

Scottish Refugee Council

Supplementary written information to the Criminal Justice Committee on the Victims, Witnesses, and Justice Reform (Scotland) Bill

16 October 2023

Introduction

1. On Wednesday 4 October 2023 Graham O'Neill, Policy Manager, Scottish Refugee Council gave [oral evidence](#) to the Criminal Justice Committee on Parts 1, 2 and 3 of the Victims Witnesses and Justice Reform (Scotland) Bill.
2. These parts of the Bill cover the establishment of a Victims and Witnesses Commissioner in Scotland, trauma-informed practice, and special measures in civil cases.
3. During that evidence session Mr O'Neill undertook to provide the Committee with supplementary written information on various issues.

Information provided

4. The annexes to this paper include the various pieces of information provided by the Scottish Refugee Council in response to this request. The information is set out below is as follows-

- [ANNEX A \(Page 3\)](#) - Cover email from the Scottish Refugee Council
- [ANNEX B \(Page 5\)](#) - Scottish Refugee Council in the case of V.C.L. and A.N. v. United Kingdom
- [ANNEX C \(Page 16\)](#) - COPFS information on the number of police reports that include charges against individuals (adults or children) who were potentially trafficking survivors and related information for January 2017 to December 2020
- [ANNEX D \(Page 20\)](#) - COPFS information on the number of police reports that include charges against individuals (adults or children) who were potentially trafficking survivors and related information for January to March 2021
- [ANNEX E \(Page 23\)](#) - COPFS information on decisions under the Lord Advocate's Instructions on non-prosecution of victims of human trafficking for 1 April 2016-31 March 2021
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- [ANNEX G \(Page 28\)](#) - COPFS information on number of applications made for convictions to be set aside for the period January 2016 to December 2020
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- [ANNEX I \(Page 33\)](#) - COPFS information on number of police reports containing charges against people reported to the NLP
- [ANNEX J \(Page 36\)](#) - Emails exchanges between Scottish Refugee Council and Scottish Prison Service
- [ANNEX K \(Page 39\)](#) - Scottish Prison Service Data on Vietnamese children/young people in YOI Polmont for 1 April 2016 to 30 June 2021
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- [ANNEX M \(Page 41\)](#) - Scottish Refugee Council - Note on acutely vulnerable group of survivors of trafficked exploitation and refugee persecution in the UK (and Scotland), and the need for the Scottish Government to institute an “end to end” anti-trafficking protection system (a Scottish “competent authority”)
- [ANNEX N \(Page 46\)](#) - Scottish Refugee Council - Opinion piece for Scotland to act to protect our human trafficking laws and survivors from the Illegal Migration Bill – 27 March 2023
- [ANNEX O \(Page 48\)](#) – *JustRight Scotland/Scottish Refugee Council/Children and Young People’s Commissioner Scotland* - Legal Opinion on the Legal Implications of the Illegal Migration Bill in Scotland
- [ANNEX P \(Page 52\)](#) - Latest COPFS data (as of October 2023), showing trends of higher volumes of referrals in the period April to September 2023 (inclusive).

**Criminal Justice Committee clerks
 Scottish Parliament
 October 2023**

ANNEX A - Cover Email from the Scottish Refugee Council

From: Graham O'Neill

Sent: 16 October 2023 13:18

To: Criminal Justice

Cc: Wixted S (Seán)

Subject: Written evidence to the Criminal Justice Committee requesting scrutiny of the Lord Advocate's discharge of the anti-trafficking non-punishment principle

Dear colleagues.

I hope you are well.

Further to our recent oral evidence to the committee (for ease [here](#)). This was on our persistent concern that the safeguard for human trafficking survivors compelled to commit criminal offences, which is the Lord Advocate's Instructions in this matter, are not an effective safeguard in that many such survivors are not being lifted out of the Scottish criminal justice system and processes.

I enclose our submission to the Council of Europe Committee of Ministers' (the CoM) Enhanced Supervision of the UK for extent of compliance with the ECtHR decision in V.C.L and A.N v UK [2021]. You can also find this submission online at [1451st meeting \(December 2022\) \(DH\) - Rule 9.2 - Communication from an NGO \(Scottish Refugee Council\) \(13/09/2022\) in the V.C.L. and A.N. v. the United Kingdom \(Application No. 77587/12\)](#). This supervision was conducted in June this year. Whilst it noted good progress made by the UK generally, it expressed severe concern as to the grave implications of the (now) Illegal Migration Act 2023 for protection for human trafficking survivors including the distinctively and acutely vulnerable group of survivors that were exploited by being compelled to commit criminal offences. You can find the details of this Enhanced Supervision and forthcoming considerations by the CoM (due by September 2024) in the papers [here](#).

As you will see from our submission, we have sympathy with the Lord Advocate in terms of waiting inordinate periods for a final trafficking status determination from the Home Office's delay-riven National Referral Mechanism. It takes at least one year to get a final determination and, in some cases, nearly 18 months. You will further note that our deeper point is that there is unique expertise in the prosecutorial function to make it appropriate the prosecutor makes this decision *and quicker* and *still* be compliant with the criteria as cited in the submission at its paras 20-26.

So, a key theme in our submission is that the current Lord Advocate Instructions are not in practice an effective safeguard against potential trafficking survivors being left in criminal justice limbo, whilst the Lord Advocate waits for the delay-ridden Home Office NRM to provide a final decision as to whether the accused (but potential survivor) is (or is not) to be confirmed as a trafficking survivor. We do think the Instructions can become that consistent safeguard in practice also. We critique in the submission that not only trafficking survivors being subject to any criminal justice is often wrong, but also they are being left in them for inordinate periods. These delays compound the injustice and trauma of a criminal justice limbo. They do not work for either the trafficking survivors or certainly not the prosecutors either, and they help the organised crime exploiters. This state of affairs is all the more reason why we need, for ethical, crime disruption and ECHR Article 4 compliance reasons, a Scottish identification and decisions agency so to maintain access to and wrap around existing support rights, and constitute an "end-to-end trafficking system".

The Crown Office data and our analysis at paras 29-30 speak to the weaknesses of the Instructions as a safeguard in practice. And, sadly, that 6 year data picture is rendered worse by the just-obtained (and attached) data for April 22 to March 23. Whereas it is positive that (a) a lot more people are

being referred to the National Lead Prosecutor (NLP) in the past year (149 as compared to 235 for the preceding 6 years - a 63% increase); (b) it is nonetheless concerning too as that indicates a lot more trafficking into forced criminal exploitation is happening; and most of all (c) we are still seeing that only a very small proportion of those referred to the NLP have the cases on them discontinued at that point. It remains unclear what the ultimate outcome is in these matters.

So, when taking the seven years together (from April 2016 to March 2023) 384 persons were referred into the NLP, but only 40 (10%) had their cases stopped at this stage. The rest proceeded beyond then so affecting up to 344 persons (a minority of which included children) and they would have remained subject to criminal justice processes that may have been traumatic. It is not clear if any were ultimately prosecuted, convicted, went missing, were re-exploited or subject to Home office removal or deportation, as there does not seem to be Crown Office monitoring of any of these. This group are so vulnerable and really need these safeguards to work, esp., to protect them from such adverse consequences. We attach this seven-year data and related evidence.

We have met the Solicitor-General in January this year on this issue, and were very encouraged by her engagement and we recognise and respect her need to be fully independent alongside the Lord Advocate on criminal prosecution matters. We also reiterate that we appreciate the invidious position that they are persistently placed in by the Home office's persistently delay-riven National Referral Mechanism in issuing final trafficking status determination. For the reasons touched on above and in in detail in this submission, we do not think that they need to remain in this position. Indeed, the imminent fuller implementation of the Illegal Migration Act 2023 notably its section 2 "duty to remove" arrangements will render access to Scottish trafficking support protections including obligations such as the non-punishment principle, effectively impossible. That is unless Scottish Ministers act in the way we recommend, inter alia, in the CoM submission.

We respect the committee has a busy agenda. However, we urge it to consider undertaking scrutiny of this serious issue in the manner it deems best. Very happy to talk further on it.

Graham O'Neill
Policy Manager
Scottish Refugee Council

ANNEX B - In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements, by the Scottish Refugee Council in the case of V.C.L. and A.N. v. United Kingdom

Part 1: Our locus in supporting better fulfilment of the anti-trafficking non-punishment principle

1. We write in respect of the execution of the judgment of the European Court of Human Rights in V.C.L. and A.N. v. the United Kingdom (applications nos. 77587/12 and 74603/12). In particular, this communication is to inform the Committee of Ministers' assessment of the UK's implementation of that judgment, especially in this communication as to how the non-punishment principle is being treated in Scotland. Our purpose therefore is to assist this assessment process, recognise the existence of some safeguards, but also to suggest areas where we think improvement is needed.

2. [Scottish Refugee Council](#) is a national refugee rights charity, operating since 1985 across Scotland. It campaigns for and provides services to refugees. Many trafficking survivors in Scotland are also seeking asylum¹. Relatedly, we also work with unaccompanied children and young people, primarily through the Scottish Guardianship Service (SGS) since 2010². This group normally applies for refugee protection in the UK. Most have also been trafficked or are acutely vulnerable to such exploitation.

3. The Special Rapporteur on trafficking in persons, especially women and children, in her latest [Report](#) to the UN Human Rights Council in 2021 on *Implementation of the non-punishment principle*³, stated "the principle of non-punishment constitutes the cornerstone of an effective protection of the rights of victims of trafficking, however, its non-implementation or deficient implementation measures that deviate the principle from its intended result are still common practice". We agree. The principle is foundational to adequate trafficking law, policy and practice. It applies to survivors of criminal trafficked exploitation, both those from or who have been trafficked into the country of exploitation. Organised crime always targets the vulnerable. If restrictive immigration rules increase or criminal justice practice compound that vulnerability, then organised crime wins. It is enabled to better target and control those at the margins, *both non-UK and UK*.

4. So, as alluded to by the Special Rapporteur, without the effective application of the principle vulnerable survivors such as those suffering trafficked criminal exploitation, may at worst be convicted or prosecuted, or be left in remand in custody and/or not referred into independent advocates or solicitors; by those with responsibilities in the justice system to identify and protect survivors. If that happens, it may culminate a triple injustice of: (a) survivors' vulnerability being abused by the exploiter initially or during the trafficking process; (b) then subject to trafficked criminal exploitation, affecting UK or non-UK survivors, as in the latter case when children and adults of Vietnamese nationality are trafficked and controlled to farm cannabis for the criminal and profit interests of others including organised crime groups; and (c) perversely, those survivors are subject to criminal justice processes like remand in custody or worse.

¹ Para. 10 and Table 2 in "Appendix - Note on acutely vulnerable group of survivors of trafficked exploitation and refugee persecution, especially in Scotland" (April 2022)

² [An evaluation of the Scottish Guardianship Service \(2022\)](#). This service is a partnership between Scottish refugee council and Aberlour childcare trust.

³ We highlight this concluding statement of the Special Rapporteur as particularly relevant to this submission: "For the effective implementation of the principle, its application must be ensured at the onset of any investigation where evidence of trafficking exists. In fact, non-punishment should be understood as a compulsory tool that is required to be applied by all domestic authorities and investigative, prosecutorial and judicial authorities – including the police, immigration and border officials, labour inspectorates and any other law enforcement agency or officials – when a situation triggering the application of non-punishment is first identified." (our emphasis)

5. The people we work with, including unaccompanied children and young people surviving such trafficked criminal exploitation, are deeply vulnerable on arrival in the UK. They are often under control methods such as debt bondage, psychological abuse of power, and isolated by their controllers in their country of exploitation, including here in Scotland. That is their reality. A trauma-skilled practice⁴ is imperative to building trust, enabling such survivors to better handle trauma suffered and to enable greater distance and transition away from those who control them so they can start making choices, exercise greater self-agency and participate on their own terms in society.

6. The Lord Advocate and, on her behalf, the Crown Office and Procurator Fiscal Service (COPFS) are the sole public prosecuting authority in Scotland, for criminal offences. In common with other public authorities, they have and rightly recognise as such, their duty to proactively identify trafficked exploitation survivors. That recognition is importantly, reflected in the main safeguard in Scotland against breaching the non-punishment principle; [the Lord Advocate's Instructions: Non-Prosecution of Victims of Human Trafficking \(the Instructions\)](#).

7. However, we are concerned about the implementation of the non-punishment principle in Scotland. In the interests of brevity and relevance we limit our comments here to two matters.

