafficking Convention*, Article 17: EU *Trafficking Directive*, and Principles 17 and 16 and Guideline 9: UN *Trafficking Principles*.

24 See Footnote 14.

25 Whereas there is not a specific comprehensive obligation to investigate, prosecute, and punish traffickers in the identified anti-trafficking instruments all (a) consider trafficking a crime; (b) state that combating the crime of trafficking is a key purpose; and (c) have varying levels of detail on how criminal procedure should be organised in respect of the crime of trafficking. The decision by the European Court of Human Rights in *Rantsev v Cyprus and Russia* from 7th January 2010 iterated the need for effective criminal investigation on trafficking cases and added that such investigations must cover *all aspects of trafficking allegations from recruitment to exploitation*.

26 Article 7: EU *Trafficking Directive* and Article 12: UN *Trafficking Protocol*.

27 Article 5(2): CoE *Trafficking Convention*, Articles 18(2)-(3): EU *Trafficking Directive*, and Article 9(2): UN *Trafficking Protocol*.

28 Article 9(4): UN *Trafficking Protocol*, Article 18(2): EU *Trafficking Directive*, and Article 5(2): CoE *Trafficking Convention*.

well as tackling the demand for cheap and exploitable labour that often generates the recruitment, movement, and exploitation of trafficking victims²⁹; and taking preventative action in a cooperative manner involving civil society and other jurisdictions, where appropriate³⁰.

This breadth of obligations in the international law on human trafficking reflects both the complexity of the problem and the corresponding need for states to adopt strategic, system-wide responses to it³¹. It is such a system-wide strategic response that the Commission has sought to develop through its recommendations below.

29 Article 6: CoE *Trafficking Convention*, Article 18(1): EU *Trafficking Directive*, and Article 9(5): UN *Trafficking Protocol*.

30 Article 5(1) and Article 5(6): CoE *Trafficking Convention*, Article 18(2): EU *Trafficking Directive*, and Article 9(3)-(4)-(5): UN *Trafficking Protocol*.

31 This point was made by the international scholar and anti-trafficking legal expert, Dr. Anne T. Gallagher, at the Inquiry's seminar on the causes of human trafficking, on the 4th May 2011: "... it's really only been over the last few years that countries have started to acknowledge that the nature of the problem is system wide and the response needs to be system wide as well".

Part C

Part C: Summary of what the Inquiry has learned, its findings, and its recommendations

“He [the trafficker] already threatened my family back home ... so I don’t know what to do, my wife and children [are there] ... their life is not secure there.”

(Interview with victim)

Introduction

This report of the Inquiry into Human Trafficking in Scotland is presented in two main parts. Part D outlines what the Inquiry learned in relation to the nature, extent and causes of trafficking in Scotland. The evidence which informed this section greatly enhanced the Commission’s understanding of human trafficking. This understanding then allowed us to identify the areas of policy, legislation and regulation which need to be addressed.

Part E deals with these areas systematically, providing findings on each along with recommendations designed to tackle the identified issues. We outline 10 findings, along with corresponding recommendations designed to improve the responses to human trafficking, put

victims at the centre of related action, and make Scotland a more hostile environment for traffickers.

What the Inquiry learned: nature, extent and causes of human trafficking

The Inquiry’s evidence shows that victims of trafficking tend to be vulnerable in their home countries through poverty and/or social marginalisation. It is such vulnerability which allows traffickers to gain initial control of their victims and successfully maintain it.

Deception is also central to trafficking as people brought to Scotland are often unaware of the type of work they will be forced into, or the conditions under which they will be exploited.

This was true across all the main purposes of trafficking that the Inquiry uncovered, namely:

- Trafficked prostitution or other forms of sexual exploitation

- Forced labour³²
- Domestic servitude
- Forced criminal acts

The evidence suggests that the majority of victims are female, reflecting the fact that the most common purpose uncovered is sexual exploitation. Those trafficked into forced labour are more likely to be male.

This exploitation tends to be intra-community and perpetrated by traffickers with the same background as those they exploit. However, Scots are also involved in trafficking, not only in terms of organised crime, but also as employers of trafficked labour, users of trafficked sex services, and as unwitting consumers of goods and service provided by trafficked people.

Assessing the extent of human trafficking is extremely difficult. Trafficked exploitation tends to be private, hidden from agencies and unseen by the public. Victims are trafficked into private 'sex' flats, workplaces with little regulation, or private or diplomatic homes, as domestics.

The fact that awareness of trafficking is low and that crimes committed by traffickers, or by victims under duress, remain undetected contributes to maintaining the unseen nature of trafficking.

The Inquiry is therefore unable to provide a reliable estimate of the numbers of people trafficked into Scotland. However it

is likely that, due to the hidden nature of trafficking, there will be many unidentified victims.

The key causes of trafficking in Scotland are the demand for exploitable labour, the lure of profits for organised crime, and the social vulnerability of the victims in source countries as mentioned above. These causes are largely in line with those contained within the EU Trafficking Directive, and an understanding of them is vital in shaping a response capable of undermining them.

What needs to change: the Inquiry's pivotal findings and recommendations

Part E of the report details the Inquiry's findings highlighting where action is required, along with corresponding recommendations. The full text of the findings and recommendations is contained within the main body of the report – an overview of these is presented below.

Finding 1

Scotland needs to have a comprehensive strategy to prevent and tackle human trafficking.

While the Scottish Government has taken important steps in recent years in anti-

³² The European Court of Human Rights in *Siliadin v France* [2005], Application no.73316/01, when interpreting the *forced or compulsory labour* limb of Article 4 of the *European Convention on Human Rights* (ECHR), emphasised the starting point to any consideration of whether *forced or compulsory labour* has occurred is Article 2(1) of the *Forced Labour Convention* (1930) of the International Labour Organisation.

trafficking, there remains room for improvement.

Responsibility for human trafficking in the Scottish Government sits with the victims and witnesses team. Given the myriad of issues implicated in human trafficking this may not be the best approach, and a specialist thematic team with links to justice, health, local government, and other policy areas should be established

Recommendation

The Scottish Government should build on its work on research, guidance, funding, and legislation on trafficking, and develop a strategic plan to tackle human trafficking. It should demonstrate leadership in devolved areas and proactively seek cooperation on issues within the competence of the UK Government and international and transnational agencies.

Outcome

The Scottish Government and partner agencies make Scotland a hostile environment for traffickers through implementing a strategy that uses all relevant policy levers and legislation.

Finding 2

There is little public or professional awareness in Scotland of human trafficking or its indicators.

There has been an absence of any coordinated effort to increase public awareness of human trafficking in Scotland.

While there were some positive initiatives to raise awareness of human trafficking and its indicators across front-line agencies, these were the exception, meaning that most of the professionals who may come into contact with trafficking are unlikely to identify it.

Recommendation

The Scottish Government should: run an anti-trafficking campaign to raise awareness with the public in Scotland; organise accredited anti-trafficking training for all First Responders³³ and relevant front-line professionals; and encourage front-line agencies to develop their own guidance on human trafficking, particularly on trafficking indicators.

Outcome

There is greater awareness amongst the general public regarding the nature, extent and indicators of human trafficking in Scotland. Frontline professionals are able to identify the indicators of trafficking and act accordingly. The true extent of trafficking in Scotland becomes clearer.

Finding 3

Human trafficking legislation in Scotland and in the UK has developed in a piecemeal fashion and is not based on a thorough consideration of how legislation should best deal with the problem. This has left human trafficking legislation in Scotland and the UK inconsistent, both internally and in comparison with international law, and has served to limit its scope and impact.

33 First Responders are bodies authorised to make initial referrals of persons presumed to be trafficked into the National Referral Mechanism for decisions to be made by the relevant Competent Authority on individuals' trafficking status.

Human trafficking legislation has been attached to other legislation, such as sexual offences, and asylum or immigration law, rather than flowing from a dedicated analysis of how the law should deal with the crime of human trafficking.

The two main criminal offences related to human trafficking in Scotland have different definitions for fundamentally the same act³⁴. This is wrong in principle, undermines legal clarity and certainty, and is problematic in practice.

Recommendation

The Scottish Government should consider introducing a comprehensive Human Trafficking Bill based upon a review of all its legislation relating to human trafficking. This review should involve close liaison with the UK Government³⁵ and, in particular, should ensure new human trafficking legislation supports any new strategy, while complying with the EU Trafficking Directive and positive human rights duties on human trafficking.

Outcome

Scotland has dedicated legislation on human trafficking that is consistent in definition, is clear on what trafficked exploitation looks like, and enables the effective prosecution and disruption of traffickers.

Finding 4

Scotland's police service has a significant intelligence gap on human trafficking.

Scotland's police service acknowledged a lack of intelligence on human trafficking. This is partly due to a need to improve the levels of trust and cooperation between victim support services and Scotland's law enforcement community.

Such cooperation is vital for many reasons, including ensuring early identification and seamless support for victims, and enabling the intelligence sharing that leads to prompt investigation and disruption of traffickers.

Recommendation

A multi-agency group dedicated to strategic, operational, and formalised intelligence sharing, analysis, and enforcement action against traffickers should be part of the recommended strategic approach to human trafficking. The group should include law enforcement agencies engaged in anti-trafficking in Scotland and have formal links through protocols to those identifying and those supporting victims.

Outcome

The police service and its law enforcement partners have robust and effective mechanisms for intelligence gathering and

34 Section 22: *Criminal Justice (Scotland) Act 2003* on trafficking into prostitution or the making or production of obscene or indecent material; and Section 4: *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* on trafficking for exploitation.

35 The UK Government's Human Trafficking Strategy commits to review the criminal legislation in England and Wales by December 2011 to see if it is adequately supporting the prosecution of traffickers.

sharing, for cooperation particularly in terms of services for victims, and for joint enforcement action against traffickers who are operating in Scotland.

Finding 5

There have been few prosecutions brought against suspected traffickers in Scotland for human trafficking offences.

The Crown Office and Procurator Fiscal Service (COPFS) can only prosecute what is reported to them. They have recently secured the first convictions on human trafficking, have had successful prosecutions on other offences where a trafficking background has been suspected, and have developed a specialism in trafficking.

How to obtain sufficient evidence to prosecute traffickers for trafficking remains a fundamental challenge. The requirement for corroboration in Scots law and the likelihood of victims being reluctant to be witnesses necessitate further improvement in COPFS' victim liaison skills.

The review of current legislation recommended above should consider whether to make a 'human trafficking background' a statutory aggravation in the sentencing of those convicted of related criminal offences, such as sexual assault or forced labour.

Recommendation

The Crown Office and Procurator Fiscal Service (COPFS) should continue to proactively develop its specialism in human trafficking to help improve its performance on successful prosecutions for trafficking offences. Particular regard needs to be given to how best to get sufficient

evidence to convict on trafficking, and how to increase the prospects of the judiciary passing adequate sentences against those with trafficking backgrounds who are convicted of related criminal offences.

Outcome

Scotland becomes a centre of excellence in the prosecution of human trafficking crime through a systematic end-to-end service from the COPFS. This will start with early advice to potential reporting agencies on evidential and other matters through to the successful prosecution of trafficking offences.

Finding 6

Law enforcement bodies operating in Scotland have experience in disrupting organised crime through the application of asset recovery powers, but there have been few operations specifically targeting organised human traffickers.

There are ample powers available for asset recovery in Scotland, not least through the Proceeds of Crime Act 2002. These have been used against serious organised crime groups in areas such as drug trafficking, tax and benefit fraud, and cannabis cultivation, and may have affected traffickers indirectly.

However, there seem to have been few disruption operations against criminal enterprises in terms of their human trafficking activities.

Recommendation

Law enforcement agencies operating in Scotland should collaborate to develop and implement a strategy for the use of disruption and asset recovery powers,

specifically targeting organised trafficking groups in Scotland.

Outcome

Scotland is a high-risk and low-return proposition for organised criminals engaged in human trafficking due to the systematic and effective disruption of organised crime through the tracing, seizure, and confiscation of their ill-gotten assets.

Finding 7

There is a need for the Scottish and UK Governments to encourage and assist organisations responsible for inspecting employment agencies and standards, environmental health and health and safety at work, regulating domestic work, or making licensing decisions, to embed anti-trafficking into their regulatory frameworks and practices.

The need for anti-trafficking regulation is most acute in sectors associated with poor employment protection, low wages, and poor health and safety records.

The promotion of anti-trafficking in regulatory bodies is a sufficiently important policy goal to merit practical leadership from the Scottish and UK Governments as part of their respective strategic approaches to human trafficking.

Recommendation

The Scottish and UK Governments should encourage, assist, and give practical leadership to those with responsibilities to regulate such as:

- employment standards in sectors with significant numbers of migrant workers
- employment agencies
- environmental health standards
- health and safety at work
- licensing practices
- the treatment of domestic workers

This would help to ensure that they embed anti-trafficking into their policy and operational activities, seek First Responder status in the National Referral Mechanism (NRM)³⁶ and learn from the regulatory model and practices of the Gangmasters Licensing Authority on labour exploitation, forced labour, and human trafficking.

Outcome

Legitimate sectors and labour markets in Scotland and in the UK are no-go areas for traffickers through nationally consistent, systematic, and evidence-based regulation, which links to services identifying and supporting victims as well as ensuring intelligence is passed to law enforcement.

