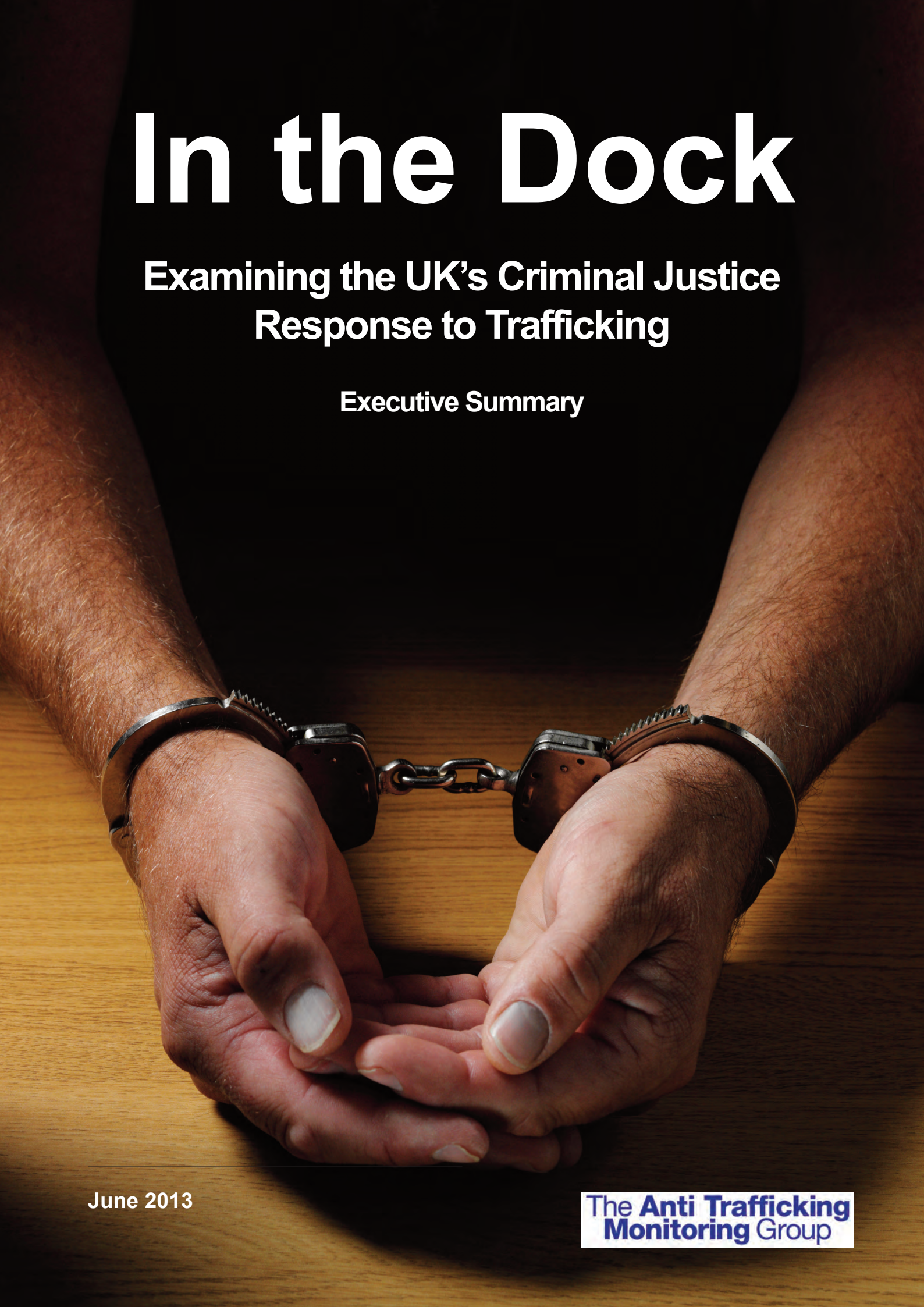


# In the Dock

## Examining the UK's Criminal Justice Response to Trafficking

Executive Summary



June 2013

**The Anti Trafficking  
Monitoring Group**

# Executive Summary

*In the Dock* is The Anti-Trafficking Monitoring Group's (ATMG) third report. The ATMG continues its unique task of monitoring and evaluating the UK's performance in implementing the *Council of Europe Convention on Action against Trafficking in Human Beings*<sup>1</sup> and the *EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*.<sup>2</sup>