8. First, is to outline what we understand as the non-punishment principle (so, not only a non-prosecution principle). In particular as it relates in Scotland to those responsible for receiving and handling reports of crime and considering whether and on what basis to prosecute accused for criminal offences. We focus on the Lord Advocate and COPFS. We then offer evidence and information on how the non-punishment principle seems to be being applied in Scotland. We draw here in particular, from COPFS data, mainly concerning decisions made through the Instructions. This data covers the period after the V.C.L. and A.N. v. UK decision, as well as reaches back to April 2016.

Part 2: Our understanding of the anti-trafficking non-punishment principle

Working from first principles, we understand the non-punishment principle in the following way:

9. It is a fundamental survivor right⁵. That a victim of a serious crime of trafficked criminal exploitation is not to be penalised, prosecuted or punished for acts or offences for which they were compelled to commit or were a consequence of their trafficked criminal exploitation predicament. Fulfilment of that non-punishment principle is necessarily first of all about identifying survivors.

⁴ As the Special Rapporteur also noted: "Any decision should be taken only following a trafficking assessment by a trained and qualified person, and the assessment must be trauma-informed, given the important public interest in combatting trafficking and protecting its victims." (our emphasis)

⁵ [The importance of implementing the non-punishment provision \(2013\)](#), in particular where the previous UN Special Rapporteur on trafficking in persons, especially women and children described it as such: (a) "In the context of trafficking victims' rights, the right to non-punishment can be considered as 'the beating heart' of victim's human rights protection at the international, regional, and domestic level. It must be given high-level prominence since it relates to the unassailable legal right of the victim to be protected by law." (para. 9); (b) the [Council of Europe Trafficking Convention] Article 26 identifies non-punishment with the possibility of 'not imposing penalties' on trafficking victims to the extent that they have been compelled to engage in unlawful activities." ... "GRETA, the monitoring body of the Council of Europe, has endorsed the approach taken by the OSCE non-punishment paper, in its role of an OSCE Alliance Partner, confirming GRETA's clear position that non-punishment relates to a protection from liability, not just protection from being sentenced for the offence or otherwise punished". (para. 11); and (c) "The EU Trafficking Directive 2011/36/EU also contains an express binding provision on non-punishment in Article 8, according to which "Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence" of their victim status. The wording of this provision, whilst albeit limited to criminal activities, confirms that non-punishment involves non-liability and enables a victim to be protected from an early stage from being charged, prosecuted and convicted. Notably, and similarly to the Council of Europe Trafficking Convention's Article 26, there is no stated limit on the severity of the crime." (para. 12) (Our emphases)

Relatedly, early identification underscores the effective investigations to get at the actual traffickers. Subjecting survivors to criminal justice processes and worse still, conviction and imprisonment, deepens fear amongst vulnerable groups, and unintentionally strengthens the control of traffickers. That is the worst possible outcome: subjecting survivors in these ways unintentionally but in reality deepens the control of and emboldens the organised crime groups that orchestrate the exploitation.

10. Decisions to prosecute or to subject a person to any criminal justice processes that unduly impinge on liberty must be preceded by a timely and rigorous assessment by a qualified person strictly in accord with positive duties on anti-trafficking as well as the international legal definition of the crime, as in the UN Palermo Protocol, more of which on that will be said below. In the prosecutorial sphere we regard the prosecutor as that person, their decision to be informed by but not decided *de facto* for them by an external agency, such as the UK Home office competent authorities. For us, it is unacceptable to survivor rights that a likely or a presumed trafficked criminal exploitation survivor is held on remand in custody for months, a year or longer whilst a prosecutor waits for an external identification competent authority to decide whether they are such. Timely assessment through prosecutorial expertise is critical⁶ to prevent justice delayed is justice denied.

11. The two limbs of the non-punishment principle that stand it up are proactive survivor identification first. And, second to apply that proactivity through the objectivity of the core prosecutorial function itself. To arrive as swiftly as is reasonable at a strong presumption to both not prosecute, and also not to penalise by subjecting survivors to undue criminal justice processes. Our point is that the prosecuting authority from start to finish, should integrate - not separate or loosen - these limbs in the discharge of its prosecutorial function. Insofar as the prosecutor exercises this responsibility objectively, to the requisite high standard⁷, and with sensitivity to exploitation; then they are leading “end-to-end” on the application of the non-punishment principle as they do in other alleged crimes reported to it. Such a rigorous approach, bolsters the overarching integrity and human rights compliance of the prosecution system. It does so as parties to the proceedings notably the criminal defence and judiciary⁸, can better undertake their responsibilities with efficacy and correctness in law, if the quality of prosecution practice is of the requisite standard. So, it is pivotal.

⁶ Para.161 in ECtHR decision in V.C.L and A.N v UK (2021) on the need for a full and proper assessment (of at the very least, potential presumed trafficking status as a first step): “given that an individual’s status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so, any decision on whether or not to prosecute a potential victim of trafficking should – insofar as possible – only be taken once a trafficking assessment has been made by a qualified person. This is particularly important where children are concerned”.

⁷ So, as a necessary condition to such a high standard, is the rigorous application case-by-case to the commonly accepted international law definition of human trafficking as set out in the UN Palermo Protocol and Council of Europe Trafficking Convention, and as stipulated also through the ECtHR decision in V.C.L. and A.N. v UK (2021), at its para.160.

⁸ Please read paras.194-200 in the ECtHR decision in V.C.L. & A.N. v UK (2021). In particular, please read (a) “Nevertheless, while criminal defence lawyers should undoubtedly be alert to indicators of trafficking, their failure to recognise or act upon such indicators cannot by itself absolve the State and its agents of their responsibility to do so. As already noted, at least one of the applicants was publicly funded and the Court has held, albeit in the context of Article 6 § 3 (c) of the Convention, that the competent national authorities are required to intervene in the event of a manifest failure by legal aid counsel to provide effective representation”. (para.198); (b) “In the context of Article 4 of the Convention, it is the State which is under a positive obligation both to protect victims of trafficking and to investigate situations of potential trafficking and that positive obligation is triggered by the existence of circumstances giving rise to a credible suspicion that an individual has been trafficked and not by a complaint made by or on behalf of the potential victim (see paragraphs 152 and 155 above). The State cannot, therefore, rely on any failings by a legal representative or indeed by the failure of a defendant – especially a minor defendant – to tell the police or his legal representative that he was a victim of trafficking.” (para.199); and (c) “The Court has already found that the authorities’ failure to conduct a timely assessment of whether the applicants had in fact been trafficked amounted to a breach of their positive obligations under Article 4 of the Convention (see paragraphs 174 and 183 above). In the context of Article 6 of the Convention it considers that the lack of such an assessment prevented them from securing evidence which may have constituted a fundamental aspect of their defence.” (para.200).

12. As the non-punishment principle bears directly on ascertaining criminal responsibility, it follows that this principle must be applied *throughout* a prosecuting authority's criteria and practice when it tests whether such responsibility can be so ascertained of an accused. As an integral part of that endeavour, the prosecutor must decide whether an accused may be a survivor of trafficked criminal exploitation. The trafficking status consideration for us is inherent - and never supplementary or ancillary - to the prosecutorial function. And, especially when gathering and testing for evidence.

13. Essentially, we argue that a prosecuting authority bears a *unique relationship amongst public authorities or indeed anyone, to the non-punishment principle*. Whereas criminal defence solicitors and the judiciary are intrinsic to criminal justice processes, the prosecuting authority has, in our view a unique role and responsibility vis-à-vis the non-punishment principle. That is particularly where the accused is for offences or in circumstances that there is evidence that are frequently environments where trafficked criminal exploitation happens. As it is in such circumstances and places that the non-punishment principle is necessary to prevent undue harm and injustice. It is not to give immunity against penalties, but rather where the requisite evidence and public interest point to trafficked criminal exploitation, it can and should be deployed to lift survivors out from these grim situations or to prevent any penalisation in the first place. That is its very reason for being.

14. As described, the non-punishment principle is a survivor right tailored to the predicament of trafficked criminal exploitation. It should be rigorously engaged in situations "where offences in the same or similar circumstances have already been established as linked to human trafficking and exploitation"⁹. For example, one such situation is clandestine and industrial-scale cannabis production and supply, which in our experience to disproportionate levels affects vulnerable Vietnamese nationals, adults, young people and children, including in Scotland as well as in many other countries¹⁰.

15. We noted the Assistant Chief Constable Judi Heaton seems to agree, in a letter to the Justice Sub-committee on policing in February 2021 stating that from a "Police Scotland perspective, it is assessed that Vietnamese nationals working illegally in Scotland are subject to labour, sexual and criminal exploitation. ... As a result, Police Scotland is aware that crime groups are exploiting more Vietnamese nationals in terms of forced criminality in cannabis cultivations"¹¹. This recognises the

⁹ Para.23, [Lord Advocate's instructions for non-prosecution of victims of human trafficking \(January 2022\)](#)

¹⁰ There is a range of evidence, across research and investigative journalism, of the vulnerability of many Vietnamese nationals who are trafficked or smuggled (or both) from Vietnam and end up in western countries, such as the [Czech Republic \(pp81-93\)](#), [Poland \(pp71-82\)](#) and the [UK \(pp111-123\)](#) amongst others. Furthermore, much of this evidence details one common exploitation "destination", or simply where people end up, as in criminal production and supply of drugs, especially (i) cannabis ("cannabis farms") but also substance production such as (ii) methamphetamine ("crystal meths"). Both substances are produced typically clandestine, often to industrial-scale output, and both happen in [very unsafe environments](#). For example, please read: (a) [Detecting modern slavery on cannabis farms: the challenges of evidence \(2020\)](#); (b) [Trafficking for forced criminal activities and begging in Europe \(2014\)](#); (c) [In the dock \(2013\)](#); (d) [National strategic assessment of serious and organised crime \(2021\)](#) - pp22-25; (e) [Combating modern slavery experienced by Vietnamese nationals en route to, and within, the UK \(2017\)](#) - pp41-49; (f) [Vulnerability to human trafficking: Vietnam-Albania-Nigeria-UK \(2018\)](#); (g) [Trafficked to grow cannabis: Vietnamese migrants are being exploited in Britain \(2017\)](#); (h) [Confessions of a cannabis farmer: The Vietnamese getting UK high \(2019\)](#); (i) [Enslaved on a British cannabis farm: 'The plants were more valuable than my life' \(2019\)](#); and (j) [Concerns over criminalisation of young Vietnamese found in cannabis factories \(2021\)](#).

¹¹ Please read, Letter from [Police Scotland to Justice Sub-committee on policing \(February 2021\)](#). In particular, note also the paragraph that states: "Cannabis cultivations, in particular, pose significant threat, risk and harm to local communities. They are predominantly found within a single apartment in a block. The electricity meters are always bypassed and the resultant risk of fire, in itself, places the lives of people living in the block at significant danger. By way of example, in December 2020, nine people, including a number of Vietnamese Nationals, were charged following a police operation in Edinburgh and Falkirk which has resulted in cannabis plants with a potential value of at least £1 million being seized from private rented properties. This operation is ongoing and further seizures are anticipated."

established nexus between organised crime and production and supply of cannabis in Scotland, and that vulnerable Vietnamese nationals are frequently in the harmful, exploitative centre of that nexus, entrapped needing support. This acknowledgment of that nexus should move us closer in practice to a presumption of non-penalisation and identification of such vulnerable persons as presumed survivors, as opposed to routing into any criminal justice processes. To be clear, we are not arguing for immunity but we are saying that it is situations like these, which is why we have the non-punishment principle.

16. Honing in on prosecutors, however, the unique relationship between the Lord Advocate & COPFS and the non-punishment principle is clearest especially as it is the sole prosecuting authority in Scotland. It alone decides whether (or not) to argue to a judge that an accused, should be routed into criminal justice processes of varying restrictions. These processes carry significant impacts on those directly affected. They include (a) from remand into custody or on bail with limits on liberty often causing trauma¹²; (b) through to prosecution and trial proceedings; and onto (c) seeking a conviction from the judge, with sentencing and imprisonment. And then likely deportation if the accused is convicted and does not have leave to remain¹³. We must avoid such perverse results for survivors.

17. From that unique responsibility of deciding who is to be presented to a judge and potentially be subject to criminal justice processes including remand and prosecution, lies the risk that if trafficking status is not considered and directly applied from the outset by the prosecutor in the discharge of their prosecutorial function and to a requisite standard; then it may never be identified at all or in sufficient time. In so far as either are true in any one case, then harm ensues to a presumed survivor. It should be impermissible for a prosecuting authority to avail itself or postpone in policy or practice this material consideration in its prosecutorial function that is to answer the critical question: “may the accused actually be a survivor of trafficked criminal exploitation in terms of the offence alleged?”