36 The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive the appropriate care. Authorised agencies, such as the Police, social services and certain Non-Governmental Organisations (NGOs), who encounter a potential victim of human trafficking, can refer them to the Competent Authority (CA). The initial referrer is known as the 'First Responder'. The UK's CAs are the Serious Organised Crime Agency (SOCA) through its UK Human Trafficking Centre and the UK Border Agency (UKBA). SOCA deals with referrals from the police, local authorities and NGOs. UKBA deals with cases where trafficking is raised as part of an asylum claim or is in the context of another immigration process.

Finding 8

Traffickers use commercial products, services, and premises to organise and facilitate the exploitation of victims, including through mobile phones, websites, credit and debit payment facilities, and privately rented or owned accommodation.

Victims reported how bogus websites enticed them to the UK, while stakeholders gave evidence of mobile phones being important tools used for the control of victims of sex trafficking and to arrange meetings with users.

There was little evidence of anti-trafficking knowledge or activity in Scotland's private sector, but its involvement now is a prerequisite to a strategic approach to anti-trafficking in Scotland.

Recommendation

The Scottish Government, as part of a strategic approach to anti-trafficking, should involve relevant parts of Scotland's private sector³⁷, and encourage them to raise awareness of human trafficking and include anti-trafficking in their product development and monitoring, and corporate social responsibility practice. They should also be encouraged to take steps to ensure they are not unwittingly enabling the crime of trafficking.

Outcome

The private sector in Scotland becomes a world leader amongst peers in contributing to preventing and tackling human trafficking.

Finding 9

The current arrangements for identifying victims and deciding trafficked status are too centralised, lack accountability, create a conflict of interest in decision making, and do not lead to the tracking of outcomes for victims or to an analysis that identifies patterns and trends in human trafficking.

The UK Border Agency (UKBA) and the Serious Organised Crime Agency (SOCA) have sole responsibility for making decisions on whether someone is, or has been, a victim of human trafficking. They do this alongside discharging their respective primary functions of border control or tackling serious organised crime. There is no formal role in the decision-making process for other key bodies, such as police, designated victim agencies, or local authorities.

There is no formal right of appeal available on trafficking status. This means that UKBA and SOCA are unaccountable for a decision that could have significant consequences for those that claim to be, or are regarded by others to be, victims of human trafficking.

Recommendation

The Home Office should lead a new review of the approach and structures for the identification of trafficked persons. This should consider, in particular, whether the present arrangements are sufficiently independent, are overly centralised, lack accountability, have conflicts of interest in decision making, should provide a formal

³⁷ The UK Government's Human Trafficking Strategy includes a commitment to consider how the private sector can and should be involved in anti-trafficking.

appeal process, and include the systematic analysis of NRM data which is then shared to enhance anti-trafficking practice across partner agencies.

Outcome

Scotland and the UK have an independent and transparent identification system which recognises that human trafficking is invasive of the dignity and rights of its victims. The system is dedicated to the identification and onward referral of victims, to the making of decisions on trafficking status, and ultimately to victims' recovery.

Finding 10

Scotland does not yet have comprehensive, end-to-end services for victims of human trafficking.

The two agencies operating in Scotland to support victims of human trafficking are the Trafficking Awareness Raising Alliance and Migrant Help, both of whom have demonstrable expertise in supporting victims. However, neither seems to be enabled to provide victims of trafficking with practical access to an end-to-end recovery service throughout Scotland.

These agencies should be enabled to deliver services for victims through an appropriate mix of their own and other professionals' expertise. These services should all be in accordance with a nationally defined Trafficking Care Standard.

Recommendation

The Scottish Government should develop a Trafficking Care Standard and introduce an end-to-end service for trafficking victims. This should include arrangements for systematically tracking the progress and outcomes for each victim.

Outcome

Scotland is a centre for excellence in providing high-quality services for victims of human trafficking, from their identification through to their physical, psychological, and social recovery.

Concluding comments

The evidence submitted during the course of this Inquiry shone a light upon the story of human trafficking in Scotland. The experiences of people who had been deceived, manipulated or coerced into coming to Scotland demonstrate the harsh reality of trafficking. Exploited by organised criminals in the sex industry, often captive in private 'sex' flats and systematically abused; forced into criminal acts such as benefits fraud or cannabis cultivation; exploited in fruit picking farms or the hospitality industry; or forced into conditions akin to slavery as domestic servants – the experiences of trafficked people here are often nothing short of brutal and, in the main, hidden from society.

Whilst the Inquiry did uncover evidence of much good work at all levels in government, enforcement, prosecution, and, vitally, victim support, the lack of a coherent approach was evident.

The response is insufficiently strategic and the approach of existing law is

inconsistent. Intelligence gathering has been hampered by lack of cooperation amongst relevant agencies and prosecutions have been limited. Victim support services are not enabled to consistently deliver the holistic end-to-end services required for survivors.

The recommendations in this report are designed to help develop and inform a response which is both strategic and comprehensive. Such an approach is fundamental in tackling human trafficking. With regard to those recommendations specific to Scotland, it should be led by the Scottish Government

and involve law enforcement and prosecution services, victim support organisations, local authorities and the private sector. It must put trafficked people at its centre, seeing them as victims of crime rather than as immigration issues. The Inquiry also made recommendations that will need consideration not just in Scotland but across the UK.

Such a properly focussed strategic approach will help identify victims and support their recovery while making Scotland a more hostile environment for traffickers.



Part D

Part D: The nature, extent and causes of human trafficking in Scotland

Scotland

This part of the report is concerned with what the Inquiry learned about human trafficking in Scotland. It seeks to shed light on the nature and extent of trafficking and examines its causal factors.



Section 1: Nature of human trafficking

Background

Although there is an agreed international definition of human trafficking³⁸ there remains disagreement on the interpretation of central elements of that definition. Terms such as 'force', 'abuse of power' and 'exploitation' continue to be the subject of professional and academic debate.

The Commission therefore felt that, in order to better understand the nature of human trafficking, it was essential to speak to those involved. Through the Inquiry it has been possible to meet, listen to, and learn from victims of trafficking. This has greatly enhanced the Inquiry, providing it with an unprecedented insight into the real nature of human trafficking in Scotland.

What the Inquiry learnt

Hearing the direct experience of victims of human trafficking enabled the Inquiry to make a clear distinction between trafficking and other ill-treatment such as smuggling. In addition, evidence to the Inquiry helped create a picture of who the victims are and where they come from.

The experiences of victims reveal the influence of factors such as organised crime on trafficking, and how other factors such as the changing demands amongst users of the sex industry shape trafficking patterns and behaviour.

It is clear that trafficking involves the exploitation of people who are normally in some way vulnerable, and subjecting them to deception and control by others who are usually from their own ethnic or cultural community. Exploitation can be for a range of purposes, from prostitution to fruit picking, or being forced into criminal acts. This exploitation takes place in many different settings and in various different ways.

The key Inquiry findings on the nature and purposes of trafficking together with information on the means used to control victims, are set out below. Also included is what we have learned about traffickers. However, there was less information on the make-up of traffickers and the Inquiry notes the lack of research in this area.

³⁸ See Footnote 3

Vulnerability

Evidence from victims of trafficking in Scotland demonstrates they are usually vulnerable through poverty or some other form of marginalisation in their home societies. This applied no matter where they came from and regardless of whether they had been trafficked into commercial sexual exploitation, domestic servitude, forced labour, or for the purposes of committing criminal acts.

The two leading agencies supporting victims of human trafficking in Scotland, Migrant Help and the Trafficking Awareness-Raising Alliance, confirmed the importance of vulnerability, in their evidence to the Inquiry. These agencies maintained that vulnerability based on poverty, identity-based discrimination, or psychological factors – such as low self-esteem or learned behaviours of compliance – was pivotal in allowing traffickers to exert and sustain control over victims.

“In general [victims] are often selected as ‘prey’ because they are already in a marginalised or vulnerable part of their original community. Examples are those in poverty ... those from a particular ethnic or cultural subset ... those who are already badly treated ... those with substance misuse issues ... those with learning disabilities or mental health issues ... those with low self-esteem ... [and] those females from countries where women are

traditionally, culturally and institutionally abused”.³⁹

It is clear from the evidence that such vulnerability is not a temporary phenomenon important only when initial control is established over a victim. It is a highly persistent and durable state. This vulnerability is increased by:

- The experience of exploitation itself
- The harmful impact of control techniques such as emotional dependence on traffickers, low/no pay, or violence

- Dislocation from home and support

This evidence confirms the thinking behind the EU Trafficking Directive which sees the

“... ‘social vulnerability’ of persons as the ‘principal root cause’ of trafficking, deriving from factors such as poverty, gender and other forms of discrimination, and personal circumstances such as age, health conditions, or disability.”⁴⁰

By including vulnerability in its definition of the criminal offence of human trafficking, the EU Trafficking Directive recognises the central role it plays⁴¹.

The experiences of victims both before and during trafficking must therefore be central to informing any future strategic response to trafficking and, particularly, the standard of care required to facilitate recovery from social, economic and psychological vulnerability.

³⁹ Evidence from Migrant Help to the Inquiry, February 2011.

⁴⁰ Proposal by the European Commission from March 2010 for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.

⁴¹ Article 2(2): EU *Trafficking Directive*.

Trafficking purposes

The Inquiry received evidence in Scotland of all of the main purposes of trafficking as set out in the EU Trafficking Directive⁴², with the exception of the removal of organs. This evidence undermines a commonly held view that human trafficking is limited to sex trafficking, as both victims and agencies reported incidences of a wide range of trafficking purposes in Scotland.

The Inquiry learned that the most common purposes of trafficking in Scotland are prostitution, forced labour, domestic servitude, and the exploitation of persons through forced criminal activities⁴³.

Analysis of National Referral Mechanism (NRM) data for Scotland reveals that sex trafficking is the most identified trafficking purpose, with trafficking into forced labour, and to a lesser extent, domestic servitude also significant.

Evidence emerged relating to each of the different purposes of trafficking:

- Trafficked prostitution was not on-street but indoors and, in particular, located in private 'sex' flats
- Victims trafficked into forced labour

were found in restaurants, hospitality, and agriculture. The Inquiry was also made aware of some trafficking into social care and the construction industry in England and, while there was no evidence of this in Scotland, it may also happen here

- Domestic servitude tended to be contained within ethnic or national groups with victims serving those from their own ethnic or national community
- Exploitation through criminal activities included victims being compelled to run bogus charity collections, to commit benefit fraud, and to cultivate cannabis

The Inquiry also learned there is an association in Scotland between certain trafficking purposes and particular nationalities or areas.

The strongest links are between:

- Nigeria and sex trafficking
- The Baltic States and the Czech and Slovak republics and trafficking into forced labour
- The Indian sub-continent and domestic servitude

The fact that there are associations between certain trafficking purposes and particular nationalities or areas does not

⁴² Article 2(3): *EU Trafficking Directive*.

⁴³ Article 4 CoE *Trafficking Convention* and Article 3 UN *Trafficking Protocol*, expressly define exploitation as but do not limit it to the following purposes: 'the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. Article 2 of the *EU Trafficking Directive* mirrors the approach and definition of the CoE and the UN but, importantly, also explicitly includes 'exploitation through criminal activity' as a trafficking purpose.

mean that victims only come from these countries. This is demonstrated by the fact that data on NRM referrals provided to the Inquiry were drawn from over 30 countries, approximately half of which were African, with a significant minority from Asia.

Moreover, these associations do not mean, for example, that Nigerians, Estonians, and Bangladeshis are not exploited for other trafficking purposes. The evidence to the Inquiry demonstrates that they are.

The association between particular purposes of trafficking and certain nationalities and ethnic backgrounds touches on some of the underlying issues in the trafficking process. These include:

- The racialisation of sexual exploitation where individuals want sex from 'exotic others'. One victim trafficked for this purpose explained

"...that this was because she was both 'new' and of a culture which was thought to be highly sexual and therefore attractive to sex purchasers who as a result treated her roughly."⁴⁴

- The exploitation of poverty-stricken parts of the Baltic States and Central Europe. This relates to the supply of poor, trafficked, but legal workers, and the use of these workers to 'collect' and produce goods for Central Europe and other poor areas:

"[I was] delivering leaflets and collection bags... for charity ... Save the Children written on the back [but not really for them] ... illegal distributors ... picking up bags and there were people who were turning [the bags] round, certain groups doing certain jobs ... I would get paid maybe £10 to £15 a week"

(Interview with victim)

- Status discrimination – when low-status, ostensibly domestic workers are trafficked into domestic servitude:

"I worked for the same gentleman ... in his house as a domestic helper. He just take me from Dhaka ... to Heathrow and he took me to Scotland by a plane ... He has 2 cars, I used to wash his cars ... I used to clean his garden as well, and clean his shoes and everything and coloured his hair as well and massaged his body ... He never give me any holiday, he didn't even allow me to go prayer on Friday ... was almost as if I was in a prison"

(Interview with victim)

⁴⁴ Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

Single purpose exploitation

The Inquiry found little evidence of victims being trafficked for multiple purposes.

Evidence showed for instance, that a Thai female victim of sex trafficking was moved by organised criminals across several borders, advertised on the internet and sexually exploited, and then internally trafficked from London to Scotland. Throughout, she experienced sexual exploitation alone, and no other form of exploitation.

Similarly, the Inquiry heard about men from the Baltic States, south-eastern Europe and the Indian sub-continent trafficked into labour exploitation. None of them suffered other types of exploitation.

This was the case irrespective of the purpose for which a person was trafficked or where they came from.

While this does not mean that exploitation for multiple purposes does not happen, it suggests that the initial purpose for which a person is trafficked matters.

Law enforcement agencies have tended to concentrate their efforts on the areas in which they have most experience, for example the sex industry. Evidence now shows that they may need to better target other industries and sectors intimately linked with certain trafficking purposes, for example agriculture.