This report examines the effectiveness of trafficking investigations and prosecutions through the UK Criminal Justice System (CJS)<sup>3</sup> in terms of law, policy and practice.

In particular, the report focuses on:

- Obstacles that impede an effective criminal justice response to trafficking;
- The UK's ability to ensure its obligations to protect trafficked persons participating in criminal proceedings;
- Adherence to the requirement not to criminalise trafficked persons; and
- Presenting examples of good practice from within the UK and abroad wherever possible.

The ATMG was pleased to find examples of localised good practice and outstanding work by the police, prosecutors and judges that led to trafficking convictions. We found that successful trafficking prosecutions are commonly linked to areas where specialism is developed within the police and other criminal justice actors, or where multi-agency and international partnerships were put into place.

The research found that such examples were often the product of individual efforts, dedication and deeper understanding of the problem. Unfortunately, these excellent examples do not represent the situation overall in the UK, as the CJS is yet to develop an efficient response to trafficking that tackles this egregious crime as a priority. The ATMG concludes that *the UK is at risk of losing the fight against human trafficking unless it urgently develops a systematic criminal justice response*.

In particular, the ATMG is concerned that:

1. Human trafficking is not a policing priority despite the Government's commitment to make the UK a hostile environment for traffickers;
2. There is no unified law against human trafficking in the statute books, often leaving criminal justice actors uncertain about how to identify the crime and prosecute traffickers;
3. Despite the steady increase in the number of potential trafficked persons identified, the number of traffickers punished for trafficking offences has decreased;
4. In comparison, evidence suggests that many trafficked persons are prosecuted for crimes they were compelled to commit while their traffickers enjoy impunity;
5. The impact of trafficking on victims is often misunderstood by criminal justice actors, resulting in inappropriate responses that hamper the trafficked persons' ability to act as a witness and may potentially cause them further harm.

---

<sup>1</sup> Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005. Hereinafter known as the "Convention".

<sup>2</sup> With the UK's opt-in to the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the ATMG undertook to include the Directive in its monitoring function. Full title: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011]. This EU Directive replaces Council Framework Decision 2002/629/JHA. Hereinafter known as the "Directive".

<sup>3</sup> The prosecution of trafficking is interpreted in this report as an umbrella term encompassing the many organs of the CJS and describing the process of collaboration and response between CJS agencies such as the police, the United Kingdom Human Trafficking Centre (UKHTC), the Crown Prosecution Service (CPS), the courts, prisons and probation service.

In the previous two ATMG reports,<sup>4</sup> it was argued that the UK should appoint an independent Anti-Trafficking Commissioner<sup>5</sup> with statutory powers, to fulfil the role of an independent monitoring body recommended by Article 29.4 of the Convention. It is our conclusion that the continued absence of an Anti-Trafficking Commissioner exacerbates the situation described in this report.

### **Trafficking in the UK**

Knowledge about the manifestation of trafficking and current trends is essential for an effective criminal justice response, and especially for planning any future strategies. The research found that policy is yet to take into account the constantly changing nature of the crime, the complexities of trafficking and its impact on trafficked persons.