18. Necessarily and logically this “trafficking status” question must be present throughout the prosecutor’s application of the non-punishment principle to its prosecutorial function. In particular, to its prosecution responsibilities to: (a) decide if any offence reported to it by the police has been committed; (b) whether there is credible, reliable and admissible evidence that the accused committed the offence; and (c) if so, whether it is in the public interest to prosecute the accused. It

¹² Please read for critical analysis of the inappropriateness and, specifically, adverse mental health impacts - including increased suicide risk for vulnerable detainees – of being remanded in custody for children and young people in Scotland (almost always in YOI Polmont). This remanded population of children and young people includes those focused on in this submission, and who are held (mainly) on drugs charges and who may also have been likely or presumed survivors of trafficked criminal exploitation: (a) [“Not cut out for prison”: Depriving children of their childhood \(2020\)](#); (b) [Statement on HMIPS inspection report into YOI Polmont from Children and Young People’s Commissioner Scotland \(2019\)](#) and (c) [Report on Expert Review of Provision of Mental Health Services at HMP YOI Polmont \(2019\)](#). Similarly, please read critical analysis of such impacts and risk on accused in adult prisons who are untried but held on remand in Scottish prisons, at [the scandal of remand in Scotland: a report by Howard League Scotland \(May 2021\)](#). Again, this population seems likely to include presumed survivors of trafficked criminal exploitation, most commonly persons held on drugs charges. Remand is a criminal justice process that can be very distressing and restrictive of liberties.

¹³In summary, the Nationality and Borders Act 2022 increases the risk and severity of the consequences for individuals who are convicted and sentenced to 12 months or more imprisonment. That includes, inter alia, offences at s4 and s5 of the Misuse of Drugs Act 1971. In so far as persons who are actually survivors of trafficked criminal exploitation are either not identified at all or in the requisite time e.g. before they are convicted and sentencing for drugs offences, or indeed for the new “unlawful arrival” offence inserted into s24 Immigration Act 1971, via s40 2022 Act. Then they are far likelier now to be classed as “foreign criminals” and a “threat to public order” for the purposes of being routed into the automatic deportation regime pursuant to s32 UK Borders Act 2007. Hence the importance of applying the non-punishment principle to the requisite high standard (including compliant to the core trafficking definition in the UN Palermo Protocol and Council of Europe Trafficking Convention), particularly through a timely assessment, all geared to fulfil the positive duties flowing from V.C.L and A.N v UK (2021) – all of this has radically increased in importance as a direct result of the new 2022 Act.

should rarely be if the offence stems from trafficked criminal exploitation, especially of children. All this applies to serious and minor offences too, as the Special Rapporteur reflects, on the scope of “offences” under the non-punishment principle, applying to criminal, civil, administrative and immigration offences¹⁴. In this she conveys the position in the OSCE principles¹⁵: “the duty of non-punishment applies to any offence so long as the necessary link with trafficking is established”.

19. As the ECtHR stated in *V.C.L. & A.N. v UK*, and as cited elsewhere in this submission, it bears repeating that “given that an individual’s status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so, any decision on whether or not to prosecute a potential victim of trafficking should – insofar as possible – only be taken once a trafficking assessment has been made by a qualified person. This is particularly important where children are concerned”. We regard that “qualified person” in respect of the non-punishment principle to a situation of possible trafficked criminal exploitation *as necessarily*, the prosecutor. They should quite properly take account of available and relevant external information and evidence, including certainly from any trafficking identification competent authority if that body has reached a decision, but it need not wait for it and certainly should not do so, if that external decision is taking an inordinate period of time to arrive; as is typically the case with the Home office and its NRM¹⁶.

20. A practice that prioritises receipt of decisions from an external trafficking identification agency, despite these often being chronically slow, is very likely albeit unintentionally, to be injurious to presumed survivors stuck in a traumatic limbo. That is particularly so if the final trafficking determination when it ultimately does come is a positive decision. The long-term trend in the Home office’s NRM is one of positive “conclusive grounds” determination rates as consistently high, just they takes a age. Rather, a prosecuting authority should seek to reach its own high-standard, holistic prosecution decision. What is *essential* is the prosecuting authority’s assessment and decision are done by a requisite qualified person. Critically, as also set down by ECtHR in *V.C.L. & A.N. v UK* and flagged it is as *necessary* that this assessment and decision inter alia, employs and is compliant with the criteria in the UN Palermo Protocol and the Council of Europe Trafficking Convention: “It follows that, as soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual suspected of having committed a criminal offence may have been trafficked or exploited, he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking. That assessment should be based on the criteria identified in the Palermo Protocol and the Anti-Trafficking Convention (namely that the person was subject to the act of recruitment, transportation, transfer, harbouring or receipt, by means of threat of force or other form of coercion, for the purpose of exploitation) having specific regard to the fact that the threat of force and/or coercion is not required where the individual is a child (see paragraphs 94 and 102 above)¹⁷. (My emphases)

21. In so far as that material consideration of the “trafficking status” question is omitted, side-lined or passed over to an external agency to answer, in terms of how the prosecutor discharges the core

¹⁴ Please read the Report of the Special Rapporteur on trafficking in persons, especially women and girls, to the UN Human Rights Council, on the Implementation of the non-punishment principle (2021), in particular it making clear that the “non-punishment principle applies to criminal, civil, administrative and immigration offences, regardless of the gravity or seriousness of the offence committed. Its effectiveness is undermined when application is limited to minor offences only. GRETA has repeatedly recommended that the non-punishment principle be applied to all offences that victims of trafficking were compelled to commit and has recommended the removal of exceptions.

¹⁵ Please read, especially para.57 in [the Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of human trafficking \(2013\)](#)

¹⁶ The average (median) waiting time in the NRM from referral to final decision was 448 days, as at the end of March 2022. Please read FN21 for more detail on NR decision outcomes.

¹⁷ Para. 160.

responsibilities inherent in the prosecutorial function in Scotland; that is inappropriate and we suspect not compatible with the non-punishment principle in international human rights law and in precise terms, neither to the fulfilment of the positive duties set out clearly in V.C.L. and A.N. v UK.

22. This gets to a concern we have shared with colleagues in the COPFS in recent months. And, the root that gave rise to our concern was actually recently conveyed publicly by the Solicitor-General for Scotland, Ruth Charteris QC, namely (i) “The means of determining whether a person is a victim is done by the Home Office through the National Referral Mechanism (NRM).” And (ii) “But for cases to be discontinued, the NRM must make a final determination in light of all the evidence.”¹⁸ (My emphases).

23. This seems to mean that in cases referred by prosecutors to its National Lead Prosecutor for Human Trafficking and Exploitation (the NLP), as to whether such should proceed or be discontinued – that these are not to be discontinued against an accused unless and until one of the UK Home office competent authorities have made their (separate) final determination on trafficking status. That implies that a decision to discontinue proceedings against an accused, relies on a “positive conclusive grounds” decision from one of the UK Home office competent authorities. Or at the very least, such a “positive” determination is a (very) necessary condition for a discontinuation decision.

24. This practice of waiting for an external agency that is not the prosecuting authority, to make a final trafficking status determination that then bears directly and, by strong implication, decisively to whether a discontinuation is permissible, is not in the current Instructions. We do not think it should be either, but this practice is different from the published Instructions. We share the Lord Advocate’s and the Solicitor-General’s recent, publicly expressed concerns as to the Home office’s competent authorities’ chronically slow trafficking status decisions. However, that makes it all the more imperative for us and survivors’ rights that prosecutors make the requisite high-standard decision themselves, otherwise despite the best of intentions, it the presumed survivors that suffer.

25. We recommend that the Instructions are revised to not only reiterate that it is for the NLP alone, to decide to proceed or discontinue with proceedings. But to also make it unambiguously clear that it should not be permissible for a prosecuting authority to rely solely on an external agency decision on trafficking status in order to be able to decide to proceed or discontinue. That is as the non-punishment principle bears uniquely on prosecuting authorities faced with persons who may also be survivors of trafficked criminal exploitation for offences of which they are accused. The expertise of prosecutors is recognised in the Instructions. It needs reinforcing with V.C.L and A.N v UK principles.

26. They should be strengthened to require the applied integration of the non-punishment principle and the trafficking status question throughout the prosecutorial function. The decision on trafficking status should be evidentially led by the prosecuting authority and flow out of the wider prosecutorial assessment and decision on whether to proceed or not with a case and on what basis. Our main call is that both decisions are led, formulated and made by the prosecutor as they discharge what they are expert at: the objective evidence gathering and analysis inherent in the prosecutorial function. They are best qualified, but they must apply the trafficking definition criteria. They should draw on available, relevant evidence from agencies, but not be limited to or be over-reliant on one external agency’s view. That is also necessary in practice in the UK: as the Home office’s competent authorities in its NRM are chronically slow in making final trafficking determinations, averaging well over a year. That is simply too long, and especially so for survivors of trafficked criminal exploitation.

Part 3: Some concerns, information and evidence on the non-punishment principle in practice

¹⁸ Please read, [Victims of human trafficking must not be prosecuted | Scotland | The Times](#)

27. Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015 (the 2015 Act) places an obligation on the Lord Advocate to make and publish instructions about the prosecution of a person who is, or appears to be, the victim of a human trafficking offence or an offence under Section 4 of the Act (covering slavery, servitude and forced or compulsory labour). The section further provides that the instructions must in particular include factors to be taken into account or steps to be taken by the prosecutor when deciding whether to prosecute a person who has been compelled to commit an offence and the compulsion is directly attributable to the person being, or appearing to be a victim of trafficking or slavery, servitude and forced or compulsory labour.

28. The current Instructions state, within its section on “Decision making” (paras. 24-27):

“24. Only once these enquires have been carried out and the status of the accused has been thoroughly and carefully explored, can a decision be made on whether it is in the public interest to prosecute the accused or not. Steps should be taken to ensure that all outstanding or ongoing cases against the same accused are assessed at one time to ensure there is consistency.

25. All cases of this nature must be reported to the National Lead Prosecutor for Human Trafficking and Exploitation for a final decision to be made.

26. The report to the National Lead Prosecutor should cover the issues raised above and should make an assessment of whether, on the balance of probabilities, the accused is a victim of human trafficking or exploitation. For child victims the report should also outline whether, on the balance of probabilities, the offence took place in the course of or as a consequence of human trafficking or exploitation. For adult victims the report should outline whether, on the balance of probabilities, the accused was compelled to commit the offence in question and that the compulsion was directly attributable to human trafficking and exploitation. The report should conclude with a recommendation as to whether proceedings should be discontinued, giving reasons for this decision.

27. The final decision regarding the proceedings will be taken by the National Lead for Human Trafficking and Exploitation.”

29. Based on data obtained from COPFS¹⁹, from 1 April 2016 to 31 March 2022, which is the period from which the Instructions have been in effect, there were 235 people referred into the NLP. These 235 persons were across 158 police reports to the COPFS. In *only* 19 (8%) of these 235 accused were proceedings either not raised or discontinued. These 235 accused comprised 204 adults and 31 children. That means that at least 12 children remained subject to proceedings or their cases were not discontinued by the NLP, at the point of decision recorded under these Instructions, as presented in this COPFS data. Many more adults too had their cases continued, including we suspect many Vietnamese nationals at least some of whom seem likely to have been in the grim and unsafe nexus predicament described above; as opposed to be in often “cannabis farm” solely of their own volition. It is hard to be definitive on this but we suspect at least some of these adults may have been prosecuted.

30. 215 (91%) of the 235 accused were indicted for drugs offences (mainly Section 4 {“production of a controlled drug”} Misuse of Drugs Act 1971{1971 Act}). We understand at least the majority – and perhaps more - of the 215 accused of drugs offences were Vietnamese nationals. That understanding draws upon data obtained from the Scottish Prison Service²⁰ (SPS) that showed from 1 April 2016 to

¹⁹ Please read the relevant appendices in the Enclosures to this submission.

²⁰ Please read the relevant appendices in the Enclosures to this submission.