Similarly, victim services should be attuned to deal both with the general sources and expressions of trauma, and with specific experiences that are more associated with certain types of exploitation. A victim of trafficking into commercial sexual exploitation conveyed the permanent, underlying, trauma arising from her feelings of shame and stigma:

“Yeah ... no matter how you try and move on that thing, or no matter how much I try to blank it out its always going to be there, the stigma is always going to be in my head.”⁴⁵

Means of Control

The Inquiry uncovered evidence of a wide variety of methods for controlling trafficked people. These included deception, manipulation, debt bondage, the threat of violence, and other forms of coercion. The main methods are detailed below.

Deception

The Inquiry learned from victims and stakeholders that deception is the most common way for traffickers to gain initial control over their victims.

Victims can be deceived about the reasons they are being brought to the country. For example, a woman may be offered a job that does not exist or which is substantially different from that promised. This might be where she is promised a restaurant job but is then forced into indoor prostitution.

“She [trafficker] say the work is in a restaurant because my age is quite old so I can work in a restaurant” [but after being

⁴⁵ Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

debt-bonded and on being told to work as a prostitute]... [trafficker] say I have to work in sex shop."

(Interview with victim)

As one woman, who was trafficked for the supposed purpose of continuing her education and was sexually exploited, reported:

"I was trafficked by my uncle. He arranged everything with my parents and there's one thing in [my country], whatever your parents say goes. Even if they say you are going somewhere tomorrow, you don't ask why."⁴⁶

Alternatively, the victim may know the type of work they will be doing but be deceived as to the actual conditions. For example, when someone expected to be working as a chef but whose conditions amounted to forced labour:

"Sometimes we are working 22 hours [and] ... [I was doing] painting, everything work ... after finishing the kitchen work we can do this work ... no tea breaks, no time off ... just payslip, only payslip ... and no money."⁴⁷
(Interview with victim)

Nearly all of the victims who provided evidence directly to the Inquiry had been deceived:

"A friend introduced me to a woman. She was the one that brought me. She told me she was taking me to a place where I could work and support myself and my child, so I did not know that she wanted to bring me

here for prostitution until I got here... She just changed because she had been so nice. She just changed and was telling me to do something that I was not willing to do."⁴⁷

This applied across trafficking purpose, gender, and ethnic background or nationality.

For example the Inquiry learned of:

- Two men from Bangladesh who were deceived as to the conditions of their work in a hotel in Scotland, and who were often forced to work over 20 hours at a time, receiving no pay initially and only relatively small amounts after 3 months
- A Chinese man who suffered multiple deceptions throughout his trafficked experiences, being deceived into forced labour in agriculture, as well as into cannabis cultivation, rather than the promised restaurant work
- The majority of adult women victims of sex trafficking interviewed being deceived about the nature and conditions of their prostitution

Even where a woman knows that prostitution is the reason for her coming to Scotland, deception surrounding its conditions is involved:

"She knew she was coming to work in the sex industry... [but]... She is put into a place where she is a prisoner until she starts earning enough money for her to make any money."⁴⁸

⁴⁶ Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

⁴⁷ Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

⁴⁸ Evidence to the Inquiry from a senior police officer, in Easton, H. and Matthews, R. *op. cit.*

Perhaps there is nothing surprising about this, as unsuspecting victims are vulnerable and may be anxious to believe what they are told by the trafficker.

Moreover, it is easier to gain and maintain control of a person, as well as move them across borders, when they are unaware of the actual exploitation that awaits them.

However, the common use of deception by traffickers should now inform the response to trafficking – particularly in terms of identifying, interviewing and making decisions on presumed victims, as well as when investigating and disrupting the deceptive practices of traffickers.

Manipulation, debt and violence

Once control has been established, the Inquiry learned it is maintained in a variety of ways, with some methods seemingly more common within certain groups.

Control methods range from the subtle, to the material, and through to the violent. They include:

- Cultivating psychological dependency, grooming, and threats to victims and their families:

“He [the trafficker] already threatened my family back home ... so I don't know what to do, my wife and children [are there] ... their life is not secure there.”
(Interview with victim)
- No or low pay, confiscation of identity documents, debt bondage, and tied accommodation:

“It was a flat and there was at least 10 people in 1 room and you just entered the room and just mattresses, there was no other space ... the ground floor all covered in mattresses.”

(Interview with victim)

- Physical violence:

“Madam was always angry with me ... Madam was very bad ... [in response to question on whether Madam was cruel] ... yes.”

(Interview with victim)

Some methods seem to be more associated with victims from certain areas. For example, ritual oaths were used against some victims from West Africa, debt bondage with those from south-east Asia, and threats or actual violence with those from Central Europe.

“I had to take an Oath; I was given this mark on my hand. I was told that if you tell anyone what has transpired you are going to die. They gave me a razor blade to eat, they took my armpit hair, they removed my nails from my toes and my fingers...

....they removed the hair on my body, they tied it up and put it in this shrine, then they tore my body and told me that if I tell anyone...you will just die... I was so scared...I think that if anything is happening I am going to die...”⁴⁹

The range of methods used to control victims demonstrates the sophistication of traffickers and the unique vulnerability of the victims they exploit. Victims are subject to a range of pressures and traumatic experiences.

⁴⁹ Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

Learning the different ways that victims are controlled is a prerequisite to undermining stereotypical images which associate trafficking solely with sexual coercion and violence e.g. the women 'chained to the radiator'.

"People seem to think that there is this victim who is imprisoned and bound. As soon as the woman has been debt bonded or exploited into doing something she didn't intend to, to me that is a trafficked woman. Now I personally think we have probably got more of these 'victims' out there than we currently are aware of."⁵⁰

In fact a victim could appear to have free movement and their own money when they are actually psychologically bound to their trafficker. They may be supervised, have little money or only be allowed specific purchases i.e. personal hygiene products, condoms, or travel tickets.

Evidence from one victim demonstrates this:

"The main thing was the ID. He [the trafficker] says you can go but I'm not giving you back your ID and also promising again that I would get money. He said you don't know anyone around here, you can't leave and go back [home] because you don't have documents."
(Interview with victim)

It is important that agencies likely to come into contact with victims are aware of this complexity, that they utilise existing guidance on the indicators of human trafficking, develop their own guidance and initiatives, and are equipped to spot trafficking when they encounter it⁵¹.

Traffickers

The Inquiry learned that traffickers often recruit, move, and exploit victims from within their own ethnic or national community. As such, the vast majority of the trafficking encountered through the Inquiry was intra-community, often associated with ethnicity or nationality.

This trafficking was run either by organised crime groups, or by smaller groups based on cultural or socio-economic hierarchies in the home society. For example, the Scottish Crime and Drug Enforcement Agency (SCDEA) told the Inquiry they believed there were organised criminals of African and Chinese background involved in sex trafficking, and criminals from the Czech and Slovak republics involved in a range of trafficking purposes⁵². The victims tended to be of the same background.

The tendency for trafficking to be intra-community applied across all trafficking purposes, and was regardless of whether the trafficking was organised by serious crime groups or smaller networks.

⁵⁰ Evidence to the Inquiry from senior police officer, in Easton, H. and Matthews, R. *op. cit.*

⁵¹ See, in particular, the United Nations Office on Drugs and Crime's Human Trafficking Indicators at http://www.ungift.org/doc/knowledgehub/resource-centre/UNGIFT_HT_indicators_English.pdf.

⁵² Evidence to the Inquiry from the Scottish Crime and Drug Enforcement Agency, February 2011

This issue is important for a number of reasons:

1. Intra-community trafficking makes it important to provide identified victims with expert, patiently delivered, and culturally appropriate care. This care must recognise the need to steer a safe course that protects victims from traffickers posing as friends or family. At the same time victims should have access to genuine friends and sources of community support to assist in their recovery. Such support could also increase the possibility of their agreeing to act as witnesses in prosecutions.
2. Race equality, cultural knowledge, and focused community relations should be embedded in anti-trafficking policy across Scotland. This applies in particular to law enforcement agencies that need to ensure victims are handled appropriately, not least in order to increase the chance of their acting as witnesses, as well as helping to get the intelligence from communities necessary to investigate, prosecute, and disrupt the traffickers in their midst. The SCDEA's initiatives on victim handling through tailored interview plans, specialist training for officers, and guidance on handling victims are all helpful practical measures to be encouraged.
3. Knowledge of intra-community trafficking should inform wider anti-trafficking work, particularly in terms of:

- a) Directing priorities for cross-border cooperation and operations by law enforcement⁵³
- b) Providing a focus for preventative attention and resources to those regions, states, and areas where traffickers are from or operate in
- c) Informing the UK's policy and practice on the voluntary, or forced, return of irregular migrants who may or may not have been classified as trafficking victims. Policy and practice will as a result take more account of trafficking in relation to migration

The importance and prevalence of intra-community trafficking in Scotland identifies a need for specific research on human traffickers and how they operate. Research on the behaviour of traffickers is as important for understanding human trafficking in Scotland as research on the experience of victims.

Scottish traffickers

It is vital that trafficking is not seen as a 'foreign problem', imported here and perpetrated and suffered by certain ethnic minorities only. Scotland's role as a 'destination' state is central, and our response as a society to human trafficking must reflect this.

⁵³ This was demonstrated from 2008 to 2011 by the excellent Metropolitan Police – Romanian National Police Joint Investigation Team, in Operation Golf, which effectively disrupted organised child trafficking from Romania to the UK for the purpose of exploitation of criminal activity.

While much of the evidence highlighted trafficking in a variety of minority ethnic communities, it must be recognised that Scots are also involved in human trafficking.

Their involvement takes a number of forms including as employers of trafficked labour and as users of trafficked sex services. In addition, Scots may be implicated as unwitting consumers of goods and services which may have been produced or delivered by trafficked labour in fruit picking or fisheries or the hospitality industry for example.

This is reflected by the recent successful prosecution of two Scots under section 22 of the Criminal Justice (Scotland) Act 2003 ('trafficking into prostitution'). It was found that they were part of an organised prostitution ring spanning Aberdeen, Belfast, Glasgow, and Cardiff⁵⁴. The success of Operation Factor demonstrates the effectiveness of multi-agency cooperation to investigate, prosecute, and disrupt traffickers, and to assist victims.

The Inquiry learned that major Scottish institutions with responsibilities in anti-trafficking – the Scottish Government, Scotland's police service, and other law enforcement – may now wish to enhance their work on anti-trafficking by linking it to their public sector equality duty⁵⁵ and, in particular, to work on race and community relations. Better work on

these issues should translate into better intelligence from communities on both the traffickers and their victims.

Summary

Victims of trafficking are vulnerable and generally from countries where there are pockets of deep poverty and inequality. This vulnerability leaves individuals open to being trafficked for the purposes of sexual, labour, domestic and criminal exploitation. This exploitation tends to be carried out and maintained through deception, and a mix of control techniques ranging from creating a psychological dependency to physical violence.

In general trafficking takes place within ethnic and national communities. This has implications for how the problem is dealt with in terms of prevention and intervention, both in the UK and in 'source' countries. Nevertheless, trafficking should not be seen as a 'foreign' problem. It is clear that Scots are involved and responses should be designed around this.

⁵⁴ Further detail can be found at <http://www.bbc.co.uk/news/uk-scotland-14857004>.

⁵⁵ Section 149(1) Equality Act 2010 at <http://www.legislation.gov.uk/ukpga/2010/15/section/149>.



Section 2: Extent of human trafficking

Background

Human trafficking tends to be hidden or unseen. Its invisibility has close parallels with other 'private' ill-treatment such as domestic violence and child abuse. Acknowledging the hidden nature of human trafficking is central to understanding and identifying it.

"I was kept in a room with my daughter. The door to my room was always locked and I was not allowed out. When men came [trafficker] would unlock the door and take my daughter away from the room, she would also tell me to get myself ready. ...When the men came in the room they would tell me what they wanted. I just did it because I had to...While I was with these men I could hear my daughter crying in the other room. It was terrible. When the men were finished they would use the bathroom and then leave. I never saw any money."⁵⁶

As a consequence, there are significant difficulties in obtaining a reliable estimate of how many victims of trafficking there are. Given that policy is often formulated, and resources allocated, on the basis of 'numbers affected' it is essential that

reasonable estimates of the extent of trafficking in Scotland are developed and accepted by Government and other agencies.

It is particularly important that agencies acknowledge the likelihood of under-reporting, and ensure that numbers are but one consideration when they formulate policy, allocate resources, and measure success. Beyond this, the severity of the harm suffered by trafficked people must also serve to concentrate minds and shape the allocation of resources.

What the Inquiry learnt

As well as learning of the hidden, unseen and under-reported nature of trafficking, the Inquiry learned that in Scotland as elsewhere in the UK, women are far likelier to be victims than men⁵⁷.

At the time of gathering evidence⁵⁸ the Inquiry also learned that the majority of trafficking in Scotland was from a small group of five countries, and that it was prevalent in both rural and urban areas across Scotland.

⁵⁶ Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

⁵⁷ The UK Human Trafficking Centre in SOCA has published statistical data on the referrals into the NRM for the period 1st April 2009 to 31st March 2011. This data, which is not disaggregated to Scotland, states of the 1481 referrals into the NRM in this period 1066 (72%) are female <http://www.soca.gov.uk/about-soca/about-the-ukhtc/statistical-data>.

⁵⁸ October 2010 to May 2011.