In the past two years, data from the National Referral Mechanism suggests an upward trajectory in the number of referrals of potential trafficked persons. The provisional 2012 NRM statistics alone are said to have increased by 25% on the 2011 figures, which are higher than previous years.<sup>6</sup> Furthermore, according to the UKHTC, the referrals in the first quarter of 2013 (yet to be published) are said to exponentially exceed the 2012 levels. Also, for the first time in 2012, the UKHTC published data reveals that trafficking for forced labour exceeds trafficking for sexual exploitation in the UK and the number of identified trafficked men has increased.<sup>7</sup>

### **The case for a comprehensive anti-trafficking law**

The research found a disproportionately low number of convictions for trafficking compared to the increasing number of potential trafficked persons. The reasons for this are multiple, including trafficking not being made a priority in policing plans.

Moreover, the current system of data collection gives a confused and potentially misleading picture on how successful the UK is in tackling trafficking. Two government departments gather different statistics on trafficking prosecutions and convictions: a) the Ministry of Justice (MoJ) collects data on convictions and prosecution of trafficking where the trafficking offence charged is the principal offence on the indictment;<sup>8</sup> and b) the Crown Prosecution Service (CPS) collects data from their case management system where cases involving a trafficking charge are flagged even if the trafficker is found guilty of other offences at trial and not the trafficking charge. The result is a situation, where different statistics are presented by different departments, leading to confusion over the number of perpetrators actually brought to justice for trafficking. Furthermore, conviction statistics are not disaggregated, rendering it almost impossible to ascertain how many child traffickers are prosecuted. An Anti-Trafficking Commissioner would be able to assist in this area by using their statutory power to request information and determine the correct number of prosecutions and conviction of traffickers.

The research concludes that individual trafficking offences in different pieces of legislation is unhelpful. Many CJS actors are unaware of their existence altogether or are uncertain in relation to the application of these laws. This is a particular problem in cases of labour trafficking, as the offence is housed in an immigration act. It was also found that the scattered nature of the legislation ignores the complexity of the crime.

<sup>4</sup> The Anti-Trafficking Monitoring Group, *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (2010), and *All Change: Preventing Trafficking in the UK* (April 2012).

<sup>5</sup> A call recently taken up by the centre-right think-tank report: Centre for Social Justice, *It Happens Here: equipping the United Kingdom to fight modern slavery* (March 2013). Available at: [www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Slavery\\_Full\\_Report\\_WEB\(5\).pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB(5).pdf) [last accessed 12 April 2013].

<sup>6</sup> UK Human Trafficking Centre, NRM provisional statistics for 2012 [Online]. Available at: [www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics](http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics) last accessed March 2013].

<sup>7</sup> SOCA, (2012) UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011 [Online]. Available at: [www.soca.gov.uk/news/462-human-trafficking-assessment-published](http://www.soca.gov.uk/news/462-human-trafficking-assessment-published) [last accessed March 2013].

<sup>8</sup> Meaning the trafficking offence has the heaviest tariff (14 years) out of the offences charge on the indictment.

Furthermore, the current legislation does not articulate protection rights for trafficked persons as required by the Convention, to ensure that all trafficked persons can access adequate protection in the CJS, particularly where the trafficked person is prosecuted for crimes they are compelled to commit by their trafficker (see below).

As Lord Bingham argued in his book *The Rule of Law*, “The law must be accessible and so far as possible intelligible, clear and predictable,” to ensure compliance with the rule of law.<sup>9</sup> The dispersed nature of the law relating to trafficking offences contributes to a lack of clarity and how they should be applied. Resolution of these difficulties could be assisted by one encompassing definition and embedding protection measures into a comprehensive Act.

The ATMG concludes that a unified piece of legislation is needed to address some of the flaws and to bring the UK fully in line with the Convention and Directive. A single Act would have the combined benefit of raising awareness of trafficking offences, and simplifying their prosecution in practice. The Forced Marriage (Civil Protection) Act 2007 was introduced to address forced marriage by combining the offences and the protections. The purpose of its enactment was to raise awareness of the crime of forced marriage. The ATMG recommends that a similar approach be adopted with respect to trafficking. Furthermore, this would also assist in cases where trafficked persons are exploited for multiple purposes. The ATMG is pleased to find that Scotland and Northern Ireland have already taken steps to consider enacting a single anti-trafficking law.