30 June 2021, 117 adults (we understand in the SPS data that is those aged 22 or above) of Vietnamese nationality were held in custody in Scottish prisons (despite being requested, the data did not disaggregate by remand and conviction). Over the same period, 28 children (aged 16-17) and young people (18-21) were held – all on drugs charges – in custody at YOI Polmont. Of these 28, 10 were children and 18 were young people. 27 were on remand in custody at some point and 1 (a child) was convicted. This means that at least 145 (117+28) of the 235 accused were Vietnamese nationals, and this 145 group does not include those accused in the 1 July 2021 to 31 March 2022 period. However, it is clear the prevalence of accused on drugs charges persisted. From 1 April 2021 to 31 March 2022, there were 80 accused referred to the NLP across 57 police reports. 74 of the 80 accused were on Section 4 charges (“production of a controlled drug”) in the 1971 Act. Only 7 had matters discontinued.

31. We cannot be definitive on the following point, but it is made in good faith. We anticipate that the vast majority of the (at least) 117 adults of Vietnamese nationality that were held in Scottish prisons would most likely have been indicted on drugs offences under the 1971 Act. We base this not only on the predominance (215/235 or 91%) of accused charged on drugs offences as a proportion of those referred into the NLP. It also relies on the above SPS data, as well as the wider evidence cited earlier on the acute vulnerability and widespread sufferance by Vietnamese nationals to be subject to trafficked criminal exploitation in inherently unsafe “cannabis farms” across a range of jurisdictions. The nexus of likely trafficked criminal exploitation affecting vulnerable Vietnamese nationals has been recognised by Police Scotland, as cited earlier in this submission, in its letter to the Justice Subcommittee on policing.

32. We also base this upon our own operational experience, primarily working with unaccompanied children and young people in the SGS. For the period 1 April 2016 to 17 August 2022, the vast majority (at least 108 children or young people) of Vietnamese nationality that have been referred into the SGS having been identified by the service and then by the UK Home office competent authority as presumed trafficking survivors, were in criminal exploitation “cannabis farms”. This presumptive status is normally followed and confirmed (when, that is decisions are actually received) by a “positive conclusive grounds” decision.²¹ Returning to “the 108 group”, from April 2016 to September 2020 only 1 had been subject to criminal justice processes including remand albeit - thankfully - not prosecution. However, since October 2020, we have noted in the SGS that there are an additional 9 children or young people subject to criminal justice processes. Thankfully not to the point of prosecution and trial proceedings, but some were remanded in custody, which is not a suitable environment for vulnerable survivors and children and young people in particular. This plight is worsened by a chronically slow UK NRM and it is rendered perverse also, as the trend is most eventually get a positive trafficking decision.

33. We highlight all the foregoing as evidence of the safeguarding importance that every such unaccompanied child or young person - particularly from high-risk “trafficked criminal exploitation” nationalities like Vietnamese – must now always be referred into the SGS, or its soon-to-be successor, the Independent Child Trafficking Guardian at s11 2015 Act. Indeed the same needs are likely amongst some of the vulnerable adult accused too. If the other 30 children in the COPFS data had been so

²¹ Please read (a) [Modern slavery: National referral mechanism and Duty to notify statistics UK, end of year summary, 2021 \(March 2022\)](#), that for adults, 88% get positive reasonable grounds and 86% get positive conclusive grounds decisions, and for children, 92% get positive reasonable grounds and 96% get positive conclusive grounds decisions and (b) [Modern slavery: National referral mechanism and Duty to notify statistics UK, January to March 2022 \(May 2022\)](#), that for adults, 90% get positive reasonable grounds and 91% get positive conclusive grounds decisions, and for children, 89% get positive reasonable grounds and 94% get positive conclusive grounds decisions. This high recognition rate at both phases of the NRM process, is a trend over a number of years. Less positively, the latest reported average (median) waiting time from referral to final conclusive grounds decision is 448 days, for the January to March 2022 period, up from the equivalent figure of 440 days for October to December 2021. As with positive decision rates, so too with average waiting times, this is a trend of a delay-ridden NRM, which often leaves survivor in limbo and which carries distinct and often adverse risks for presumed survivors of trafficked criminal exploitation; as has been a theme in this submission.

referred to SGS, the independent guardian may have been able to effectively advocate that any or all of the other responsible agencies – Police Scotland, COPFS, criminal defence²² solicitors and others – would themselves have been likelier to identify the exploitation indicators. And, in being involved to help either prevent routing them into the criminal justice system at all or argue that any proceedings are discontinued by the NLP, and as swiftly as possible for survivors, in what may be complex matters.

34. We are unclear as to how many of the adults, who account for the bulk of accused in the COPFS data were prosecuted and further, how many were convicted and if so what were their sentences and were any deported. Relatedly, we understand that despite the hefty weight placed by the COPFS on receipt of a “positive conclusive grounds” NRM decision, that they do not centrally record or monitor them. Nor are “reasonable grounds” NRM decisions recorded either, rendering any central tracking of trafficking survivors impossible or very difficult to ascertain²³. That is a gap to be filled. We think it is imperative that all such information is part of an improved and adequate system in Scotland. That can help ensure not only the COPFS but the wider Scottish criminal justice sector are effectively fulfilling the non-punishment principle that they bear a unique relationship to and ideally, expertise applying. Given the grim and harmful circumstances that trafficked criminal exploitation survivors are routed into, such expertise is crucial to justice, via swift identification, to lift out of crime scenes and to give support. The non-punishment principle may be challenging in practice but, if complied with and to the requisite high standard it can be the “beating heart” of healthy anti-trafficking law, policy and practice.

35. We conclude with three overarching points:

(a) To emphasise that *this submission is offered in sincere good faith, constructively and with the best interest of survivors paramount*. We know that is common ground across those public and charitable organisations in Scotland, and beyond, who are trying to prevent and prosecute traffickers as well as to effectively identify and protect survivors, including those suffering trafficked criminal exploitation.

²² In so far as presumed or confirmed survivors of criminal trafficked exploitation who are accused and face prosecution or have been convicted - in the present matter especially for the production and / or supply of cannabis contrary to sections 4(2)(a) and 4(3)(b) of the Misuse of Drugs Act 1971 - we regard it at least arguable that the common law defence of coercion is *not* a sufficient safeguard against conviction or to enable consideration of circumstances that give rise to mitigation. This charge of inadequacy is *particularly in respect of children* who are presumed or confirmed survivors given, as children, they cannot be held to have consented to their exploitation. Relatedly, the “means” element in the international law definition of human trafficking (the UN “Palermo Protocol”) on what methods were deployed to establish or maintain control over that child, are irrelevant to whether they are a survivor or not. As the defence of coercion *necessarily* involves assessing questions of means or methods e.g. whether violence or the threat of such is *genuine and that the accused cannot avoid it were it to be attempted*, then that sets a threshold that should not even be presented to a child accused facing conviction or making a plea for mitigation. And, we would also suggest this defence of coercion *may be too narrow and set too high a threshold* for some adult survivors of criminal trafficked exploitation. Whereas the “means” by which an adult is controlled by the exploiters is relevant to the question: are they a survivor or not. As it is also bears upon whether the offence accused was a direct consequence of their criminal trafficked exploitation predicament. Even if both these are answered in the affirmative and still the prosecution proceeds and a conviction is made, this common law defence coercion may, we suggest be too narrow and hence arguably in *some* adult cases not be an adequate safeguard. That is precisely as it does not include other key “means” of control, such as psychological deception or abuse of a position of vulnerability. And, more specifically, there may not be a threat of genuine violence that could be avoided if it were attempted, but it may be that the accused facing conviction may have had their position of vulnerability abused, their loved ones may be under threat or subject to debt bondage, as may the accused be also, or they may have been held and kept as extremely socially isolated, with - arguably - no genuine way to get away. None of these methods of control are in the criteria for establishing the common law defence of coercion. That is not a criticism of the defence in itself but rather, to argue that it is not adequate in and of itself as a safeguard for *any* child, and *some* adult, survivors, of criminal trafficked exploitation. When the defence is assessed against the internationally accepted definition of human trafficking – the UN “Palermo Protocol” as mentioned elsewhere in this paper – it only encompasses one of the “means”, coercion, and not the other methods through which control is gained or maintained. For children, this “means” element should be irrelevant. We offer the above thoughts in good faith, including after considering *Queyen Van Pahn v. Her Majesty’s Advocate* [2018].

²³ Please read the relevant appendices in the Enclosures to this submission.

(b) Essentially, what we are really saying about Scotland's and, in particular, the COPFS' relationship with the non-punishment principle, is in the same vein of the wider fundamental point we have made for some time now: *that Scotland should take full responsibility for identification and decision making on trafficking status*²⁴. That same logic of Scotland taking full responsibility applies to Scottish ministers using their regulation powers at Section 9(8) of the 2015 Act, to institute its own Scottish competent authority so that it makes decisions on trafficking status – *and not distant and delay-ridden Home office competent authorities and NRM* - so it is a Scottish competent authority, closest to the parties and most of all the survivor, it is that body deciding who accesses the survivor rights in the 2015 Act.

(c) That would complete a wider *Scottish end-to-end anti-trafficking protection system*, consistent with and complementary to this submission in respect of COPFS' unique relationship and decision-making responsibilities vis-à-vis the non-punishment principle. Both measures, a Scottish end-to-end system and a COPFS policy and practice as advocated for in this submission, are coherent and complementary.

Graham O'Neill

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Enclosures:

- Appendices with COPFS data covering:
 - (a) Decisions under the Lord Advocate's Instructions on non-prosecution of victims of human trafficking for 1 April 2016-31 March 2022
 - (b) Convictions set aside for 1 April 2016-31 December 2020
 - (c) Prosecutions and convictions for trafficking offences for 1 April 2016-31 March 2021; and
 - (d) Recording and monitoring practice of NRM decisions for 1 April 2016-31 March 2022.

- Appendices with SPS data covering:
 - (a) Vietnamese children / young people in YOI Polmont for 1 April 2016 to 30 June 2021; and
 - (b) Vietnamese adults in Scottish prisons for 1 April 2016 to 30 June 2021.

- Appendix with Scottish Refugee Council's "Note on acutely vulnerable group of survivors of trafficked exploitation and refugee persecution, especially in Scotland" (April 2022)

²⁴ Please read, for illustration: (a) [Not in our name: a joint statement on the Borders Bill - Scottish Refugee Council](#) (2022); (b) [The Anti-Refugee Bill - an expert legal opinion - Scottish Refugee Council](#) (2021); and (c) [What could the anti-refugee bill mean for survivors of trafficking? - Scottish Refugee Council](#) (2022).

ANNEX C - COPFS information on the number of police reports that include charges against individuals (adults or children) who were potentially trafficking survivors and related information for January 2017 to December 2020



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SCOTLAND'S PROSECUTION SERVICE

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Graham O'Neill

Tel: 0300 020 3000
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By email:

Our ref: R-00228-21

8 February 2021

Dear Graham O'Neill,

I refer to your e-mail of 2 February 2021 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

Further to the attached Lord Advocate Instructions, for the years 2017/18, 2018/19, 2019/20 and 1 April to 31 December 2020, please list: (a) the number of Police Reports to the COPFS (as envisaged in para.10) that included charges against individuals (adults or children) who were potential trafficking survivors; (b) what offences were listed in those Police Reports; and (c) if known, what was the decision of the Lead National Prosecutor in respect of whether to proceed with or discontinue the prosecution (as envisaged in para., 27)?

[10. There is a duty on all public authorities to proactively identify any victim of human trafficking and exploitation. Prosecutors must be alert to the circumstances or situations where someone suspected of committing a criminal offence might also be a victim of human trafficking and exploitation. Prosecutors should consider all information provided in a Police Report and instruct further investigation where necessary.]

The Crown Office & Procurator Fiscal Service's case management database is a live, operating database. It is designed to meet our business needs in relation to the processing of criminal cases, and the information within it is structured accordingly. We do not have a separate statistical database and hold only operational data needed for business purposes. Please refer to ANNEX A below for the recorded information we do hold in relation to your request.

If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.



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Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely

H Hart
Response and Information Unit

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ANNEX A

Please note to provide you with a single source for ease of your reference the table we sent to you for your related request of 30 January 2021 also includes the information you requested in this FOI request.