Estimates of Victims

Trafficked exploitation tends to be private, hidden from agencies and unseen by the public. Victims are trafficked into private 'sex' flats, workplaces with little regulation, or as domestics in private or diplomatic homes. The fact that awareness of trafficking is low and crimes committed by traffickers, or by victims under duress, remain undetected contributes to maintaining the unseen nature of trafficking.

Therefore estimates of identified potential victims do not reflect what is likely to be a much greater number of unidentified victims.

*"In terms of what you uncover, you uncover what you want in terms of the resources you throw at it. With prostitution being underground, the only bit you see is the bit that is overground. There is so much more of it underneath. It is just the tip of the iceberg."*⁵⁹

While the Inquiry welcomed the availability of published statistical data on referrals into the NRM, it was concerned that these were not disaggregated to the nations and regions of the UK, including Scotland. Accordingly the Inquiry requested and received data for referrals in Scotland but suggests that the production and publication of disaggregated data now becomes standard practice.

The Inquiry learned that 134 persons were referred into the NRM in Scotland over 21 months from 1st April 2009 to 31st December 2010. However it is important to note that this figure does not include those potential victims who did not consent to enter to the NRM. In the same 21 month period, Migrant Help reported they knew of 52 individuals who did not consent to enter the NRM. Whilst these numbers may appear small, there are of course many who have not been identified at all.

The Inquiry further noted that, in April 2009, the Scottish Government tentatively reported that 79 victims of human trafficking came into contact with agencies in Scotland between April 2007 and March 2008⁶⁰. The vast majority were trafficked for sexual exploitation. Agencies informing that estimate were mainly Glasgow-based including the Trafficking Awareness Raising Alliance (TARA), the Legal Services Agency (the LSA), the Scottish Refugee Council (the SRC), and the UK Border Agency (UKBA).

Gender and trafficking

Trafficking in Scotland is gendered, with women being far more likely than men to be victims of human trafficking.

NRM data from UKBA and SOCA showed that, during one period, 91 of the 134 Scottish NRM referrals were female and 43 were male⁶¹. Nearly all sex trafficking

⁵⁹ Evidence to the Inquiry from senior police officer, in Easton, H. and Matthews, R. *op. cit.*

⁶⁰ Lebov, K. (2009) *Human Trafficking in Scotland 2007/2008* (Edinburgh: Scottish Government).

⁶¹ SOCA and the UKBA *op. cit.*

cases involved women, with a significant minority being under the age of 18. This was also true, though to a lesser extent, for trafficking into domestic servitude.

Meanwhile, men were the majority of victims of trafficking into forced labour or labour exploitation, representing 34 of the 50 reported cases.

These statistics are supported by international evidence demonstrating the gendered nature of trafficking⁶². Legal instruments also reflect the fact that gender is a central element of trafficking.

A major contributory factor is that females are often more likely to be vulnerable through poverty and marginalisation in 'source' countries, while demand for sexual exploitation focuses upon them. It is important therefore that gender analysis informs anti-trafficking strategy and practice.

Source countries

The Inquiry learned that, at the time of its evidence gathering, five countries accounted for over 65 per cent of

Scotland's suspected and confirmed survivors of human trafficking. Between April 2009 and December 2010, 86 of the 134 presumed trafficked persons referred into the NRM came from these five countries: Nigeria (26), Czech Republic (21), Slovakia (19), China (12), and Somalia (8). While this concentration may change over it time, it is clearly noteworthy.

The remaining 48 persons referred into the NRM came from a diverse range of 27 countries. However, 26 were from Africa spanning 14 nation states, 10 came from Asia spread across 6 countries, with the remainder drawn mainly from Central Europe, South America, and the Middle East⁶³.

The fact that a small group of countries account for such a significant portion of Scotland's identified trafficking should inform anti-trafficking activity in the following respects:

- **Prevention:** this evidence should be used to help align international development priorities with anti-trafficking

⁶² The UN's Office on Drugs and Crime estimated in February 2009 in its *Global Report on Trafficking in Persons* reports that the most commonly identified form of human trafficking is sexual exploitation (79%) with women and girls being the predominant victims of this. In June 2009 Europol estimated that most victims are women and children and that sexual exploitation is the most common form of trafficking in the European Union. In the UK and Scotland various estimates from public bodies, NGOs and others over the past decade have pointed to the existence of significant levels of trafficking for sexual and labour exploitation and for other purposes such as domestic servitude – see estimates mentioned in the 'key facts' section at pg.3 of the House of Commons' Home Affairs Committee's report *The Trade in Human Beings: Human Trafficking in the UK* (May 2009) 'We have noted further that women and children tend to be the predominant victims in most of these estimates.'

⁶³ SOCA and UKBA *op. cit.*

- **Identification:** to ensure that border checks are sensitive to indicators of trafficking amongst those countries known to be 'source' states
- **Law enforcement:** the use of victim profiling is one way to gather intelligence on, investigate, and disrupt or prosecute organised traffickers. Ideally this should be done through systematic joint investigative cooperation with equivalent bodies in 'source' states
- **Co-operation:** with agencies working with victims in 'source' states to enable safe reintegration for returning victims

Trafficking throughout Scotland

The Inquiry learned that trafficking occurs throughout Scotland and is not confined to its major cities. Evidence identified human trafficking in Argyll (forced labour), Glasgow (all purposes), Kirkcaldy (criminal acts under duress), Edinburgh (sexual exploitation and domestic servitude), Skye (forced labour) and Aberdeen (sexual exploitation)⁶⁴.

There was further evidence of human trafficking for all purposes in many other parts of Scotland. It is reasonable to assume that for some purposes, such as sexual exploitation, the volume of trafficking will be greater where the demand is most concentrated i.e. in more populated areas.

It is, however, important to remember that such sexual exploitation is not exclusive to towns and cities. Moreover, certain rural areas will be more likely to be the scene of trafficking for other purposes such as forced labour in agriculture.

"The main areas are Edinburgh, Glasgow and Aberdeen but we've seen it in all areas. We've seen it in little towns in West Lothian and we've seen it in Falkirk... It's not restricted."⁶⁵

This evidence has a number of implications:

- In the first instance it undermines the view that trafficking is an urban problem located only in, say, the sex industries in Glasgow or Edinburgh
- It demonstrates that all the main trafficking purposes are present throughout Scotland in cities, towns, and rural areas. It is not then 'someone else's' problem
- In terms of a national response to trafficking in Scotland it suggests a need for delivery through local multi-agency groups and communities. These groups and communities need to be aware of trafficking, the types of exploitation involved, and the kinds of places where it may happen e.g. in private 'sex' flats, in hotels, or in restaurants

⁶⁴ This finding is based on evidence provided to the Inquiry by victims, by those agencies designated to help victims in Scotland, and by certain bodies working in law enforcement in Scotland.

⁶⁵ Evidence to the Inquiry from senior police officer, in Easton, H. and Matthews, R. *op. cit.*

Summary

Any strategic national response to trafficking should take into account the following facts:

- (a) Due to the hidden nature of the problem, estimates of identified victims do not reflect the much greater number of hidden and unidentified victims
- (b) Victims are trafficked into Scotland for diverse purposes
- (c) Many of the victims may come from a small group of countries
- (d) Trafficking is gendered
- (e) Trafficking is prevalent in urban and rural areas and therefore local agencies and communities should be involved in tackling it



Section 3: Causes of human trafficking

“The causes and influences of human trafficking are varied and are based largely on a supply and demand economy where demand for cheap labour and increased profit margins leads to the possibility of the exploitation of vulnerable people. The situation in Scotland appears to be similar to that in many developed Western European countries.”⁶⁶

Background

Human trafficking is a global and complex issue. It thrives where there is inequality and where people are vulnerable through poverty and social marginalisation.

While it is beyond the capacity of any single state acting alone to prevent human trafficking, analysing the factors that give rise to it is crucial, as this reveals the need for ‘system wide’ integrated and strategic approaches to anti-trafficking efforts.

The need for states to cooperate to prevent human trafficking is acknowledged in the leading international instruments. It is therefore important that there is intra-state cooperation, and in the UK there should always be cooperation between the Scottish and UK Governments on anti-trafficking.

Within these instruments, international law distinguishes between preventative actions that have short or long-term effects. The duty for short-term action lies with national governments, whereas longer-term prevention tends to require action going beyond electoral cycles, or depends upon international cooperation.

Measures with short-term effect include awareness or education campaigns. Longer-term action includes aligning international development work with anti-trafficking goals. This alignment relies on sustained engagement with ‘source’ countries, supporting them to build capacity to tackle poverty and other factors that give rise to persons being vulnerable to traffickers.

What the Inquiry learnt

The main drivers of human trafficking in Scotland correspond with the factors identified in the EU Trafficking Directive as often giving rise to trafficking⁶⁷:

- (a) The demand for easy to control and exploitable labour
- (b) The lure of profit for organised crime
- (c) The social vulnerability of persons in ‘source’ countries

⁶⁶ Evidence to the Inquiry from the Scottish Crime and Drug Enforcement Agency, February 2011.

⁶⁷ Proposal for a *Directive 2011/36/EU Preventing and Combating Trafficking in Human Beings and Protecting its Victims*.

These dominant factors were confirmed by those organisations with an interest in, or responsibility for, anti-trafficking in Scotland⁶⁸.

Demand for trafficked people

Demand is a key driver for human trafficking. This fact underlines the need for 'destination' states, such as the UK and Scotland, to take responsibility to act to tackle trafficking through targeting demand.

Although there are varying patterns of demand it centres largely on exploitable labour.

Exploitable labour

The Inquiry learned that demand for exploitable labour has three main aspects:

- Demand in affluent countries like Scotland for cheap goods and services, that drives demand for exploitable labour which then fuels human trafficking
- Demand from organised crime groups operating and sourcing victims within their ethnic or national community to move them into exploitation
- Legitimate business – e.g. fruit-picking, hotels, and restaurants – employing exploitable labour often supplied by third parties

Exploitable labour relates closely to trafficking purposes in four areas:

– Sex markets

There seemed to be a demand in Scotland's sex markets for 'exotic others', notably black women from Africa, 'oriental' women from China and south-east Asia, and women from South America, particularly Brazil.

– Domestic servitude

Demand for exploitation in domestic work was based mainly on cultural hierarchies (such as gender or caste), and tended to be within communities – the Inquiry heard from Bangladeshi and Nigerian victims, amongst others.

– Criminal exploitation

Demand for victims to commit criminal offences tended to focus on youngsters from China and Vietnam and those marginalised in their own societies through poverty or cultural discrimination, such as Roma from the Czech Republic and Slovakia. Demand was also evident for those affected by a learning disability or difficulty, on the basis that they were useful to engage public sympathy in street begging.

– Legitimate markets

Demand for exploitable labour in other areas tended to be in low-status employment in certain service industries (hotels, restaurants), in agriculture (farming, fruit-picking) as well as in food cultivation and production (shell-fish gathering, commercial fishing).

⁶⁸ This point is based mainly on the Inquiry's evidence from victims of human trafficking, from submissions provided by the designated victim agencies in Scotland, as well as by some law enforcement bodies and NGOs.

Challenging demand

Demand is a pull factor to 'destination' countries. It is therefore important that trafficking destinations, like Scotland, recognise demand is an issue within their control and take steps to tackle it.

Any national strategy against human trafficking should take into account the need for:

- Analysis of arrangements for regulating and scrutinising business and employment practices across Scotland's economy
- Targeted regulation of industries thought or known to have trafficked labour, including domestic work
- Proactive policing and prosecution to investigate, convict, and disrupt traffickers
- Effective enforcement of minimum wage legislation to provide basic, fair wages for workers and to root out exploitative employers
- Ensuring 'at risk' workers can access and use employment protection

Organised crime and profit

The Inquiry also took evidence about the relationship between organised crime and human trafficking in Scotland. The evidence suggested that organised crime groups ranged from small family-based operations to large, multi-functional, and cross-border networks. In addition they tended to operate within ethnic or national communities and all were motivated by financial profit and community power.

For example, the SCDEA told the Inquiry of one serious organised crime group running ten brothels that provided earnings of between £1,560,000 and £2,600,000 per annum⁶⁹.



⁶⁹ Evidence to the Inquiry from the Scottish Crime and Drug Enforcement Agency, February 2011

Social vulnerability

The social vulnerability of victims was evident in what they told the Inquiry. For instance, many victims of sex trafficking who gave evidence were vulnerable in part as a result of losing their parents through kidnapping or murder, whilst others were motivated to lessen their own and their families' poverty.

"Most of the interviewees came from Africa ... including women from Nigeria, Gambia, Uganda, Kenya and Somalia. One woman came from South America. Six women reported that their parents and other family members had been murdered, kidnapped or had died by natural causes prior to their being trafficked and another was told that her parents had both died after she had been sent to the UK."⁷⁰

Similarly, victims trafficked into forced labour, domestic servitude, and exploitation through criminal activities were also vulnerable, seeking to alleviate their own or their families' poverty, or because they were regarded as lower status within their own families or wider communities.

Summary

The Inquiry found significant consensus across victims' stories and the evidence from designated victims' agencies, law enforcement bodies, and some non-governmental organisations, that demand, criminal profit, and vulnerability were central to human trafficking in Scotland.

Any response therefore should:

- Focus on and tackle the factors giving rise to the demand for exploitable labour in Scotland's legal and illegal economies
- Prioritise disruption of the criminal gains of serious and organised crime groups generally, including those made through human trafficking. The SCDEA's national strategic intelligence assessment on human trafficking is important here
- Prioritise learning from the stories of victims as well as of traffickers, recognising that the former can become the latter

⁷⁰ Easton, H. and Matthews, R. *op. cit.*

Part E

Part E: Taking action: what needs to change

As is set out in Part C above, the Inquiry learned that victims of human trafficking tend to be vulnerable individuals exploited for one of several main purposes, controlled through a variety of means such as deceit, manipulation, debt bondage and violence, and often subject to ongoing control by organised criminals.