### **Investigating trafficking**

The report highlights several successful landmark cases investigated by the police and other law enforcement agencies. However, there was also recognition that this is not the case across the UK, as the overall law enforcement capacity to respond to trafficking remains low.

The culture of policing targets means that trafficking is not considered a priority and an investigation is often dependent on the good will and perseverance of individual officers. There is also a lack of tailored training to equip law enforcement officers with the specialist knowledge to effectively investigate this crime.

Worryingly, the majority of respondents confirmed that trafficked persons are frequently refused assistance when presenting at police stations and are told that their problem is not a police matter, especially in instances of labour trafficking. Undoubtedly, the fewer trafficked persons identified will inevitably result in fewer potential cases investigated and ultimately fewer traffickers convicted, thus perpetuating the criminal groups activities.

Where specialism is developed or specialist anti-trafficking units have been formed, trafficking has been tackled with greater success. Moreover, in the climate of austerity and cuts, focused and proactive anti-trafficking operations can be cost-effective. The ATMG’s research found that where large-scale trafficking operations against traffickers for forced criminality (such as petty theft and begging) were carried out, this also curbed the occurrence of low level crime.

Also, operations which proactively dismantle the whole trafficking network are more effective than a temporary disruption of its activities, which can result in not just financial savings in the CJS, but also on funding victim care. Such operations are also more likely to recover substantial assets (proceeds of crime) from traffickers where a financial investigator is involved from the beginning of the

<sup>9</sup> See Bingham, T., *The Rule of Law* (2010). Also see principles 2, 4 & 8.

investigation. Recovered assets can be potentially used to fund future anti-trafficking operations, a model applied in the past to drug operations.

The research found that the EU provides some effective tools for investigating and prosecuting trafficking such as Joint Investigation Teams, European Arrest Warrants and Europol. Respondents recommend that these tools and resources should be increasingly utilised rather than put at risk. The Government is, as part of a review due to take effect in 2014, considering opting out of these EU policing and justice measures. These measures have assisted in prosecuting trafficking and their absence may significantly impede the UK's ability to effectively combat trafficking in the future, delay justice for trafficked persons and perpetuate traffickers' impunity.

### **Prosecuting traffickers**

Several criminal justice actors play a role in criminal proceedings against traffickers. The ATMG found that trial success depends on the level of trafficking knowledge that the CPS lawyers/prosecuting advocates and judges have, as well as the support afforded to a trafficked person who is participating in the proceedings. Until a combination of adequate victim-witness support and protection, and competent presentation and handling cases in court is achieved, many traffickers will continue to enjoy impunity.

The ATMG was presented with a number of examples where traffickers were successfully prosecuted, such as *R v Anthony Harrison*,<sup>10</sup> *R v James and Josie Connors*<sup>11</sup> and *R v Hassan and others*.<sup>12</sup> Where such successes occurred, they were largely due to a specialist or experienced CPS lawyer/prosecuting advocate who understood the intricacies of trafficking.

Trafficking is likely to be well outside of the experience of most of the general public, hence positive outcomes may also depend upon the knowledge of the judge and the prosecutor to convey this complex crime to the jury.

The research found a lack of knowledge and understanding of trafficking and how it impacts on trafficked persons across prosecutors and the judiciary, potentially impacting on the positive outcome of cases. Research contributors suggested the development of specialist prosecutors for trafficking cases, similar to those who are accredited to prosecute rape cases.

The research also revealed that despite the importance of victim support and protection measures for a successful prosecution, these are often not in place. Interviewed respondents stated that trafficking trials may have collapsed due to poor victim support/contact or due to the trafficked person having suffered secondary victimisation due to invasive questioning.

### **Non-criminalisation of trafficked persons**

The Convention and Directive establish a legal right for trafficked persons not to be prosecuted and/or punished for crimes that they commit as a consequence of their trafficking.