Summary of reports to the COPFS National Lead Prosecutor (NLP) for Human Trafficking:

Year	Number of police reports containing charges against accused people reported to the NLP	Number of accused persons reported to the NLP	Number of accused persons reported to NLP against whom proceedings were not raised or were discontinued on the basis that the test in the Lord Advocate's instructions was satisfied ¹	Number of Adults	Number of Children	Nature of alleged offences ²
2016-17	11	20	2	18	2	14 accused of offences in terms of the Misuse of Drugs Act 1971 6 accused of offences in terms of section 11 of the Criminal Law (Consolidation) (Scotland) Act 1995
2017-18	12	15	2	14	1	13 accused of offences in terms of the Misuse of Drugs Act 1971 1 accused of Fraud 1 accused of offence in terms of section 24B(1) of the Immigration Act 1971



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2018-19	14	27	2	24	3	24 accused of offences in terms of the Misuse of Drugs Act 1971 3 accused of offences in terms of section 11 of the Criminal Law (Consolidation) (Scotland) Act 1995
2019-20	16	24	2	21	3	22 accused of offences in terms of the Misuse of Drugs Act 1971 2 accused of Theft
2020-21 (to 31 December 2020)	23	27	1	21	6	27 accused of offences in terms of the Misuse of Drugs Act 1971

¹ A decision to discontinue proceedings can be taken at any time during proceedings. Therefore, although the NLP has not discontinued proceedings against an accused person that may not be the final decision. Should further information become available, such as a Positive Conclusive Grounds Decision from the National Referral Mechanism, the NLP may decide to discontinue proceedings on receipt of that information.

² The data on nature of charges refers to one of the charges libelled against an accused person.



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ANNEX D - COPFS information on the number of police reports that include charges against individuals (adults or children) who were potentially trafficking survivors and related information for January 2017 to March 2021



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Our ref: R-01082-21

12 May 2021

Dear Graham O'Neill,

I refer to your e-mail of 28 April 2021 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

I request the same information as provided in attached response, but this time for the period 1 January to 31 March 2021.

The attachment you referred to was the COPFS response (R-00228-21) to your FOI request of 2 February 2021, i.e.:

Further to the attached Lord Advocate Instructions, for the years 2017/18, 2018/19, 2019/20 and 1 April to 31 December 2020, please list: (a) the number of Police Reports to the COPFS (as envisaged in para.10) that included charges against individuals (adults or children) who were potential trafficking survivors; (b) what offences were listed in those Police Reports; and (c) if known, what was the decision of the Lead National Prosecutor in respect of whether to proceed with or discontinue the prosecution (as envisaged in para., 27)?

[10. There is a duty on all public authorities to proactively identify any victim of human trafficking and exploitation. Prosecutors must be alert to the circumstances or situations where someone suspected of committing a criminal offence might also be a victim of human trafficking and exploitation. Prosecutors should consider all information provided in a Police Report and instruct further investigation where necessary.]

The Crown Office & Procurator Fiscal Service's case management database is a live, operating database. It is designed to meet our business needs in relation to the processing of criminal cases, and the information within it is structured accordingly. We do not have a separate statistical database and hold only operational data needed for business purposes.

Please refer to ANNEX A below for the recorded information we do hold in relation to your request.



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If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.

Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely

H Hart
Response and Information Unit

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ANNEX A

Human Trafficking Potential Victims Data 1 January 2021 – 31 March 2021

Year	Number of police reports containing charges against accused people reported to the NLP	Number of accused persons reported to the NLP	Number of accused persons reported to NLP against whom proceedings were not raised or were discontinued on the basis that the test in the Lord Advocate's instructions was satisfied ¹	Number of Adults	Number of Children	Nature of alleged offences ²
1 Jan 2021 – 31 March 2021	25	42	3	36	6	41 accused of offences in terms of the Misuse of Drugs Act 1971 1 accused of offences in terms of the Human Trafficking and Exploitation (Scotland) Act 2015

¹ A decision to discontinue proceedings can be taken at any time during proceedings. Therefore, although the NLP has not discontinued proceedings against an accused person that may not be the final decision. Should further information become available, such as a Positive Conclusive Grounds Decision from the National Referral Mechanism, the NLP may decide to discontinue proceedings on receipt of that information.

² The data on nature of charges refers to one of the charges libelled against an accused person.



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ANNEX E - COPFS - Decisions under the Lord Advocate's Instructions on non-prosecution of victims of human trafficking for 1 April 2016-31 March 2021



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Our ref: R-01183-21

8 June 2021

Dear Graham O'Neill,

I refer to your e-mail of 10 May 2021 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

Please provide, for each year since 1 April 2016 to date, how many prosecutions you have pursued in court, which included libelling the offences: a) s1 Human Trafficking and Exploitation (Scotland) Act 2015 (the 2015 Act); and/or b) s4 of the 2015 Act; and c) what was the outcome of the prosecutions in court (conviction or not, sentence). I'd be grateful if you can provide as much of the information requested above, as is possible.

We have provided information at ANNEX A. Please note that this information has been obtained from the Crown Office & Procurator Fiscal Service (COPFS) case management system which is an operational database primarily designed to assist in the management of live cases. Accordingly, this data may not be comparable with data obtained from other sources or other organisations.

If you are dissatisfied with the COPFS response to your FOI request you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.

Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.



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Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely

H Hart
Response and Information Unit



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Human Trafficking Prosecution Data

Prosecutions and Convictions:

Years	Number of accused persons prosecuted ¹ for offences in terms of s1 or s4 or aggravated in terms of s5 of the 2015 Act	Number of accused persons convicted of an offence in terms of s1 of the 2015 Act	Number of accused persons convicted of an offence in terms of s4 of the 2015 Act	Number of accused persons convicted of an offence aggravated in terms of s5 of the 2015 Act
2016/17	0	0	0	0
2017/18	13	1	2	0
2018/19	8	2	0	0
2019/20	22	0	0	0
2020/21	22	0	0	0

Sentencing:**2017/18**

The accused person convicted of an offence in terms of section 1 of the 2015 Act was sentenced to a Community Payback Order.

The two accused people convicted of offences in terms of section 4 of the 2015 Act were sentenced to terms of imprisonment and 'Trafficking and Exploitation Prevention Orders' were imposed.

2018/19

One of the accused people convicted of an offence in terms of section 1 of the 2015 Act was sentenced to a term of imprisonment and a 'Trafficking and Exploitation Prevention Order' was imposed.

One of the accused people convicted of an offence in terms of section 1 of the 2015 Act was sentenced to a Community Payback Order, a Compensation Order and a 'Trafficking and Exploitation Prevention Order' was imposed.

¹ Prosecuted means placed on petition, complaint or indictment. Many of these proceedings, particularly in respect of cases reported to COPFS in 2019/20 and 2020/21, are ongoing.



ANNEX F - COPFS Decisions under the Lord Advocate's Instructions on non-prosecution of victims of human trafficking for 1 April - 30 Sept 2021



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Response and Information Unit
Crown Office
25 Chambers Street
Edinburgh EH1 1LA

PRIVATE AND CONFIDENTIAL

Graham O'Neill

Tel: 0300 020 3000
Text Relay prefix: 18001

By email:

Graham.O'Neill@scottishrefugeecouncil.org.uk

Our ref: R-02592-21

15 October 2021

Dear Graham O'Neill,

I refer to your e-mail of 1 October 2021 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

Further to this helpful response, please provide the same data but this time for the period: 1 April to 30 September 2021?

The response you referred to is our 19 August 2021 FOI response (R-01991-21); the information you requested was:

(a) the number of Police Reports to the COPFS (as envisaged in para.10) that included charges against individuals (adults or children) who were potential trafficking survivors; (b) what offences were listed in those Police Reports; and (c) if known, what was the decision of the Lead National Prosecutor in respect of whether to proceed with or discontinue the prosecution

Please see ANNEX A below.

If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt. The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request. Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review. Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case-by-case basis.

Yours sincerely

H Hart
Information Governance Unit
COPFS



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ANNEX A

Year	Number of police reports containing charges against accused people reported to the NLP	Number of accused persons reported to the NLP	Number of accused persons reported to NLP against whom proceedings were not raised or were discontinued on the basis that the test in the Lord Advocate's instructions was satisfied ¹	Number of Adults	Number of Children	Nature of alleged offences ²
2021-22 (1/4/21 to 30/9/21)	26	39	5	34	5	36 accused of offences in terms of the Misuse of Drugs Act 1971, section 4 1 accused of offence in terms of the Human Trafficking and Exploitation (Scotland) Act 2015, section 1 1 accused of offence in terms of the Criminal Law (Consolidation) (Scotland) Act 1995, section 11 1 accused of offence in terms of the Civic Government (Scotland) Act 1982, section 52A

¹ A decision to discontinue proceedings can be taken at any time during proceedings. Therefore, although the NLP has not discontinued proceedings against an accused person that may not be the final decision. Should further information become available, such as a Positive Conclusive Grounds Decision from the National Referral Mechanism, the NLP may decide to discontinue proceedings on receipt of that information.

² The data on nature of charges refers to one of the charges labelled against an accused person.



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ANNEX G - COPFS - Convictions set aside for 1 April 2016-31 December 2020



SCOTLAND'S PROSECUTION SERVICE

PRIVATE AND CONFIDENTIAL

Graham O'Neill

By email:

oneill.graham2609@gmail.com

Response and Information Unit
Crown Office
25 Chambers Street
Edinburgh EH1 1LA

Tel: 0300 020 3000

Text Relay prefix: 18001

Our ref: R-00526-21

24 March 2021

Dear Graham O'Neill,

I refer to your e-mail of 3 March 2021 in which you requested the following information under the Freedom of Information (Scotland) Act 2002 (FOISA):

I request, for the years 2016/17, 2017/18, 2018/19, 2019/20 and 1 April to 31 December 2020, pursuant to para., 29 of the attached Instructions, please state of those cases that were not discontinued by the Lead National Prosecutor: (a) how many applications were made for convictions to be set aside and (b) how many convictions were set aside?

[Lord Advocate's Instructions for Prosecutors when considering Prosecution of Victims](#)

29. Where information comes to light after there has been a conviction and the assessment is that the case should be discontinued then the Appeals unit should be contacted and an application should be made to the Court under section 188 of the Criminal Procedure (Scotland) Act 1995 for the conviction to be set aside.

We have considered that your request relates to the number of convictions between 2016 and 31 December 2020 set aside by s188 minute and relating to only those convicted of offences where it has, subsequent to conviction, been assessed that the accused was the victim of human trafficking at the time.

I can confirm that of 16 cases none had any human trafficking connection, however, I have provided the annual figures for all other cases in case this is of any value to you:

2016: 3 lodged, 2 convictions set aside
2017: 4 lodged, 4 convictions set aside
2018: 3 lodged, 2 convictions set aside
2019: 4 lodged, 2 convictions set aside
2020: 2 lodged, 1 conviction set aside



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If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.

Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely

H Hart
Response and Information Unit

A Register of FOI responses is published on the [FOI page](#) on the COPFS website: www.copfs.gov.uk.



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ANNEX H - COPFS information on number of applications made for concessions to be set aside for the period 1 October 2021 to 31 March 2022



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Response and Information Unit
Crown Office
25 Chambers Street
Edinburgh EH1 1LA

PRIVATE AND CONFIDENTIAL

Graham O'Neill

Sent Via Email:
Graham.O'Neill@scottishrefugeecouncil.org.uk

Tel: 0300 020 3000
Text Relay prefix: 18001

Our ref: R-04533-22

26 April 2022

Dear Graham O'Neill

I refer to your e-mail of 04 April 2022 in which you requested the following:

Further to helpful attached, can I get the same information, but now for the period from 1 October 2021 to 31 March 2022?

The information alluded to relates to the below from a previous request R-03504-21:

- (a) the number of Police Reports to the COPFS (as envisaged in para.10) that included charges against individuals (adults or children) who were potential trafficking survivors;*
- (b) what offences were listed in those Police Reports; and (c) if known, what was the decision of the Lead National Prosecutor in respect of whether to proceed with or discontinue the prosecution.*

This request will be managed by The Crown Office and Procurator Fiscal Service (COPFS) under the Freedom of Information (Scotland) Act 2002.

Please refer to Annex A below for the information you have requested.

If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.

Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.



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Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely



Information Governance Unit
Policy & Engagement
COPFS



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Annex A

Year	Number of police reports containing charges against accused people reported to the NLP	Number of accused persons reported to the NLP	Number of accused persons reported to NLP against whom proceedings were not raised or were discontinued on the basis that the test in the Lord Advocate's instructions was satisfied*	Number of Adults	Number of Children	Nature of alleged offences**
1 October 2021 – 31 March 2022	31	41	2	36	5	<p>38 accused of an offence in terms of the Misuse of Drugs Act 1971, section 4</p> <p>1 accused of an offence in terms of the Misuse of Drugs Act 1971, section 5</p> <p>1 accused of an offence in terms of the Dogs (Protection of Livestock) Act 1953, section 1</p> <p>1 accused of a common law offence of Fraud</p>

*A decision to discontinue proceedings can be taken at any time during proceedings. Therefore, although the NLP has not discontinued proceedings against an accused person that may not be the final decision. Should further information become available, such as a Positive Conclusive Grounds Decision from the National Referral Mechanism, the NLP may decide to discontinue proceedings on receipt of that information.