The nature of trafficking means much goes unrecorded. The demand for exploitable labour supplied by, and often for, organised criminals drives the harsh reality of human trafficking.

Its brutal impact, along with its diverse nature, hidden extent and variety of causes, means there is a serious and immediate need for a properly strategic and comprehensive approach.

The Inquiry found much has been done in Scotland to tackle and respond to human trafficking but that there is room for improvement. The Inquiry has arrived at ten findings, each accompanied by a recommendation. These findings and recommendations focus on the issues pivotal to effective anti-trafficking in Scotland.

The Inquiry has focused on strategy, the law and regulation, disruption of traffickers, prosecution, and the identification of, and support for, trafficked people. It is the vulnerability of the victims and the ongoing harm they suffer that is at the heart of human trafficking. As such, particular attention should be paid to recommendations on the care that victims require.

Section 4: A strategic approach to human trafficking

“We’re talking about a phenomenon [human trafficking] that first of all has been around forever but perhaps even more importantly is now entrenched into the fabric of our societies and our economy and the way that we live.”⁷¹

Background

Human trafficking is a complex and cross-cutting phenomenon and should not be conflated with any one single social, economic, or political issue. It straddles borders, impacts on the public, civil and private sectors, and is closer to us all than is commonly supposed. It is ingrained in the way we live and thus requires a 'system-wide' strategic response.

The issues involved in human trafficking lie variously within the competencies of international, national and sub-national legislators and agencies. They relate to international development, migration, poverty reduction, law enforcement, labour regulation, licensing, health and victim services, and private sector activities.

It is important therefore that future action against human trafficking in Scotland is both strategic and comprehensive, utilising effectively all relevant policy levers and monitoring their impact on an ongoing basis.

Finding 1

Scotland needs to have a comprehensive strategy to prevent and tackle human trafficking.

The need for a strategic approach

Scotland has taken important steps in recent years to better understand and respond to human trafficking. Noteworthy measures include the creation of the offences of trafficking for sexual exploitation in 2003⁷² and for other purposes in 2004⁷³. The Scottish Government also published research on trafficking in April 2009 as well as excellent guidance on child trafficking in February 2009⁷⁴. There has also been funding for victim services and law enforcement, leading in the latter case to

⁷¹ Evidence to the Inquiry from Dr. Anne T. Gallagher, May 2011.

⁷² Section 22: *Criminal Justice (Scotland) Act 2003*
<http://www.legislation.gov.uk/asp/2003/7/section/22>.

⁷³ Section 4: *The Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004*
<http://www.legislation.gov.uk/ukpga/2004/19/section/4>

⁷⁴ Scottish Government, *Safeguarding children in Scotland who may have been trafficked* (2009).

the development of a notable anti-trafficking specialism in the SCDEA.

However, whilst there have been three joint Home Office – Scottish Government action plans on human trafficking since March 2007⁷⁵, these have tended to focus only on law enforcement and victim services. While both of these areas are fundamental in anti-trafficking efforts, work in Scotland should now expand to encompass appropriate areas of international development, health services, local authorities, licensing regimes, the regulation of devolved sectors (such as agriculture or fisheries), and to start to engage with Scotland’s private sector.

The Inquiry took evidence from a range of key stakeholders who also highlighted the need for the Scottish Government to build on the progress of recent years and develop a more proactive and strategic approach to human trafficking:

“They [the Scottish Government] are really supportive and take what we say as gospel and we are quite open with them but they don’t help us in any way. They don’t provide any guidance. It would be nice to have the Scottish Government telling us what they would like the Police

to do but it’s the other way around. They want us to tell them what we want.”⁷⁶

and,

“The Scottish Government requires to have more involvement with respect to National, UK, and International legal, policy, and strategic developments. ... It is imperative that the Scottish Government takes on responsibility for ensuring all partners and stakeholders are kept informed regularly on developments in order to progress any recommendations to both Westminster and Holyrood Governments.”⁷⁷

Responsibility for human trafficking presently lies within the victims and witnesses portfolio in the Scottish Government. Given the myriad of issues implicated in human trafficking, this may not be the best approach. Rather, there is a strong case for creating a specialist thematic team within the Scottish Government.

Such a team may work across directorates and disciplines linking especially to those in justice, health and local government, and engaging with stakeholders both inside and outside the Scottish Government. In particular the team may lead the development, implementation, and

75 Home Office/Scottish Executive, *The Joint Scottish Executive/Home Office Action Plan on Tackling Human Trafficking* (2007);

Home Office/Scottish Government, *Update to UK Action Plan on tackling human trafficking* (2008); and

Home Office/Scottish Government, *Update to UK Action Plan on tackling human trafficking* (2009),

76 Evidence to the Inquiry from senior police officer, in Easton, H. and Matthews, R. *op. cit.*

77 Evidence to the Inquiry from senior practitioner, February 2011.

coordination of a new strategy on human trafficking through a new multi-agency strategy and action group.

Recommendation

The Scottish Government should build on its work on research, guidance, funding, and legislation on trafficking, and develop a strategic plan to tackle human trafficking. It should demonstrate leadership in devolved areas and proactively seek cooperation on issues within the competence of the UK Government and international and transnational agencies.

Outcome

The Scottish Government and partner agencies make Scotland a hostile environment for traffickers through implementing a strategy that uses all relevant policy levers and legislation.

Finding 2

There is little public or professional awareness in Scotland of human trafficking or its indicators.

Low awareness of human trafficking

The Inquiry found the vast majority of front-line police officers have very little knowledge or practical experience of human trafficking. This also appeared to be true of other key front-line professionals, such as health workers and solicitors, licensing authorities and regulators of labour markets and other areas. This finding was both informed and reinforced in evidence from key stakeholders.

“Victim identification was considered by stakeholders to be particularly poor among frontline staff from all key agencies and services.”⁷⁸

and,

“I think we still have a lot of awareness raising to do, I don't think that every single police officer knows what trafficking is and what to do with it... I do think it is like domestic abuse and you only have to look now at the amount of training we have in relation to that, the amount of awareness.”⁷⁹

Pockets of good practice were identified, notably in Strathclyde Police's anti-trafficking and family protection units, as well as in Grampian Police's proactive approach to monitoring sex markets in Aberdeen. Additionally, the SCDEA has produced a distance learning package on human trafficking for recruits at the Scottish Police College, and is developing an e-learning package for police officers across Scotland.

The Inquiry learned that the lack of awareness of the indicators of trafficking was also a geographical issue, in that the front-line awareness that does exist tends to be in Glasgow. This is reflected by the near absence of non-Glasgow referrals into the NRM by police or other agencies. There is an immediate and acute need to raise awareness of trafficking amongst key front-line professionals across Scotland.

⁷⁸ Evidence to the Inquiry from key stakeholders, in Easton, H. and Matthews, R. *op. cit.*

⁷⁹ Evidence to the Inquiry from senior police officer, in Easton, H. and Matthews, R. *op. cit.*

Victims and traffickers, for different reasons, are unlikely to volunteer their experiences. It is therefore fundamental that front-line professionals are able to recognise the indicators of human trafficking to look behind the stories told and try to pick up on any signs of trafficking.

The Inquiry also found there had been no national public awareness raising campaigns in Scotland on human trafficking. There also seems to be an absence of agencies in Scotland utilising UK-wide anti-trafficking materials, such as the SOCA's 'Blue Blindfold' campaign that has been available since 2007⁸⁰.

As with front-line professionals, public awareness raising on human trafficking is pivotal in order to stop complacency, educate communities on its indicators and locations, and in effect make them the new front-line in Scotland; an 'eyes and ears' against human trafficking.

Recommendation

The Scottish Government should: run an anti-trafficking campaign to raise awareness with the public in Scotland; organise accredited anti-trafficking training for all First Responders⁸¹ and relevant front-line professionals; and encourage front-line agencies to develop their own guidance on human trafficking, particularly on trafficking indicators.

Outcome

There is greater awareness amongst the general public regarding the nature, extent and indicators of human trafficking in Scotland. Frontline professionals are able to identify the indicators of trafficking and act accordingly. The true extent of trafficking in Scotland becomes clearer.

80 The 'Blue Blindfold' campaign was launched in 2007 by the UK Human Trafficking Centre, part of SOCA, see: <http://www.blueblindfold.co.uk/>.

81 First Responders are bodies authorised to make initial referrals of persons presumed to be trafficked into the National Referral Mechanism for decisions to be made by the relevant Competent Authority on individuals' trafficking status.



Section 5: Law and human trafficking

Background

The UN, in agreeing a definition in its Trafficking Protocol in 2000, emphasised the criminal nature of human trafficking. This definition was to provide a template for states to develop domestic criminal law on human trafficking, heralding a decade of legislation to criminalise trafficking across the globe.

It is in this context that, since 2003, legislation relating to trafficking has developed in Scotland and the UK. However, the Inquiry found it has developed in a piecemeal way and is neither consistent nor sufficiently focused on the criminal and exploitative nature of human trafficking.

Finding 3

Human trafficking legislation in Scotland and in the UK has developed in a piecemeal fashion and is not based on a thorough

consideration of how legislation should best deal with the problem. This has left human trafficking legislation in Scotland and the UK inconsistent, both internally and in comparison with international law, and has served to limit its scope and impact.

Piecemeal and inconsistent legislation

In Scotland, there are numerous pieces of legislation relating in some way to human trafficking, including:

- The Criminal Justice (Scotland) Act 2003
- The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004
- The Criminal Law (Consolidation) (Scotland) Act 1995
- The Sexual Offences (Scotland) Act 2009
- The Criminal Justice and Licensing (Scotland) Act 2010⁸²

⁸² Specifically see: (a) Section 11 ('trading in prostitution and brothel-keeping') and section 23A ('investigation of offences by Her Majesty's Revenue and Customs') of *The Criminal Law (Consolidation) (Scotland) Act 1995* – important for tax and benefit fraud; (b) Section 22 of *The Criminal Justice (Scotland) Act 2003* ('trafficking into prostitution'); (c) Section 4 of *The Asylum and Immigration Act 2004*, ('trafficking people for exploitation'); (d) Section 4 of the *Sexual Offences (Scotland) Act 2009* ('sexual coercion'); and (e) Section 47 ('slavery, servitude, and forced or compulsory labour') and Section 99 ('closure of premises associated with human exploitation') of the *Criminal Justice and Licensing (Scotland) Act 2010*.

Human trafficking legislation is therefore scattered over the statute book. The Inquiry was not surprised by this piecemeal development of legislation, as it partly reflects the need to comply with the UK's ratification of anti-trafficking instruments, such as the UN's Trafficking Protocol. Nevertheless, it has not delivered a consistent legislative approach to human trafficking.

More fundamentally, the Inquiry is unaware of any thorough and dedicated consideration, in Scotland or the UK, of how trafficking can be dealt with mainly, but not exclusively, through the criminal law.

Partly due to the piecemeal and reactive development of the law, there are various inconsistencies in the definitions of what constitutes human trafficking and how it is approached. These inconsistencies can be seen in the differing definitions used in Scottish and UK laws concerned respectively with the criminal and immigration aspects of trafficking.

The two main criminal offences – trafficking in prostitution and trafficking people for exploitation – in particular, are problematic. The Acts covering these offences have different definitions of the 'acts' of trafficking, the 'means of exploitation', and 'trafficking purposes'. Additionally, they diverge from international law and lack a degree of clarity.

Such inconsistencies have led to lack of clarity on the types of activities to be considered as trafficked exploitation. This stands in the way of legal certainty and law enforcement and dilutes the nature of the crime of trafficking, making it harder to secure convictions under these offences.

"A clearer definition of what activities or actions might fit within the definition of exploitation provided within legislation would be helpful for law enforcement agencies to improve their understanding of whether certain activities might be considered trafficking or not."⁸³

The Inquiry was told by a number of lead practitioners in Scotland's law enforcement community that the criminal legislation on human trafficking needed to be clearer. Thus it is necessary to ensure that any future criminal law on trafficking provides clarity on what is considered to be trafficked exploitation and what is not.

The Inquiry also heard about a particular concern regarding the scope of Scotland's criminal offence for sex trafficking; it applies only to trafficking into prostitution or for the purpose of producing obscene or indecent material⁸⁴. The Inquiry was told this is significantly narrower than the equivalent legislation in England and Wales.

⁸³ Evidence from Lothian and Borders Police to the Inquiry, February 2011.

⁸⁴ Section 22: *Criminal Justice (Scotland) Act 2003*.

“The legislation is not good. The English legislation where you have trafficking as any offence under the Sexual Offences Act – that’s much better than we have here. Trafficking for the purposes of prostitution – it makes it more difficult because you have got to prove prostitution. It’s not helping. To do that you need financial evidence or a punter saying this is what happened.”⁸⁵

The Inquiry has listened carefully to this evidence from experts and practitioners in Scotland’s law enforcement community. It is therefore important that any future criminal legislation on human trafficking is consistent, clear and can be applied effectively by our law enforcement community.

Recommendation

The Scottish Government should consider introducing a comprehensive Human Trafficking Bill based upon a review of all its legislation relating to human trafficking. This review should involve close liaison with the UK Government⁸⁶ and, in particular, should ensure new human trafficking legislation supports any new strategy, while complying with the EU Trafficking Directive and positive human rights duties on human trafficking.