The research pointed to many instances where trafficked persons were misidentified as offenders, and were subsequently prosecuted and convicted. The continued criminalisation of trafficked persons (including those who were trafficked for drug offences and those who were given false documents by their traffickers) was raised as a widespread problem by respondents.

<sup>10</sup> *R v Anthony Harrison* at Woolwich Crown Court, July 2011.

<sup>11</sup> *R v John and Josie Connors* at Luton Crown Court, July 2012.

<sup>12</sup> *R v Hassan and others* at Liverpool Crown Court, 9 May 2012



The ATMG was made aware of some cases where trafficked children were re-trafficked to another cannabis factory on release from Young Offender Institutions. The ATMG is concerned that the present practice may have the effect of a “revolving door”, leading to re-victimisation of vulnerable trafficked children and young persons.

The ATMG concludes that the current regime in which non-criminalisation provisions are implemented through policy (e.g. CPS guidance) allows for the arbitrariness of decisions that lead to many trafficked persons being prosecuted, hence undermining basic principles of rule of law.

There are a range of professionals that come into contact with trafficked persons within the CJS. The research identified at least seven stages of the process at which identification can arise. If identification occurs at an early stage, especially during the pre-charge period, the criminalisation of trafficked persons can be prevented and the CJS can focus on the underlying problem – the crime of trafficking. However, the research found that the identification of trafficked persons often occurs at a very late stage in the process i.e. post-conviction.

### **Specific issues relating to child trafficking**

There was a general consensus among interviewees that child trafficking has a lower profile than adult trafficking which may affect prosecution numbers. There are also distinct barriers to identifying trafficked children in frontline practice. Investigating and prosecuting child trafficking can be more complicated. Children generally do not report crime, especially against family members. It is for these reasons that the Convention obliges frontline competent authorities to be proactive in identifying trafficked children.

The research found that some stakeholders are reticent to allow trafficked children to participate in trafficking investigation or prosecutions, because this may not be in the child’s best interests due to the potential detrimental impact on an already vulnerable child giving evidence in court. Therefore, this limits the number of convictions where the child’s testimony is crucial to the prosecution. Other complications result from a failure by concerned agencies to adhere to the benefit of the doubt principle when age assessing age-disputed children.

The key principles of best interests, non-discrimination and the child’s rights, as contained in the Convention and Directive, must be adhered to at all stages of a criminal investigation into child trafficking. Furthermore, child trafficking is child abuse: this is a message that must be central to the UK’s criminal justice response to trafficking in order to successfully safeguard vulnerable trafficked children while delivering justice to those who seek to exploit them.

### **Prosecuting trafficking in devolved administrations**

Criminal justice is a devolved matter within the responsibility of the governments of Scotland and Northern Ireland. Despite this, these regions face similar problems to England and Wales as thus far each country has seen only two prosecutions for trafficking offences.

A potential positive development was seen in Scotland in April 2013, when a single police force was created with a specialised unit that will focus on investigating trafficking across Scotland. Northern Ireland, on the contrary, has disbanded its specialised unit within the Police Service of Northern Ireland. Given the proven success of other specialised police units, which have adequate funding and a clear mandate, this may prove to be a retrogressive step.

### **Conclusion**

The ATMG research found localised good practice and excellent examples of individual work by police and criminal justice actors. This good practice needs to be rolled out across the UK to mitigate the

current system which allows the majority of traffickers to escape justice. Despite the Government's declaration, the UK is far from being a hostile environment for traffickers. An integrated and cost-effective approach to investigating and prosecuting trafficking needs to be introduced that focuses on trafficking as a priority, takes into account the complexity of the crime, and ensures that traffickers, rather than victims, are the ones put behind bars.

## **KEY RECOMMENDATIONS**

### **OVERALL**

Introduce a UK Anti-Trafficking Commissioner, an independent body with statutory powers to request data and information, to examine the trends and changing nature of trafficking and to recommend a focused and efficient strategy to combat this crime.