**The data detailing the nature of charges refers to one of the charges labelled against an accused person.



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ANNEX I - COPFS information on number of police reports containing charges against people reported to the NLP



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Information Governance Unit
Crown Office
25 Chambers Street
Edinburgh EH1 1LA

PRIVATE AND CONFIDENTIAL

Graham O'Neill

Tel: 0300 020 3000
Text Relay prefix: 18001

By Email

Graham.O'Neill@scottishrefugeecouncil.org.uk

Our ref: R-08393-23

1 June 2023

Dear Graham O'Neill

I refer to your e-mail of 3 May 2023 in which you requested the following information:

For 2022/23

(a) the number of Police Reports to the COPFS (as envisaged in para.10) that included charges against individuals (adults or children) who were potential trafficking survivors;

(b) what offences were listed in those Police Reports; and

(c) if known, what was the decision of the Lead National Prosecutor in respect of whether to proceed with or discontinue the prosecution.

This request will be managed by The Crown Office and Procurator Fiscal Service under the Freedom of Information Act (Scotland) 2002 (FOISA).

As per previous FOI responses, we have provided the **"Number of police reports containing charges against accused people reported to the NLP"** as we do not hold information relating to individuals who were potential victims of trafficking.

Please see Annex which contains information relevant to your request.

If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.



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Under section 47(1) of FOISA if the COPFS position is unchanged following a review you have the right to appeal to the Scottish Information Commissioner within six months of receiving the review.

Under section 48(c) of FOISA that right of appeal might be limited as it can be subject to what information is requested. It is for the Scottish Information Commissioner to decide if he will accept your appeal on a case by case basis.

Yours sincerely

F Corrie
Information Governance Unit
Policy & Engagement
COPFS



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Year	Number of police reports containing charges against accused people reported to the NLP	Number of accused persons reported to the NLP	Number of accused persons reported to NLP against whom proceedings were not raised or were discontinued on the basis that the test in the Lord Advocate's instructions was satisfied*	Number of Adults	Number of Children	Nature of alleged offences**
1 st April 2022 – 31 March 2023	99	149	21	133	16	<p>Misuse of Drugs Act 1974 Section 4(1) Section 4(2)(a) Section 4(2)(b) Section 4(3)(b) Section 5(3) Section 23(4)</p> <p>Criminal Justice and licensing (S) Act 2010 Section 28(1) Section 38(1)</p> <p>Assault</p> <p>Criminal Law (Consolidation)(Scotland) Act 1995 Section 49(1)</p> <p>Proceeds of Crime Act 2002 Section 239(1)(a)</p> <p>Road Traffic Act 1988 Section 5A(1)</p> <p>Identity Documents Act 2010 Section 4(1)(a)</p>

Title

Published date (if required)

Page 1 of 2

*A decision to discontinue proceedings can be taken at any time during proceedings. Therefore, although the NLP has not discontinued proceedings against an accused person that may not be the final decision. Should further information become available, such as a Positive Conclusive Grounds Decision from the National Referral Mechanism, the NLP may decide to discontinue proceedings on receipt of that information. **The data detailing the nature of charges refers to one of the charges libelled against an accused person

ANNEX J - Emails exchanges between Graham O'Neill, Scottish Refugee Council and Paul Duffin, Scottish Prison Service

From: Paul Duffin
Sent: 28 October 2021 11:08
To: Graham O'Neill
Subject: RE: HQ20317 [SEC=OFFICIAL] OFFICIAL

Hi Graham

Sorry for the delay in responding. I am part time now and only work Monday & Tuesday. I will get this to you early next week. With time frame provided we have 117 Vietnamese adults in our care. I will have to carry out a manual file search for each individual to provide the data you request. This will take some time as each search averages 3.4 minutes. I am looking at over 6.5 hours.

Regards Paul

From: Graham O'Neill
Sent: 27 October 2021 00:13
To: Paul Duffin
Subject: Fwd: HQ20317 [SEC=OFFICIAL]

Hey Paul.

Hope all well. I just wondered if you can provide the requested information? Only as it is 2 months since original request. Please redirect me and the request itself, to relevant person in SPS, if it is not you. Hope to get the information.

Graham

Begin forwarded message:

From: Graham O'Neill
Date: 17 October 2021 at 23:20:40 BST
Subject: Fwd: HQ20317 [SEC=OFFICIAL]

Dear Paul. Hope all well. Just wondered if you can provide a response to this request. Thanks. Graham

Begin forwarded message:

From: "Graham O'Neill"
Date: 1 October 2021 at 00:10:29 BST
Subject: Fwd: HQ20317 [SEC=OFFICIAL]

Hey Paul. Hope all is well. I wondered if you (or a colleague) are able as yet, to provide the information requested? Thanks very much, Graham

Begin forwarded message:

From: "Graham O'Neill"
Date: 22 August 2021 at 23:59:36 BST
Subject: Fwd: HQ20317 [SEC=OFFICIAL]

Hey Paul.

Hope all well.

Further to your very helpful email below on 92 persons of Vietnamese nationality etc., I wondered if you could answer the following FOI request ...

Can you provide the numbers, for the period 1 April 2016 to 30 June 2021: of (a) persons of Vietnamese nationality held in (b) adult prisons in Scotland (c) whether on remand or convicted (d) whether charged or convicted under the Misuse of Drugs Act 1971 (e) length of sentences (if possible) and (f) age profile of the persons (again, if possible)?

Thanks a lot, Graham

Begin forwarded message:

From: Duffin Paul

Date: 5 April 2021 at 12:06:35 BST

Subject: RE: HQ20317 [SEC=OFFICIAL]

Hi Graham

This shows all Adult Vietnamese in custody between 1/4/2016 and 31/12/2020

The figure is (92)

Paul

From: Graham O'Neill

Sent: 31 March 2021 14:03

To: Duffin Paul

Subject: RE: HQ20317 [SEC=OFFICIAL]

Hey Paul, just a quick one to see if you had the figures, no bother if not and brill if so, thanks a lot, Graham

From: Duffin Paul

Sent: 29 March 2021 11:45

To: Graham O'Neill

Subject: RE: HQ20317 [SEC=OFFICIAL]

Hi Graham. I will have them shortly.

Paul

From: Graham O'Neill

Sent: 29 March 2021 11:36

To: Duffin Paul

Subject: Re: HQ20317 [SEC=OFFICIAL]

Hey Paul. Hope all is well. Just wondered if you were able to access the information requested; as in my email of 18 March. Thanks a lot, Graham

On 18 Mar 2021, at 12:16, Duffin Paul wrote:

Graham

Leave it with me.

Paul

From: Graham O'Neill
Sent: 18 March 2021 11:57
To: Duffin Paul
Subject: Re: HQ20317 [SEC=OFFICIAL]

Hey. No, was more after the stats., on Vietnamese nationals in adult prisons, over the same time period, and whether on remand or convicted, as well as how many of all these were for offences under the Misuse of Drugs Act 1971. On children under 16, I just assumed there wouldn't be any in YOIs, but if you can supply such information also, that would be much appreciated too. Thanks again. Graham

On 18 Mar 2021, at 11:53, Duffin Paul wrote:

Hi Graham

Are you referring to Vietnamese nationals under the age of 16?

Paul

From: Graham O'Neill
Sent: 18 March 2021 10:14
To: Duffin Paul
Subject: Re: HQ20317 [SEC=OFFICIAL]

Thanks very much, Paul. This is much appreciated.

I wondered if you can provide the same information but, this time, substitute adults in SPS prisons for children and young people. So still Vietnamese nationals, remand or conviction and for drugs offences under the 1971 Act. If easier to provide this without need to recourse to FOI, that'd be brill, but understand if you need to route it into FOI process. Just whichever is easier.

Thanks again,
Graham

Graham O'Neill
Policy Manager
Scottish Refugee Council

On 18 Mar 2021, at 09:06, Duffin Paul wrote:

Mr O'Neil

Please find attached our response to your request for information.

Regards

Paul Duffin
SPS HQ

ANNEX K - Scottish Prison Service Data on Vietnamese children/young people in YOI Polmont for 1 April 2016 to 30 June 2021

Our Ref **HQ20317**

Dear Graham O'Neil
Graham.O'Neill@scottishrefugeecouncil.org.uk

17 March 2021

Thank you for your request dated 3 March 2021 under the Freedom of Information (Scotland) Act 2002 (FOISA) for:

FOI1: For the period, 1 April 2016 to 31 December 2020, please specify how many persons of Vietnamese nationality were (a) held in a Young Offenders Institution (YOI); (b) the respective number of such nationals, by each YOI; (c) if possible, the respective numbers held by each YOI on the basis of either (i) remand or (ii) having been sentenced; (d) if possible, how many were aged 16-17 on entry to the YOI; and (e) if possible, how many were held in the YOI in relation to offences under the Misuse of Drugs Act 1971?

FOI1 response: Within the time frame requested by yourself, SPS had fourteen (14) Vietnamese nationals in our care. Our records that all fourteen were in custody on drug related offences with 13 being on remand and one being convicted. Our records show that 10 of these prisoners were between the ages of 16 and 17

We have now completed our search for the information you requested which is provided.

If you are unhappy with this response to your request, you may ask us to carry out an internal review, by writing to The Chief Executive, Calton House, 5 Redheughs Rigg, Edinburgh, EH12 9HW. Your request should explain why you wish a review to be carried out, and should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If you are not satisfied with the result of the review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

Yours sincerely

Paul Duffin
SPS HQ

ANNEX L - Scottish Prison Service data on Vietnamese adults in Scottish prisons for 1 April 2016 to 30 June 2021

Our Ref **HQ21105**

Dear Graham O'Neil
Graham.O'Neill@scottishrefugeecouncil.org.uk

18 August 2021

Thank you for your request dated 3 March 2021 under the Freedom of Information (Scotland) Act 2002 (FOISA) for:

FOI1: For the period, 1 January 2021 to 30 June 2021, please specify how many persons of Vietnamese nationality were (a) held in a Young Offenders Institution (YOI); (b) the respective number of such nationals, by each YOI; (c) if possible, the respective numbers held by each YOI on the basis of either (i) remand or (ii) having been sentenced; (d) if possible, how many were aged 16-17 on entry to the YOI; and (e) if possible, how many were held in the YOI in relation to offences under the Misuse of Drugs Act 1971?

FOI1 response: Within the time frame requested by yourself, SPS had fourteen (14) Vietnamese nationals in our care. Our records show that all fourteen were in custody on drug related offences with all 14 being on remand at some point during the time frame with 3 still on remand and 11 no longer in custody. All 14 were on remand in Polmont. Our records show that all 14 were between 18 and 21 years of age.