Outcome

Scotland has dedicated legislation on human trafficking that is consistent in definition, is clear on what trafficked exploitation looks like, and enables the effective prosecution and disruption of traffickers.



⁸⁵ Evidence to the inquiry from senior police officer, in Easton, H. and Matthews, R. *op. cit.*
⁸⁶ The UK Government’s Human Trafficking Strategy commits to review the criminal legislation in England and Wales by December 2011 to see if it is adequately supporting the prosecution of traffickers.



Section 6: Investigating and prosecuting traffickers

Background

The Inquiry found a number of factors had a detrimental impact on intelligence gathering and prosecution, including a need for more systematic cooperation between law enforcement and victim agencies and issues surrounding sufficiency of evidence.

A low level of professional awareness was identified as a strategic issue in Section 4 above, but should also be considered here as an issue in relation to intelligence and convictions gaps on human trafficking in Scotland.

These factors contribute to a lack of intelligence, to low levels of reports to the COPFS, and to the correspondingly low number of prosecutions of trafficking offences. This increases the risk that Scotland is perceived by traffickers as a low-risk high-return market.

To avoid this perception and the risk of serious organised crime groups continuing, and perhaps expanding, their operations in Scotland, concerted action is required to ensure that intelligence on trafficking activities is comprehensive and systematic. Scotland's first national strategic intelligence assessment on human trafficking should assist in this regard.

Finding 4

Scotland's police service has a significant intelligence gap on human trafficking.

Lack of intelligence on human trafficking

"Scottish law enforcement and its partner agencies currently hold limited intelligence on how these networks operate and this is still an area where the true nature of the crime is difficult to determine."⁸⁷

The hidden nature of human trafficking presents considerable challenges for police and prosecution authorities. This requires law enforcement to combine modern policing techniques against serious and organised crime with sensitive and dedicated work with victims who may, in time, be witnesses in prosecutions.

The Inquiry uncovered several positive examples of proactive policing in respect of human trafficking, including the initiatives by Grampian and Strathclyde Police forces touched on earlier in this report.

Another particularly noteworthy national measure is the SCDEA's mapping and analysis of serious organised crime that led to Scotland's first national strategic intelligence assessment on human trafficking.

⁸⁷ Evidence to the Inquiry from the SCDEA, February 2011.

However, the Inquiry found that, in general, there was a serious lack of information held by police on trafficking in different parts of Scotland.

For example, Lothian and Borders Police stated in their submission to the Inquiry that knowledge of traffickers in their force area "*remains a significant intelligence gap*", and that there is "*very little evidence, or indeed intelligence, in relation to trafficked individuals*."⁸⁸ Grampian Police said they have "*no intelligence in relation to traffickers*"⁸⁹.

It is also clear that it is not only the police who have limited intelligence about traffickers operating in Scotland. Other law enforcement and regulatory bodies made similar points to the Inquiry. Nevertheless, it is the police who have the pivotal role in gathering intelligence and investigating crime. It is important therefore that they take steps to enhance their intelligence, and that partner agencies, especially those working with victims, systematically assist in this process.

Formal systems of cooperation and information sharing across partners are vital to effective anti-trafficking and should be introduced and embedded across Scotland. These systems should involve all agencies that may encounter trafficking, provide clarity on agencies' roles and responsibilities, and respect data protection and human rights legislation.

Sharing of intelligence

At the time of gathering evidence, the Inquiry identified tension between parts of Scotland's law enforcement and victim services in human trafficking which may have impeded the sharing of intelligence and access to victims.

On the one hand the SCDEA reported a need for '*continued working*' between them, law enforcement generally, and victim services to build trust, mutual understanding of respective roles, and to improve information sharing.

However, the Trafficking Awareness-Raising Alliance (TARA) was more critical, stating that communication flows from the SCDEA are '*extremely limited*' with little information given on potential victims of trafficking, their accommodation needs, or basic information on who to contact within each force⁹⁰.

The Inquiry has since learned of increased levels of cooperation between SCDEA and TARA in terms of sharing intelligence and in victim handling in operations. This is to be encouraged.

Formal and systematic cooperation between all those working with victims is important, especially between agencies supporting victims and law enforcement.

Building relationships and multi-agency working is key to anti-trafficking work in Scotland. This is particularly so in sharing expertise, but more importantly, for ensuring early support for victims and the

⁸⁸ Evidence to the Inquiry from Lothian and Borders Police, February 2011.

⁸⁹ Evidence to the Inquiry from Grampian Police, February 2011.

⁹⁰ This finding is based on the evidence provided to the Inquiry by the SCDEA and TARA.

prompt investigation of traffickers. Such co-operation is vital for enhancing intelligence on the relationship between human trafficking and serious organised crime in Scotland. Systematic intelligence sharing is central to gathering the material to generate profiles of victims and traffickers. A lack of sufficient cooperation can, unintentionally, impede the early intelligence sharing vital to securing convictions of traffickers, and undermine consistent seamless support for victims.

Recommendation

A multi-agency group dedicated to strategic, operational, and formalised intelligence sharing, analysis, and enforcement action against traffickers should be part of the recommended strategic approach to human trafficking. The group should include law enforcement agencies engaged in anti-trafficking in Scotland and have formal links through protocols to those identifying and those supporting victims.

Outcome

The police service and its law enforcement partners have robust and effective mechanisms for intelligence gathering and sharing, for cooperation particularly in terms of services for victims, and for joint enforcement action against traffickers who are operating in Scotland.

Finding 5

There have been few prosecutions brought against suspected traffickers in Scotland for human trafficking offences.

Low levels of prosecution

The Inquiry found there have been two prosecutions since 2003 in Scotland for human trafficking offences. The first reached trial in 2006 but was discontinued following a review of evidence. The second, in September 2011, resulted in the first conviction in Scotland for human trafficking offences. There have also been five reports made to the COPFS for consideration of prosecution, with two discontinued and three currently being considered.

However, there were 18 convictions for other criminal offences against persons identified in Scotland through Operation Pentameter 2 that targeted sex trafficking⁹¹. Successful prosecutions included trading in prostitution and facilitating illegal immigration. No reports were made to the COPFS alleging contraventions of trafficking legislation through this Operation.

It is difficult to be overly critical here. The COPFS made the persuasive point to the Inquiry that they can only prosecute what is reported to it. Moreover, the Inquiry found that the COPFS had made significant progress in its arrangements and practice relating to human trafficking.

91 Operation Pentameter 2 focused on human trafficking for sexual exploitation. It was launched in October 2007, and has resulted in Scottish police forces contributing to intelligence gathering which saw 351 individuals initially dealt with as victims of human trafficking throughout the UK; 59 of them in Scotland.

Two particularly noteworthy initiatives by the COPFS are:

- The publication of guidance from October 2010 for prosecutors on human trafficking offences
- The designation of Crown Counsel to lead on the consideration of all potential and actual prosecutions of human trafficking offences

However, there is no doubt that two prosecutions, and one conviction, over almost eight years is a relatively low return for the criminal legislation on human trafficking in Scotland. While low levels of reports to the COPFS on trafficking offences is an important factor, it is not an explanation. Convictions for trafficking are essential in order to begin punishing and dissuading traffickers and secure justice for victims. It is hoped the progress outlined above will result in more prosecutions.

The COPFS has a responsibility to systematically engage with and advise the police and other designated reporting agencies, at the earliest opportunity, on the nature and collection of all relevant evidence. It is important they discharge this responsibility in respect of trafficking by deepening their specialism on human trafficking in the coming years.

Sufficiency of evidence

Low rates of prosecution for trafficking offences may in part be due to difficulties in obtaining sufficient evidence in Scots criminal law.

Scots law requires corroboration for a criminal offence that can be proved only by "*leading evidence from at least two independent sources that the crime was committed and that the accused was the perpetrator*". In the view of the COPFS, this requirement, together with the inherent difficulty of getting traumatised survivors to be witnesses, poses "*real challenges in obtaining a sufficiency of evidence to satisfy the requirement for corroboration*"⁹².

The COPFS provided the Inquiry with helpful information that trafficking victims acting as witnesses would be offered the help of its Victim Information and Advice Service and that they can apply for 'special measures' as provided in the Vulnerable Witnesses (Scotland) Act 2004, or for Witness Anonymity Orders in the Criminal Justice and Licensing (Scotland) Act 2010. While this is all welcome, more consideration is required of how special measures can assist in enabling trafficking victims to be witnesses, particularly in ways that account for the fact that:

- It can be difficult and sometimes medically inappropriate to get trafficking victims to act as witnesses
- Many potential witnesses will be foreign nationals who may be fearful of authority, as well as being unfamiliar with the Scottish criminal justice system
- Some witnesses may need translation and interpreting services, which should be available at the stages of police

⁹² Evidence to the Inquiry from the Crown Office and Procurator Fiscal Service (COPFS), February 2011.

investigation, precognition, and criminal proceedings

- Witnesses may be subject to asylum and immigration processes that, despite anti-trafficking safeguards⁹³, may lead to absconding, or, if the system breaks down, to their premature or wrongful removal from the UK
- Witnesses may be subject to pressure from traffickers, directly or through others

Sentencing of those implicated in human trafficking

Scotland, and indeed the UK, has responded well to the obligation in the international law of human trafficking that states should attach severe and dissuasive penalties to criminal offence(s) of human trafficking. The two criminal offences for human trafficking that apply in Scotland can lead to sentences of up to 14 years imprisonment. Such punishments are appropriate in that they are commensurate with the egregious nature of this crime.

However, in taking evidence from COPFS, the Inquiry learned of the possibility that legislation could be developed to introduce human trafficking as an aggravating factor when sentencing for other crimes. It could be used when sentencing those convicted of any crime with a trafficking dimension where it was evidentially more appropriate to prosecute for other offences⁹⁴, such as brothel keeping, living off immoral earnings, and immigration offences. There is precedence for such an aggravation in

other legislation where only one source of evidence is required to prove the aggravation.

Recommendation

The COPFS should continue to proactively develop its specialism in human trafficking to help improve its performance on successful prosecutions for trafficking offences. Particular regard needs given to how best to get sufficient evidence to convict on trafficking, and how to increase the prospects of the judiciary passing adequate sentences against those with trafficking backgrounds who are convicted of related criminal offences.

Outcome

Scotland becomes a centre of excellence in the prosecution of human trafficking crime through a systematic end-to-end service from the COPFS. This will start with early advice to potential reporting agencies on evidential and other matters, through to the successful prosecution of trafficking offences.

⁹³ Articles 13(1) and 14(1)(b): CoE *Trafficking Convention*.

⁹⁴ Evidence to the Inquiry from the COPFS, February 2011.



Section 7: Disrupting traffickers and regulating markets

“Our most powerful tactic in the fight against serious organised crime is the ability to disrupt criminal networks. For disruption to be truly effective it has to be meaningful, targeting every area of a criminal enterprise by all legitimate means available to restrict and deny them the opportunity to operate.”⁹⁵

Background

Disrupting serious organised crime is a key part of anti-trafficking efforts. Disruption refers to the identification, tracing, restraint and confiscation of the assets, instruments and proceeds of serious and organised criminal activity; anything that makes the activities of organised crime groups more difficult is a disruption opportunity.

Article 7 of the EU Trafficking Directive is dedicated to the disruption of traffickers, reflecting the fact that much trafficking crime is motivated by financial gain. Such disruption would go some way to dissuading traffickers from operating in Scotland as it would make trafficking a more high-cost low-return proposition.

The Inquiry found that most law enforcement bodies were mindful of the need to disrupt serious crime (including

trafficking) and had corresponding arrangements in place. However, while there was evidence of disruption operations against serious crime groups through the Scottish Tactical Tasking and Coordinating Group, there was little evidence of specific disruption against those suspected of, or known to be involved in, human trafficking.

In addition, it was discovered that there is a need for greater practical awareness amongst those responsible for regulating sectors where trafficking may occur. Domestic workers were identified as being particularly vulnerable to trafficking. The Inquiry also found that the private sector had a key role in helping to tackle the activities of traffickers.

Finding 6

Law enforcement bodies operating in Scotland have experience in disrupting organised crime through the application of asset recovery powers, but there have been few operations specifically targeting organised human traffickers.

Disruption and asset recovery against traffickers
The Inquiry took evidence from law

⁹⁵ SCDEA, *Protecting Our Communities – Disrupting Serious Organised Crime* (2011) pg. 8.

enforcement bodies in Scotland and most recognised that disruption should contribute to anti-trafficking efforts⁹⁶. Moreover, many key agencies – the COPFS, Her Majesty’s Revenue and Customs (HMRC), SCDEA, and the major Scottish police forces – had arrangements for disrupting serious organised crime by attacking their ill-gotten gains and criminal finance.

However, there seem to have been few disruption operations against criminal enterprises in terms of their human trafficking activities. Moreover the Inquiry suspects that two recent Scottish Tactical Tasking and Coordinating Group operations into organised tax credit fraud⁹⁷ and cannabis cultivation⁹⁸ could have impacted upon traffickers indirectly.

One factor in the lack of disruption activity specifically against traffickers may be the very low number of convictions to date in Scotland for human trafficking offences.

Another factor may have been that Scottish law enforcement agencies

needed to make greater use of the disruption powers available. A joint inspection report on the Proceeds of Crime Act 2002, published in October 2009, found that:

“... there is far more scope to use POCA powers to redress the financial benefits of crime at all levels across Scotland than is currently recognised.”⁹⁹

However, significant progress in disrupting serious organised crime has been made since the publication of this joint report.