### **LEGISLATION**

- Enact a single Act on human trafficking and other forms of contemporary slavery to cover the offences and victim protections (including the non-criminalisation provision).

### **DATA COLLECTION**

- Create a unified data collection system that includes all prosecutions and convictions of traffickers, regardless of the final offence charged. Also, disaggregate data by age and gender.

### **INVESTIGATION**

- Trafficking shall be made a priority and included among policing targets set by the Home Secretary.
- Specialist anti-trafficking and multi-agency units have the dual benefit of success and potential for cost-effectiveness. Where possible, these shall be formed and maintained. A single specialist unit operational across England and Wales, similar to the Metropolitan Police and Scottish model should be considered.
- All frontline police shall receive basic training on trafficking. Guidance should be available at all police stations to stop the practice of declining assistance to trafficked persons wishing to report trafficking.

### **PROSECUTION**

- Ensure that all CPS lawyers, prosecuting advocates, judges receive training on trafficking laws and the nature of the crime.
- Develop specialist CPS lawyers and judges, similar to the *rape-ticketed* model.
- Ensure that trafficked persons are supported throughout and after criminal proceedings. Readily provide, where necessary, efficient special measures including witness protection.

### **NON-CRIMINALISATION**

- ACPO to issue guidance, without delay, on the treatment of suspects that may be trafficked persons.
- MoJ to issue guidance for prisons on identification and treatment of prisoners who might be victims of trafficking.

### **CHILD TRAFFICKING**

- Bring UK trafficking legislation in line with the UNCRC's child definition as under 18s, and clarify the word "young" in Section 4(4)(d) of the AI(TC) 2004 replacing it with under 18s.
- Ensure all suspected cases of child trafficking are investigated fully, strictly utilising s.47 of the Children Act 1989 to trigger multi-agency inquiries and ensure the prosecution of an offence for a sufficient period of time after the trafficked child has turned 18.

- Introduce mandatory child-specific trafficking training for frontline staff which is reviewed and updated regularly to improve identification of trafficked children and safeguarding responses.
- Increase proactive police investigations into child trafficking supported by increased government resources, and increase the use of victimless prosecutions in child trafficking cases.
- Appoint a legal guardian to each suspected trafficked child in order to act in the child's best interests and to act as a link between the multiple agencies involved in prosecuting child trafficking.



## The Anti Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group (ATMG) was established in May 2009 and works to promote a victim-centred human-rights based approach to protect the well-being and best interests of trafficked persons. It was created to fulfil the role of a National Rapporteur set out in Article 29.4 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005. The ATMG undertakes analytical and evaluative monitoring of the implementation of the Convention, with a view to strengthening the overall effectiveness of UK anti-trafficking policy.

This report, the third in the ATMG series, examines the UK's criminal justice system and its response to trafficking in accordance with relevant Convention obligations.

We would like to thank Comic Relief, the Esmée Fairbairn Foundation and The Bromley Trust for funding the activities of ATMG.



The views expressed herein are those of the ATMG and in no way reflect the opinion of the funders.

The ATMG comprises:

Afruca  
Amnesty International (Northern Ireland and Scotland)  
Anti-Slavery International  
Black Association of Women Step Out (BAWSO)  
ECPAT UK  
Helen Bamber Foundation  
Kalayaan  
POPPY Project (of Eaves Housing)  
Trafficking Awareness Raising Alliance (TARA of Glasgow Community & Safety Services)

The Anti-Trafficking Monitoring Group, c/o Anti-Slavery International  
Thomas Clarkson House, The Stableyard, Broomgrove Road, London SW9 9TL, United Kingdom  
Tel. +44 (0) 207 501 8920  
Email: [antitrafficking@antislavery.org](mailto:antitrafficking@antislavery.org)  
For further information see: [www.antislavery.org/atmg](http://www.antislavery.org/atmg)