If you are unhappy with this response to your request, you may ask us to carry out an internal review, by writing to The Chief Executive, Calton House, 5 Redheughs Rigg, Edinburgh, EH12 9HW. Your request should explain why you wish a review to be carried out, and should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If you are not satisfied with the result of the review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

Yours sincerely

Paul Duffin
SPS HQ

ANNEX M - Scottish Refugee Council's Note on acutely vulnerable group of survivors of trafficked exploitation and refugee persecution in the UK and especially in Scotland, and the need for the Scottish Government to institute an "end to end" anti-trafficking protection system (a Scottish "competent authority")

1. Scottish Refugee Council, with others inside and outside parliaments and across the UK, have the gravest concerns about the Nationality and Borders Bill (the Bill). It is a seismic and adverse change in UK refugee policy and law. It [severs](#) the UK state's relationship with the Refugee Convention (the RC), substituting for it a [refugee punishment regime](#). It also [contorts](#) the UK's other key protection system, trafficking and modern slavery, by [reinserting immigration considerations](#) where they have no place. Left unchallenged, this affects law in Scotland, reversing progress made over a decade to prevent trafficked exploitation, disrupt and prosecute those who perpetrate it, and to support survivors to recover. That journey started with a Private Members Bill; [here](#), with its proposals including rights to support, encompassing accommodation, to be set out in primary legislation for trafficking survivors. Those proposals were given direct effect to by the Scottish Government; [here](#).
2. We fear that this Bill [will fail trafficking survivors](#) and, perversely, assist those who exploit and persecute. Such is the irresponsibility in effectively [closing off](#) refugee protection for those seeking, necessarily through irregular means, safety in the UK or for those who are trafficked here or suffer exploitation after arrival. We have set these out these concerns frequently, since the policy framework for the Bill was introduced in March 2021 - the New Plan for Immigration; as outlined [here](#) and [here](#). And, when the Bill entered the UK Parliament in June 2021; [here](#) with 80+ charities as well as with Just Right Scotland; [here](#).
3. We therefore welcomed the [Scottish Parliament's strong majority vote against this Bill](#) including withholding legislative consent to provisions on age assessment and trafficking information requirements ("[trauma notices](#)"), imposed on exploitation survivors. Our briefing to inform that debate and vote is [here](#). We further welcomed the Scottish Government's Legislative Consent Memorandum; [here](#), in relation to the Bill, reflecting as it did calls that we have made especially with Just Right Scotland, since last year; [here](#). We provided written evidence ([here: pp2-28 {pp2-6 for main briefing}](#)) and oral evidence ([here: pp2-21 {pp16-21 on the Bill}](#)) to the Social Justice and Social Security Committee to inform its consideration of the legislative consent issues raised by this proposed legislation, as well as wider Bill matters.
4. The main ask we have of Scottish Government, is to lead and implement a **Five-Point Plan** to prevent and mitigate as much as possible in devolved competence, against the worst effects of the Bill. That plan builds on the Scottish Government's clear positions; [here](#) and [here](#).

5. This [Five-Point Plan \(pp19-20\)](#) should be led by Scottish Ministers, to protect people against the worst of this legislation. In summary, that plan is **(a)** for the Scottish Parliament to reject the Bill and affirm clearly that consent is not given, which has been achieved, as [here](#); **(b)** to institute via [s9\(8\)&\(9\)](#) regulations, a Scottish anti-trafficking identification responsibility (a Scottish “competent authority”) to complete an 2 “end-to-end” trafficking protection system, spanning: (i) initial identification, (ii) accommodation and support and, critically, (iii) decisions on survivor status - with such a Scottish “competent authority” able to recommend to the Home Secretary recognition of the need (or where applicable) the [entitlement](#) for leave to remain; **(c)** to strengthen key devolved policies, in light of this Bill, such as [New Scots refugee integration](#), [Ending destitution together](#) and [Violence against women and girls](#); **(d)** that refugee and migrant inclusion is part of what Scottish public authorities should pay due regard to in any Scottish Human Rights Act; and **(e)** that the Lord Advocate gives Instructions that it is not in the public interest to prosecute persons for the Bill’s unlawful arrival offence, when such are refugees or exploitation survivors. This Bill closes off asylum protection to all that it marks out as “Group 2 refugees”, based on how they got to the UK and not their actual protection needs. That drastically increases the vulnerability of refugees, including to traffickers. We need a Scottish “end to end” system to protect them.

6. The vast majority of refugees, as the [RC recognises necessarily arrive unofficially to a territory](#). However, in one sweep, the Bill renders them “Group 2” refugees, routed into a likely [harmful, expensive and ineffective](#) refugee punishment regime. That regime is to comprise: (a) [criminalisation](#) of refugees or non-identified trafficked exploitation survivors, up to 4 years in prison; (b) persons temporarily [inadmissible \(pp10-11\)](#) to asylum pending, [ostensibly \(p11\)](#), removal; (c) put in an [accommodation holding centre \(pp2-5\)](#) or prison, separated from mainstream society, possibly indefinitely; (d) left there in the severest poverty of [£1 a day](#); (e) with [little chance \(p20\)](#) of Refugee leave and or a route to settlement; and (f) if not removable they may get [temporary status \(p18\)](#) of up to 2 ½ years, but that may be subject to [NRPF](#). For “Group 2” [refugees also surviving trafficking \(pp27-28\)](#), they also face [“trauma notices” \(pp2-6\)](#), under pain of damage to credibility. All this fate awaits Afghan, Syrian, Ukrainian and, indeed all seeking asylum who, necessarily, arrive in the UK irregularly. Indeed, in our experience, some of this regime is [already](#) here.

7. The rest of this note returns to focus on one of the most vulnerable of groups in society, namely those that have fled overlapping refugee persecution and trafficked exploitation, and who seek safety in the asylum and trafficking protection systems. The Bill carries particularly severe risks for such persons. Left unchallenged, this Bill will re-traumatise this already acutely vulnerable group. Drawing on new Home Office and Scottish Government data, this note first details the extent of this deeply vulnerable group. Second, it notes the patterns in [refugee](#) and [trafficking](#) survivor procedures with, especially, delayed decisions increasing in recent years rendering higher volumes of deeply vulnerable people in “limbo” predicaments including even when their trafficking survivor status had been confirmed. As the High Court in [KTI](#) decided and upheld by the Court of Appeal (see at para. 5{b}), such persons with asylum applications outstanding which included risks of re-trafficking should have been granted leave to remain, rather than

stuck in asylum “limbo”. Third, in narrowing these two asylum and trafficking protection routes, the Bill leaves thousands of this acutely vulnerable group at risk, including in Scotland. 3

8. Table 1 immediately below uses unpublished Home Office FOI data, amalgamating three FOIs datasets spanning 6 years 3 months, of persons in the trafficking National Referral Mechanism (the NRM) who had also applied for asylum in the UK. The total period is 1 January 2015 to 31 March 2021. In covering a significant length of time, it gives a sense of the numbers in this acutely vulnerable group, who stand to be so adversely affected by the restrictions in asylum and trafficking protection routes, as a result of the Bill. It also breakdowns how many of those referred into the Home Office NRM were confirmed as trafficking survivors and, separately, how many were recognised as refugees, in the UK and Scotland, respectively. Many of the recent applications, in the past few years, remain outstanding, often mired in Home Office delays.

Table 1: Persons entering the Home Office NRM and the asylum procedure from 1 January 2015 to 31 March 2021, by UK and Scotland

Period = 6years3months	NRM + asylum (UK)	Confirmed survivors	%	Recognised as refugees	%	NRM + asylum (Scotland) <i>(as part of UK totals)</i>	Confirmed survivors	%	Recognised as refugees	%
1/1/2015 to 31/12/2017	7,524	3,281	44%	3,237	43%	295	130	44%	130	44%
1/1/2018 to 30/6/2020	11,187	1,266	11%	2,220	20%	585	110	19%	112	19%
1/7/2020 to 31/3/2021	3,386	32	1%	1,185	35%	174	5	3%	32	18%
Totals	= 22,097	= 4,579	21%	= 6,642	30%	= 1,054	= 245	23%	= 274	26%

9. Returning to the call for Scottish Government, as part of the recommended **Five-Point Plan**. And, in particular the call to institute a Scottish “end to end” anti-trafficking protection system. In Table 2 immediately below we highlight the extensive placement of trafficking survivors in Scotland, into Home Office asylum accommodation. We estimate that approximately 99% of trafficking survivors entitled to ss 9-10 Human Trafficking and Exploitation (Scotland) Act 2015 since 1 April 2016 who also applied for asylum, have been mainly or only housed in asylum accommodation. We also understand that financial provision, after the up-to 90 days support expires under [Scottish trafficking regulations](#) and if the person is (one of many) awaiting a final conclusive grounds decision from the NRM, then unless a needs assessment determines otherwise, they will only get asylum support. That means £39.68 per

week if in self-catering asylum housing or £8 per week if in institutional “ex-hotel” accommodation; despite being in scope of Scottish trafficking support entitlements under ss 9-10. This table draws upon a [Scottish Government response to a PQ](#) and [referrals to Police Scotland](#) data in the Home Office NRM. The Bill threatens [inappropriate institutional accommodation](#) as the norm for “Group 2” refugees, and that may well include this trafficking/asylum group in Scotland. We fear that neither 4 the asylum procedure nor appropriate asylum accommodation, will be an option for this acutely vulnerable group, if the Bill passes. We think that strengthens our call for the Scottish Government to institute an “end to end” anti-trafficking protection system, via s9(8)&(9) regulations.

Table 2: Persons entitled to ss9-10 of Human Trafficking and Exploitation (Scotland) Act 2015 and in Home Office asylum accommodation

Year	Persons entitled to ss9-10 Scottish trafficking support, <i>but</i> in Home Office asylum accommodation	Persons <i>initially</i> in ss9-10 Scottish trafficking support before <i>being moved to</i> Home Office asylum accommodation ¹	Persons in Home Office NRM where Scotland is location of exploitation (“ <i>Scottish trafficking cohort</i> ”) ²	Persons in trafficking/asylum group <i>as proportion of overall “Scottish trafficking cohort”,</i> in Home Office NRM
2016/2017	123	34	150	82%
2017/2018	138	23	207	67%
2018/2019	181	40	228	79%
2019/2020	333	81	512	65%
2020/2021	297	37	387	77%
2021/2022 ³	314	63	419	75%
	Total = 1,386		Total = 1,903	Total % = 73%

¹ These numbers in this column are part of the total in the preceding column not additional or separate to it.

² Calendar years: 2016, 2017, 2018, 2019, 2020, 2021 at End of year summaries, published in March of following year, as at [here](#).

³ Period: 1 April to 31 December 2021

10. These figures indicate that the vast majority (1,386 or 73%) of all trafficking survivors (1,903) in Scotland since 1 April 2016 to 31 December 2021 are also seeking refugee protection. Furthermore, it seems likely that nearly all of this trafficking/asylum group are in Home Office asylum accommodation under s95 Immigration and Asylum Act 1999, and not in Scottish Government-funded housing pursuant to the trafficking support entitlements under ss9-10 Human Trafficking and Exploitation (Scotland) Act 2015. We

base that on the fact that there were 1,386 persons entitled to ss-9-10 Scottish trafficking support but who were actually in Home Office asylum accommodation. That 1,386 number approximates to the Table 1 estimate of the “Scottish” trafficking/asylum group of 1,054 (to 31 March 2021) + 314 (1 April to 31 December 2021) = 1,368. Given the Bill will weaken access to protection for most refugees and many trafficking survivors, there is a clear case for a Scottish “end-to-end” anti-trafficking protection system, as in devolved competences, to be there to help the many this Bill will leave behind.

Graham O’Neill,
Policy Manager,
Scottish Refugee Council

ANNEX N - Scottish Refugee Council - Opinion piece for Scotland to act to protect our human trafficking laws and survivors from the Illegal Migration Bill – 27 March 2023

This week, the Home Secretary railroaded her Illegal Migration Bill (the Bill) through the Westminster House of Commons. This proposed law seeks to [crush](#) life-saving asylum and trafficking protections, in a shocking act of legislative fiat. This Bill will cost lives.

What is proposed means more refugees fleeing oppression will die at sea, as there are no safe routes. More slavery victims will be in sealed vans, at risk of suffocating in trafficking journeys. If people do get here, this Bill punishes survivors who will no longer have any rights. This makes it a traffickers' charter, to be used by exploiters to control their victims.

The horror of all this is starting to be comprehended in how the Bill effectively [abolishes](#) the right to seek asylum in the UK. It is less understood that it also strips away any protection for survivors of trafficking and slavery. In Scotland, over 90% of the [2,400 survivors](#) since 2016 are trafficked here. Around two-thirds of them are also refugees, reflecting the vulnerabilities and severe trauma in this group. The consequences of this Bill for them are [devastating](#).

For example, it abandons women raped daily in trafficked sexual exploitation or young people locked into deeply unsafe cannabis production by organised crime groups. If survivors arrived "irregularly" without immigration permission, they will not be entitled to any rights of help and support in legislation across the UK, including in our [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) (the 2015 Act).

There is no evidence to justify such arbitrary provisions. From 2018 to 2022, [only 7%](#) of the 83,000 "small boat" arrivals to the UK were referred into the modern slavery system.

Rather than being identified as survivors in Scotland - by police officers, charities or frontline Home office workers - under this Bill these same survivors are to be immediately rendered immigration offenders. They face detention, possibly indefinitely. They will be threatened with forcible removal including to Rwanda. The rotten core of the Bill is that the Home secretary puts herself under a legal duty to remove all arriving via unofficial means. It is immaterial in this law if they were trafficked. The UK state is compelling itself to punish survivors who, like refugees, are often the most vulnerable people in the world.