The SCDEA recently reported ‘hard cash’ seizures in 2010/11 of £1.26 million from serious organised crime groups, up from £207,000 in 2009/10, as well as the identification of £9.1 million of assets for consideration of restraint by the COPFS¹⁰⁰.

This progress has been supported by the SCDEA’s Senior Investigating Officer toolkit as it relates to human trafficking investigations. In particular, linking financial investigation units in police

96 The Inquiry took evidence from (i) the SCDEA, (ii) the Crown Office and Procurator Fiscal Service, (iii) Her Majesty’s Revenue and Customs, (iv) Serious Organised Crime Agency, (v) Scotland’s eight police forces, and (vi) the Gangmasters Licensing Authority.

97 Operation Mockday, September 2009, was a criminal investigation into organised tax credit fraud in Scotland. It was the first multi-agency investigation under the Serious Organised Crime Taskforce in Scotland.

98 Operation League started in 2006 and by 2010 had seized almost £40 million of cannabis plants. It is a multi-agency operation across Scotland and is led by Strathclyde Police. It was also conducted under the banner of the Serious Organised Crime Taskforce.

99 Her Majesty’s Inspectorate of Constabulary for Scotland and the Inspectorate of Prosecution in Scotland (2009) *The Joint Thematic Report on the Proceeds of Crime Act 2002*.

100 See Footnote 98

forces and in the COPFS, as well as placing more emphasis on forensic accounting skills, which the Inquiry has learned are especially critical for effective disruption, has been helpful.

Recommendation

Law enforcement agencies operating in Scotland should collaborate to develop and implement a strategy for the use of disruption and asset recovery powers, specifically targeting organised trafficking groups in Scotland.

Outcome

Scotland is a high-risk and low-return proposition for organised criminals engaged in human trafficking due to the systematic and effective disruption of organised crime through the tracing, seizure, and confiscation of their ill-gotten assets.

Finding 7

There is a need for the Scottish and UK Governments to encourage and assist organisations responsible for inspecting employment agencies and standards, environmental health and health and safety at work, regulating domestic work, or making licensing decisions, to embed anti-trafficking into their regulatory frameworks and practices.

The role of regulation in tackling human trafficking

Traffickers operate in both illegal and legitimate markets. Law enforcement agencies lead in the identification of exploitation and trafficking in illegal sectors. However, regulators of certain legitimate sectors have a role to play in

the identification of trafficking. If this role is not fulfilled, the risk is that traffickers will thrive in legitimate markets and sectors.

Apart from the Gangmasters Licensing Authority (GLA), the Inquiry did not identify evidence of regulators linking anti-trafficking efforts with their work. This is understandable not least as human trafficking has only been recognised as a significant issue in the UK over the past five or so years.

However, there is now a need for the UK and Scottish Governments, as part of their leadership role on human trafficking, to encourage and assist certain regulators to embed anti-trafficking into their work. The Inquiry is of the view that regulators can help in two ways: firstly, in identifying trafficking in front-line inspections, and secondly, in sharing intelligence on possible trafficking with law enforcement bodies.

Moreover, the Inquiry regards an anti-trafficking focus in regulatory practice as being particularly helpful in sectors associated with poor employment protection, low wages, and poor health and safety records, as well as in respect of certain regulatory activities, such as environmental health or licensing. The Inquiry has pinpointed some of these in the recommendation below.

The Inquiry found the GLA to be a regulator taking an excellent proactive approach to anti-trafficking. Despite limitations on their scope and powers, for which the Inquiry sees no good reason, they effectively integrate trafficking indicators into their operational inspections and cooperate well with other

agencies¹⁰¹. The GLA's regulatory approach should be regarded as a model amongst other regulators and be promoted by the Scottish and UK Governments particularly in terms of identifying suspected trafficking.

Domestic servitude

The Inquiry was especially concerned about the treatment and invisibility of victims trafficked into domestic servitude. The Inquiry took evidence from these victims. They suffered exploitation amounting to forced labour, including very long hours, no/low pay, and control of

their movements. This was reinforced by evidence provided by Kalayaan, a specialist NGO on these matters¹⁰²:

"Migrant domestic workers are dependent on one employer for their work, their accommodation, their immigration status, and for all their information about their situation in the UK. Many speak little or no English and know no one other than their employer here. Many work extremely long hours and if living in their employer's home, are effectively on call. Many are not paid the National Minimum Wage for the hours



101 The main limitations on the GLA are: (a) regulatory scope, in that the GLA can't regulate 'problem' sectors including social care (esp., private care homes), construction, and catering; (b) anomalies in their current powers in Scotland in that they can't arrest a suspected unlicensed gangmaster; (c) they can't formally investigate the offence of slavery, servitude, and forced or compulsory labour, despite its 'logical link' with their work; and (d) maximum penalties are lower in Scotland vis-à-vis elsewhere in the UK for the offences of being or using the services of an unlicensed gangmaster.

102 Submission from Kalayaan to the Inquiry, May 2011.

they work, some are not paid at all, and some are not given their own room or personal space in the house in which they live and work, instead sleeping in the kitchen, lounge, or children's room."

Kalayaan went on to note that the victims were invisible to officialdom and lacked access to employment protections:

"The hidden and isolated nature of domestic work in private households makes such protections vital."

Whilst the Inquiry welcomes the concept underlying the Overseas Domestic Worker Visa (ODWV) scheme, there is a concern it is not supported by activities to ensure visa holders are being treated appropriately in private and in diplomatic households¹⁰³.

It is therefore important that safeguards are present and are practical. These should include registration of workers, periodic meetings with employees (ideally alone) and employers to form judgments on working conditions. Guarantees that workers have the freedom, in practice, to change employer also need to be considered.

With this in mind, it is a concern that, in a recent consultation on how those who

come to work in the UK may be granted indefinite leave to remain, the UK Government proposed the abolition of the ODWV. A further worry is the UK Government's reluctance to adopt and ratify the International Labour Organisation's new Convention for Decent Work for Domestic Workers, which was formally adopted in June 2011.

Recommendation

The Scottish and UK Governments should encourage, assist, and give practical leadership to those with responsibilities to regulate

- employment standards in sectors with significant numbers of migrant workers
- employment agencies
- environmental health standards
- health and safety at work
- licensing practices
- the treatment of domestic workers

This would help to ensure that they embed anti-trafficking into their policy and operational activities, seek First Responder status in the National Referral Mechanism (NRM)¹⁰⁴ and learn from the regulatory model and practices of the Gangmasters Licensing Authority on labour exploitation, forced labour, and human trafficking.

103 Submission from Kalayaan to the Inquiry, May 2011.

104 The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive the appropriate care. Authorised agencies, such as the Police, social services and certain Non-Governmental Organisations (NGOs), who encounter a potential victim of human trafficking, can refer them to the Competent Authority (CA). The initial referrer is known as the 'First Responder'. The UK's CAs are the Serious Organised Crime Agency (SOCA) through its UK Human Trafficking Centre and the UK Border Agency (UKBA). SOCA deals with referrals from the police, local authorities and NGOs. UKBA deals with cases where trafficking is raised as part of an asylum claim or is in the context of another immigration process.

Outcome

Legitimate sectors and labour markets in Scotland and in the UK are no-go areas for traffickers through nationally consistent, systematic, and evidence-based regulation, which links to services identifying and supporting victims as well as ensuring intelligence is passed to law enforcement.

Finding 8

Traffickers use commercial products, services, and premises to organise and facilitate the exploitation of victims, including through mobile phones, websites, credit and debit payment facilities, and privately rented or owned accommodation.

The role of the private sector

A common theme running through the stories of victims was the importance of certain technologies in facilitating trafficking. Certain websites are dedicated to advertising prostitution and related escort services. The Inquiry has evidence of victims being 'advertised' on the internet.

One victim, trafficked for sexual exploitation, was told in the 'source' country what she would have to do:

"She [the trafficker] had choice for me, she told me you have to work [to pay back money owed], firstly on the internet in London, she had websites [she knew of to advertise on], called A1 Asian or Asian Girls. They told me that they were going to take me out to buy a dress and make up."
(Interview with victim)

Victims of trafficking into forced labour reported how bogus websites enticed them to come to the UK. Stakeholders gave evidence of mobile phones being an important tool to control victims of sex trafficking and to arrange meetings with users.

The Inquiry found no evidence of anti-trafficking measures in Scotland's private sector. However, trafficking violates international human rights norms and laws and often defies international labour standards which apply, in some respects, to private organisations.

As a result, businesses in Scotland may need to take proportionate steps to ensure they do not unwittingly facilitate the crime of trafficking. Doing so would enable companies to manage reputational risk and ensure their integrity remains intact. The private sector is an essential but under-acknowledged part of a fit-for-purpose anti-trafficking strategy¹⁰⁵.

105 Particular regard should be had to the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), specifically its work on human trafficking and corporate responsibility: see <http://www.ungift.org/knowledgehub/en/business/index.html>.

Recommendation

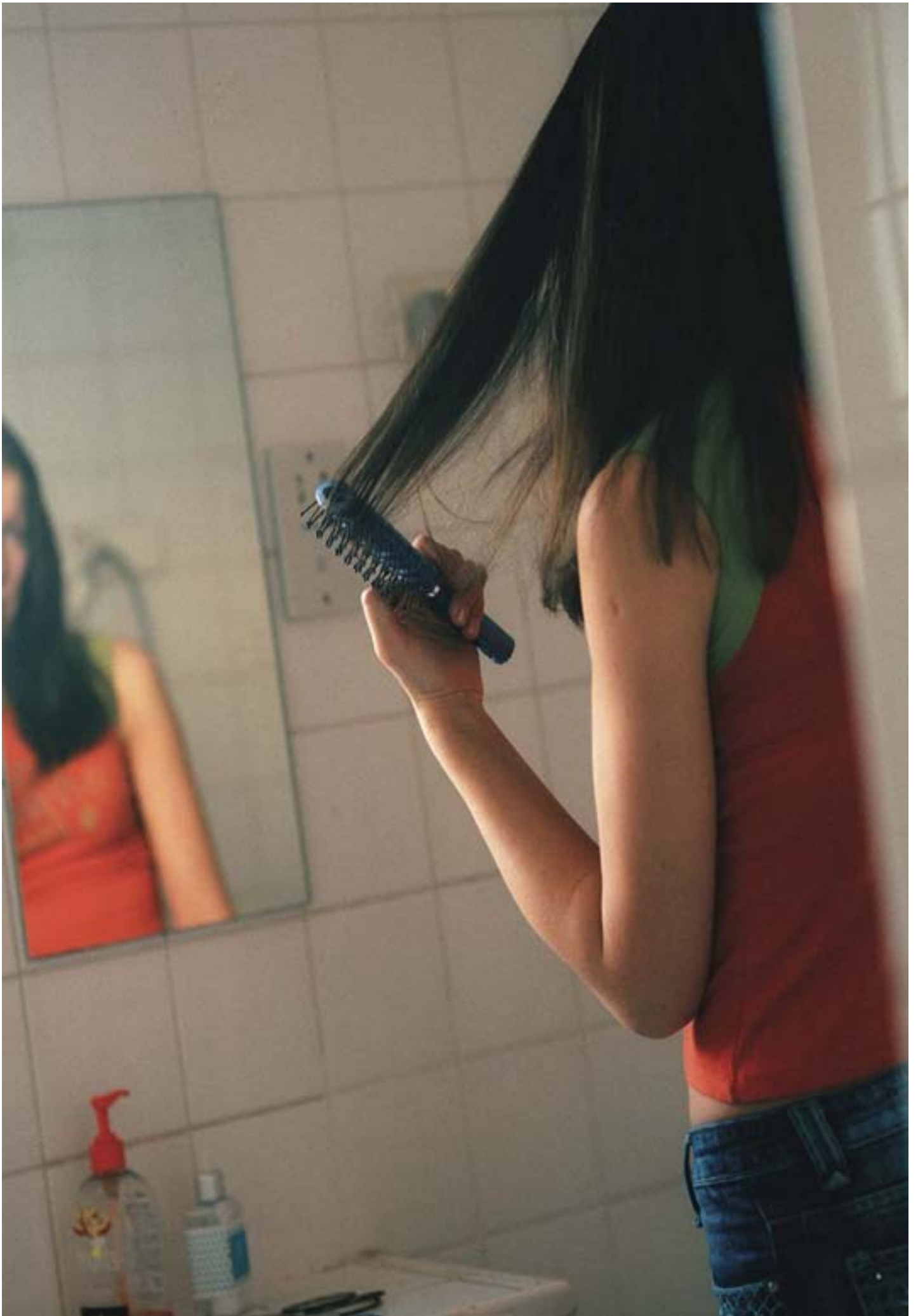
The Scottish Government, as part of a strategic approach to anti-trafficking, should involve relevant parts of Scotland's private sector¹⁰⁶, and encourage them to raise awareness of human trafficking and include anti-trafficking in their product development and monitoring, and corporate social responsibility practice. They should also be encouraged to take steps to ensure they are not unwittingly enabling the crime of trafficking.

Outcome

The private sector in Scotland becomes a world leader amongst peers in contributing to preventing and tackling human trafficking.



106 The UK Government's Human Trafficking Strategy includes a commitment to consider how the private sector can and should be involved in anti-trafficking.



Section 8: Identifying, caring for, and enabling recovery of victims

“My life has changed because I have people like TARA, to have somebody to speak for me when I have no voice. If somebody tries to do something bad to me I can run to TARA who will look at what has happened and say I have to contact these people. I’ve made friends too. I’m not on the streets and my baby, especially my baby is safe. A big change and I am happy with what I have”.¹⁰⁷

Background

Trafficking is one of the most fundamental abuses of human rights. Any mechanism to identify trafficked persons should have the dignity, safety, and recovery of victims at its core.

Moreover trafficking victims should have access to a broad range of effective remedies as well as the forms of reparation set out in the United Nations’ ‘Van Boven Principles’.¹⁰⁸

There is a distinction between criminal and immigration approaches to the issue which is reflected in the current treatment of human trafficking in Scotland.

The UK Border Agency (UKBA) is one of two competent authorities invested with the power to make decisions for the State on whether a person is considered a victim of trafficking, the other being The Serious Organised Crime Agency (SOCA). SOCA considers non-immigration cases, and UKBA decides matters that raise asylum or immigration issues. The Inquiry learned that the UKBA is the main body driving policy and practice on the identification of trafficked persons.

This centralised decision making process has led to a lack of accountability and conflict of interest.

The Inquiry also found that while the National Referral Mechanism (NRM) is at the heart of the identification process, there was a lack of analysis and application in relation to trafficking. Crucially, the Inquiry also discovered that there is a lack of end-to-end holistic services for victims of trafficking. These findings are set out in more detail below with recommendations for change.

107 Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

108 *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* 2005.

Finding 9

The current arrangements for identifying victims and deciding trafficked status are too centralised, lack accountability, create a conflict of interest in decision making, and do not lead to the tracking of outcomes for victims or to an analysis that identifies patterns and trends in human trafficking.

Basing decision making on trafficked status on human rights

UKBA and SOCA are charged with making decisions on whether someone is or has been a victim of human trafficking, alongside discharging their respective primary functions of border control or tackling serious organised crime. Evidence shows that the UK's NRM is overly centralised in that it invests sole decision making in relation to trafficking status in UKBA and SOCA. This is not appropriate given the severe nature of this human rights abuse, and decisions should be made by a body dedicated to that question.

There is no formal role in the decision making process granted to others, such as police, victim agencies, regulators, or local authorities. It is important to note that often it is these referring agencies that have the best understanding and evidence of a presumed victim's needs. Their formal input would enhance the quality and transparency of decisions, whether negative or positive.

The Inquiry found an inherent conflict of interest in the dual role of UKBA as a competent authority within the NRM, as the same person in UKBA can be dealing with two parallel claims – one on trafficking and one on asylum.

There is no opportunity for an independent review of a decision which deems someone not to be a victim of human trafficking. This is despite the fact that such claims, according to UKBA, may have "*evidential areas of cross-over*" that, "*for operational reasons*" may be being considered by the same person, on two different but similar tests:

- *Reasonable likelihood* for the well-founded fear of persecution element of an asylum claim
- *Balance of probabilities for conclusive decisions on a person's trafficking status*

UKBA's submission to the Inquiry seemed to convey, perhaps unintentionally, unease with this dual role, evidenced in part by the welcome, but ultimately insufficient, internal review of decisions by a more senior 'second pair of eyes'. This acknowledges the need for review of UKBA decisions and, arguably, implies the need for a formal right of appeal.

Trafficking is a violation of a person's right to dignity, and these decisions may have profound consequences for the victims' safety and life, so a formal right of appeal is appropriate.

Using National Referral Mechanism data

There is a lack of analysis or application of NRM data for human trafficking purposes.

The Organisation for Security and Cooperation in Europe recommends that NRMs should comprise formal multi-agency cooperation across state and civil society¹⁰⁹. This is especially important to identify persons presumed to be trafficked, refer victims to services to facilitate recovery, and make decisions on trafficking status.

The Inquiry identified the UK'S NRM as a useful source of disaggregated information about victims and types of human trafficking. However, there seems to be a lack of follow-through in terms of analysis of the data. This may undermine intelligence-sharing and the tracking of victims over and above the recording of decisions within the NRM.

It is unsatisfactory that no evidence has been given to the Inquiry of the analysis or application of NRM data for purposes other than quarterly publication of figures.

The raw data that was provided to the Inquiry indicated the following:

- European Union / European Economic Area persons were more likely to be considered trafficked than others
- Gender was significant, with men far more likely than women to be recognised as trafficked

- Geography was an issue, with the overwhelming majority of referrals into the NRM being from Glasgow, implying a need for awareness-raising, capacity-building, and accessible victim services across Scotland¹¹⁰

Therefore it is important that intelligence from key sources, such as the NRM, should be analysed, used to inform practice, and shared across partners.

Recommendation

The Home Office should lead a new review of the approach and structures for the identification of trafficked persons. This should consider, in particular, whether the present arrangements are sufficiently independent, are overly centralised, lack accountability, have conflicts of interest in decision making, should provide a formal appeal process, and include the systematic analysis of NRM data which is then shared to enhance anti-trafficking practice across partner agencies.

Outcome

Scotland and the UK have an independent and transparent identification system which recognises that human trafficking is invasive of the dignity and rights of its victims. The system is dedicated to the identification and onward referral of victims, to the making of decisions on trafficking status, and ultimately to victims' recovery.

¹⁰⁹ Organisation for Security and Cooperation in Europe (2004) *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons* (Warsaw: OSCE Office for Democratic Institutions and Human Rights).

¹¹⁰ SOCA and UKBA NRM data *op. cit.*

Finding 10

Scotland does not yet have comprehensive, end-to-end services for victims of human trafficking.

The need for end-to-end services for victims

Persons presumed or confirmed to have been trafficked in Scotland can, depending on age, gender and the exploitation suffered, consent to be assisted by the Trafficking Awareness Raising Alliance (TARA) (for adult females trafficked into sexual exploitation) or Migrant Help (MH) (all other victims).

The Inquiry found that both MH and TARA do good work and especially so when public spending on support services in all sectors is under pressure. TARA, for example, have strong roots in Glasgow and have developed close links with a range of specialists, such as sexual health and psychological services, in attempting to secure a holistic service for those they support. Such an approach is commensurate with the depth and durability of the trauma suffered by many trafficking victims.

“I’ve lived a very rough life. While I’ve been a mother I’ve tried to put it behind me but it’s like everything keeps coming back. For a very long time I tried not to think about it but now I think about it more or less every day...Sometimes the way I think is I can’t eat, I can’t sleep. You think about it all the time.”¹¹¹

Such use of victim support resources to link to other specialist agencies would seem to be a rational method for delivering cost-effective services. However, due to insufficient resources, TARA do not have a physical presence outside Glasgow and lack their own dedicated safe spaces in Glasgow and elsewhere where women can stay, for instance, during their 45 day-reflection period¹¹².

“Some of the accommodation providers within Glasgow are better than others and some are worse, and if you end up with one of the ones which aren’t very good you’re likely to have all sorts of problems with accommodation that can really tip people over the edge.”¹¹³

111 Evidence to the Inquiry from a victim of sex trafficking, in Easton, H. and Matthews, R. *op. cit.*

112 Presumed victims of trafficking i.e. those who receive a ‘positive reasonable grounds’ decision, for the purposes of the CoE *Trafficking Convention* and irrespective of immigration status are granted a minimum of 45 days to reflect on their experiences, make decisions on their future, and receive appropriate support and services. This right is especially valuable for those presumed victims that do not have residency or citizenship rights as it acts, in effect, as a right to remain in the UK for at least 45 days. It is not contingent in principle on willingness to cooperate in a criminal investigation or prosecution against traffickers.

113 Evidence to the Inquiry from a senior practitioner, in Easton, H. and Matthews, R. *op. cit.*

Conversely, Migrant Help have suitable accommodation (including a safe house plus many scatter-flats), an infrastructure across the UK, and a 24/7 service.

However, overall the Inquiry found no evidence of a comprehensive Scotland-wide, holistic, service package for victims of human trafficking.

Trafficking is a serious violation of a person's dignity and human rights, in much the same way as domestic violence or child abuse are. It is only proper that victims of trafficking have practical access to an end-to-end recovery service delivered by one or more specialist agencies, each adhering to an agreed Trafficking Care Standard which applies from the identification of a victim through to their psychological, physical and social recovery.

The Trafficking Care Standard should:

- Be implemented on an informed and consensual basis
- Require measures and services that promote and enable the victims' fullest recovery from the trafficking experiences
- Not necessarily be delivered by one single agency but make more use of existing professional services and expertise in Scotland

- Ensure that a victim's progress is tracked, with an emphasis on achieving and sharing good outcomes
- Be well resourced and comprise individual needs assessments, agreed by a key worker and victim throughout the recovery process

It is of particular importance that the Trafficking Care Standard includes provision for victims to be supported as they move through key recovery phases including:

- Acting on identified and agreed needs
- Being provided with the requisite specialist services, assistance and advice¹¹⁴
- Being fit to move on. This may mean integration into Scotland, returning home to safety, not danger, or some other outcome

Recommendation

The Scottish Government should develop a Trafficking Care Standard and introduce an end-to-end service for trafficking victims. This should include arrangements for systematically tracking the progress and outcomes for each victim.

114 Services, assistance, or advice should include (i) necessary medical treatment, (ii) different health checks i.e. sexual, (iii) various forms of psychological support, (iv) accommodation, (v) material assistance i.e. money or in-kind goods, (vi) language support i.e. translation and interpretation, (vii) legal assistance or advice on various matters i.e. trafficking, asylum, criminal proceedings, compensation etc, and (viii) information on and access to educational, vocational training, or employment opportunities.

Outcome

Scotland is a centre for excellence in providing high-quality services for victims of human trafficking, from their identification through to their physical, psychological, and social recovery.

Concluding comments

The evidence submitted during the course of this Inquiry shone a light upon the story of human trafficking in Scotland. The experiences of people who had been deceived, manipulated or coerced into coming to Scotland demonstrate the harsh reality of trafficking. Exploited by organised criminals in the sex industry, often captive in private 'sex' flats and systematically abused; forced into criminal acts such as benefits fraud or cannabis cultivation; exploited in fruit picking farms or the hospitality industry; or forced into conditions akin to slavery as domestic servants. The experiences of trafficked people here are often nothing short of brutal and, in the main, hidden from society.

While the Inquiry did uncover evidence of much good work at all levels in government, enforcement, prosecution, and, vitally, victim support, the lack of a coherent approach was evident.

The response is insufficiently strategic and the approach of existing law is inconsistent. Intelligence gathering has been hampered by lack of cooperation amongst relevant agencies and prosecutions have been limited. Victim support services are not enabled to consistently deliver the holistic end-to-end services required for survivors.

The recommendations in this report are designed to help develop and inform a response which is both strategic and comprehensive. Such an approach is fundamental in tackling human trafficking. With regard to those recommendations specific to Scotland, it should be led by the Scottish Government and involve law enforcement and prosecution services, victim support organisations, local authorities and the private sector. It must put trafficked people at its centre, seeing them as victims of crime rather than as immigration issues. The Inquiry also made recommendations that will need consideration not just in Scotland but across the UK.

Such a properly focussed strategic approach will help identify victims and support their recovery while making Scotland a more hostile environment for traffickers.

'I had to take an Oath; I was given this mark on my hand. I was told that if you tell anyone what has transpired you are going to die. They gave me a razor blade to eat, they took my armpit hair, they removed my nails from my toes and my fingers... they removed the hair on my body, they tied it up and put it in this shrine, then they tore my body and told me that if I tell anyone...you will just die... I was so scared... I think that if anything is happening I am going to die.'

Appendix 1

Equality and Human Rights Commission
Notice of Terms of Reference For The
Inquiry Into Human Trafficking In
Scotland Under Section 16 Of The Equality
Act 2006.

In accordance with paragraph 2 in
Schedule 2 of the Equality Act 2006,
notice is hereby given that in fulfilment of
the Commission's duties under sections 8
and 9 of the said Act and in using the
power granted to the Commission under
section 16 of the said Act, the Commission
gives notice of the terms of reference
immediately below for its Inquiry into
human trafficking in Scotland.

The terms of reference for the Inquiry are:

1. To inquire into the extent and nature of human trafficking in relation to Scotland, focusing mainly but not exclusively on trafficking for the purpose of commercial sexual exploitation.
2. To inquire into the causes of human trafficking relating to Scotland focusing especially on the role of demand for commercial sexual exploitation.
3. To inquire into policy and practice in Scotland measured against anti-trafficking human rights standards especially in respect of: (i) the identification and treatment of trafficking victims in the asylum and immigration system; (ii) monitoring for, and the investigation and prosecution of, traffickers, especially for trafficking crime; and (iii) the extent and quality of statutory and specialist services and accommodation for victims.
4. To inquire into domestic and international good practice on the prevention and prohibition of human trafficking, the criminal prosecution of traffickers, and the protection of its victims.

February 2010

Contact us

Scotland

The Optima Building
58 Robertson Street
Glasgow G2 8DU

Helpline:

Telephone
0845 604 55 10

Textphone
0845 604 5520

Fax
0845 604 5530

England

Arndale House
The Arndale Centre
Manchester M4 3AQ

Helpline:

Telephone
0845 604 6610

Textphone
0845 604 6620

Fax
0845 604 6630

Wales

3rd Floor
3 Callaghan Square
Cardiff CF10 5BT

Helpline:

Telephone
0845 604 8810

Textphone
0845 604 8820

Fax
0845 604 8830

Helpline opening times:

Monday to Friday: 8am–6pm

If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website:

www.equalityhumanrights.com/humantraffickingfi

© Equality and Human Rights Commission
August 2011
ISBN 978-1-84206-412-2

Artwork by Epigram
www.epigram.co.uk

www.equalityhumanrights.com