Irregular arrival is inherent to the exploitative control in human trafficking. The UK government know this, especially via its "National Referral Mechanism" (NRM); the discredited, [delay-riven](#) identification system for trafficking survivors. That fact exposes the sweeping removal through this Bill of life-saving and restorative rights for survivors, as a callous harm inflicted by Ministers from their plush offices in Whitehall. Shame on them.

For those in positions of power in Scotland who, like us care and despise this Bill, it is self-evidently inadequate to merely correspond our condemnation. We have our

own trafficking law, with survivor rights reflecting this as serious crime and abuse. It is not immigration. We must finish the job started with our 2015 Act, using the powers in it for a Scottish survivor identification and decision system. “End to end” anti-trafficking protection. No more NRM.

We need to protect the 2015 Act. Not only is that right. In keeping survivors safe we keep communities safer too. In that it will help weaken the grip of organised crime in our towns and cities. However, we must also protect our law for reasons of legality. To not do so risks Scottish ministers and public bodies like Police Scotland, being dragged into a quagmire of this Bill’s unlawfulness under the European Convention of Human Rights (the ECHR).

The Bill cuts into the ECHR’s prohibition against slavery and human trafficking. It brazenly ignores the non-negotiable [positive obligations](#) on the UK state, including devolved institutions to have legislation against slavery and human trafficking, and that such laws must also enable investigation of these crimes and the identification and protection of all survivors. We have our 2015 Act to do this. The rest of the UK has similar laws. Left unchallenged, the protection these laws give are bulldozed by this Bill, leaving survivors bereft with no safety.

This is a brutal and unlawful attempt to end trafficking protection. Survivors need more than words, though. They need deeds. Scottish ministers must institute an “end to end” anti-trafficking system and be ready to challenge UK ministers in the courts if need be. How else can survivors stand any chance of accessing their rights? These protections wither through inaction. To be safe from traffickers and this Bill plus to uphold our ECHR obligations, we must act. If not, then the uncomfortable truth is that we too will be failing survivors.

Graham O'Neill
Policy Manager
Scottish Refugee Council
27 March 2023

ANNEX O - Legal Opinion on the Legal Implications of the Illegal Migration Bill in Scotland



Briefing Note

Legal Opinion on the Legal Implications of the Illegal Migration Bill in Scotland Summary of Key Points

The following is a summary of the key points of a legal opinion on the [Illegal Migration Bill](#) (“the Bill”) in Scotland, delivered by Kay Springham KC, instructed by JustRight Scotland (JRS), the Scottish Refugee Council (SRC) and the Children and Young People’s Commissioner Scotland in June 2023. The legal opinion was funded by a contribution from the Strategic Legal Fund, managed by the Immigration Law Practitioners’ Association.

We are opposed to the Bill. JRS and SRC have joined together and are working in coalition with other migration sector organisations in Scotland and beyond, to engage with the legislative process as this Bill proceeds through Parliament. The Commissioner’s office is working with other children’s commissioners across the UK to influence the content of the Bill in both the House of Commons and House of Lords.

The legal opinion will help us understand the impact of the Bill on Scottish Ministers, public authorities, and their responsibilities under devolved powers. We will also share it with civil society organisations in Scotland and the UK so they can actively participate in the legislative and implementation processes if the Bill becomes law.

Since the Bill will have retrospective effect – because it will impact on the lives and rights of people who have already arrived in the UK on or after 7th March 2023 – a key issue for us is the urgent need to identify and recommend steps that can be taken to mitigate against the significant harm that will result from implementation of the Bill.

About the Illegal Migration Bill

The Bill, which is currently at the report stage in the House of Lords, proposes significant changes to the UK’s asylum system, removal powers, detention powers, corporate parenting powers, the support and assistance to victims of trafficking/modern slavery, leave to remain and British citizenship, and the relationship with the European Court of Human Rights.

The Bill creates a new category of people who either entered the UK, on or after 7 March 2023, ‘illegally’ or with leave to enter obtained through deception. Clause 2 prohibits people who meet this criteria from making a claim for asylum or any immigration application and creates a duty on Home Office staff to seek to remove these people, with very limited exceptions. Trafficking or slavery victims covered by Clause 2 will have their entitlement to support, including the recovery and reflection period, revoked.

The UN High Commission on Refugees has stated that this clause, if enacted would “breach the UK’s obligations under the Refugee Convention” and “extinguishes the right of refugees to be recognized and protected in the UK, for all but a few.”²⁵

There has been no public consultation prior to the introduction of this Bill, nor has an economic impact assessment been published, while the equality impact assessment only released after the Bill had completed its stages in the House of Commons.

Legal opinion: Summary of Key Points

Immigration is a matter reserved to the Westminster Parliament. However, the Bill makes direct and serious intrusions into devolved powers exercised by Scottish Ministers and Scottish public authorities.

- **It ends Scottish Ministers powers to support survivors of trafficking in Scotland:**
 - For example, Clause 23 proposes to dis-apply the duties and powers Scottish Ministers have under the Human Trafficking & Exploitation (Scotland) Act 2015 (“the 2015 Act”) ²⁶ to provide support and assistance to adult victims of trafficking who meet the Bill’s Clause 2 removal criteria, subject to one very limited exception.
- **It creates new powers for the Home Office to accommodate children in Scotland:**
 - Clause 19 of the Bill gives the Home Office the power to make regulations to directly accommodate unaccompanied migrant children in Scotland. The Home Office will also be able to direct when a local authority in Scotland starts to look after a child (dictating when the relevant sections of the Children (Scotland) Act 1995 apply), and when it ceases looking after a child so that the child can be transferred into the care of the Home Office.
- **Legislative consent should have been sought from the Scottish Parliament:**

²⁵ 1 UNHCR Legal Observations on the Illegal Migration Bill, 2 May 2023, available here: <https://www.unhcr.org/uk/media/unhcr-legal-observations-illegal-migration-bill-02-may-2023>

²⁶ Sections 9(1), 9(3) and 10 of the 2015 Act

- The impact of Clause 23 (trafficking) “obviously relate[s] to devolved matters; it would be hard to think of a clearer example”. Counsel has no doubt that the Scottish Parliament should have been asked to consider passing a legislative consent motion.
- Scottish Parliament should also have been asked to consider passing a legislative consent motion in relation to Clause 19.
- **However, the Bill's validity is unaffected by the failure to seek legislative consent.**
- **If Scottish Ministers cease to provide support and assistance to victims of trafficking in Scotland, that action will breach Scotland’s international human rights legal obligations.**
 - Specifically, a blanket ban on providing support and assistance to survivors of trafficking would be unlawfully discriminatory and would breach Article 4 of the European Convention on Human Rights and Article 12 of the European Convention on Action against Trafficking in Human Beings.
- **Local authorities must continue to fulfil their obligations under the Children (Scotland) Act 1995, even if directed by the Home Office to transfer children into Home Office accommodation. This would include an assessment of whether changing accommodation would “safeguard and promote” the child’s welfare which remains a “paramount concern”.**
- It is not at all clear how Scottish local authorities would ensure the welfare of children accommodated by the Home Office will be secured, but they **will not be relieved of those duties even if Clause 19 is enacted.**
- It is harder to assess how this clause would operate in practice, but the differential treatment of migrant children in care transferred to Home Office accommodation as compared to other children in care not so transferred is potentially unlawful discriminatory and a breach of international human rights obligations.

Recommendations and Conclusions

In summary, the impact of the Illegal Migration Bill on devolved competencies in Scotland is to create powers for the Home Office that will pose challenges for Scottish Ministers and for other Scottish public authorities, including Scottish local authorities.

The Bill, if enacted, will cut across our current adult protection and child protection frameworks, potentially forcing Scottish Ministers and Scottish public authorities to differentiate in the protection and support that they provide to child and adult victims of abuse, trauma and trafficking. If Scottish Ministers and Scottish public authorities fail to maintain equal treatment for child and adult victims, regardless of whether or not they are migrants and subject to the Clause 2 criteria, they risk breaching international

human rights obligations, as well as engaging in unlawfully discriminatory action under existing domestic legislation (for example, the Children (Scotland) Act 1995).

For this reason, we are pressing for an urgent, concrete and commensurate response from Scottish Ministers and Scottish public authorities to the grave harm this Bill creates. That response must comprise tangible actions the benefits of which will actually be felt by those being assailed by this Bill.

We collectively stress that inaction is unacceptable, as that means in Scotland, people needing refugee or trafficking protection are entirely abandoned. We need the First Minister to lead from the front, and act to protect some of the most vulnerable people in the world, in Scotland by harnessing devolved law, policy and practice. We will play our part, but that must be within a public and third sector plan led by government, rather than charities and communities left carrying all the risk and human carnage that otherwise will ensue from this bill. We stand ready to help. We are also calling on our civil society and public authority partners across the UK to work with us to identify and recommend steps that can be taken in mitigation against the significant harm that will result from implementation of this cruel, unnecessary and unlawful Bill.

Contact Us

To discuss our legal opinion or any aspect of this work, please contact:

JustRight Scotland: press@justrightscotland.org.uk

Scottish Refugee Council: Gillian.Furmage@scottishrefugeecouncil.org.uk

Children and Young People's Commissioner Scotland:

ezmie.mccutcheon@cypcs.org.uk

ANNEX P - Latest COPFS data showing trends of higher volumes of referrals in the period April to September 2023 (inclusive)

From: Graham O'Neill

Sent: 26 October 2023 12:47

To: Wixted S (Seán)

Subject: RE: Written evidence to the Criminal Justice Committee requesting scrutiny of the Lord Advocate's discharge of the anti-trafficking non-punishment principle

Importance: High

For completeness, here is the latest FOI data from COPFS.

It reinforces the trends as described in the embedded correspondence below in terms of higher volumes of referrals (since April 2022) with 76 folk (across 56 police reports) referred in the April to September 2023 period (inclusive).

Means in the 7 ½ years of the data period of April 2016 to September 2023 (inclusive), there were 460 people referred into the National Lead Prosecutor, with only 48 (10%) having the decisions not to raise proceedings or cases discontinued at that NLP referral stage.

Please find attached FOI response.

Hopefully, the committee will be able to look further into this, which we recognise – as stated – is a difficult one for the Lord Advocate, given the delays endemic in the Home Office National Referral Mechanism (as described in embedded correspondence).

We do think these difficulties can be overcome.

Graham O'Neill

Policy Manager

Scottish Refugee Council

26 October 2023



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Information Governance Unit
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Graham O'Neill

Tel: 0300 020 3000

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24 October 2023

Dear Graham O'Neill

I refer to your e-mail of 11 October 2023 in which you requested the following information:

for the period 1 April 2023 to 30 September 2023

- (a) the number of Police Reports to the COPFS (as envisaged in para.10) that included charges against individuals (adults or children) who were potential trafficking survivors;*
- (b) what offences were listed in those Police Reports; and*
- (c) if known, what was the decision of the Lead National Prosecutor in respect of whether to proceed with or discontinue the prosecution*

This request will be managed by The Crown Office and Procurator Fiscal Service under the Freedom of Information Act (Scotland) 2002 (FOISA).

As per previous FOI responses, we have provided the "Number of police reports containing charges against accused people reported to the NLP" as we do not hold information relating to individuals who were potential victims of trafficking.

Please see Annex which contains information relevant to your request.

If you are dissatisfied with the COPFS response to your FOI request, you have the right to ask us to review it. Your review request should be made within 40 working days of receipt of this letter; please e-mail foi@copfs.gov.uk and we will reply within 20 working days of receipt.

The review will be undertaken by a member of the COPFS FOI unit who was not involved in the original consideration of your request.



www.copfs.gov.uk



Year	Number of police reports containing charges against accused people reported to the NLP	Number of accused persons reported to the NLP	Number of accused persons reported to NLP against whom proceedings were not raised or were discontinued on the basis that the test in the Lord Advocate's instructions was satisfied ¹	Number of Adults	Number of Children	Nature of alleged offences ²
1 st April 2023 to 30 th September 2023	54	76	8	70	6	<p>Misuse of Drugs Act 1974 Section 4(1) Section 4(2)(a) Section 4(2)(b) Section 4(3)(b) Section 5(2) Section 5(3)</p> <p>Human Trafficking & Exploitation (S) Act 2015 Section 1(1)</p> <p>Customs & Excise Management Act 1979 Section 170(1)(b)</p> <p>Criminal Justice and licensing (S) Act 2010 Section 38(1)</p> <p>Criminal Law (Consolidation)(S) Act 1995 Section 47(1)</p>

¹ A decision to discontinue proceedings can be taken at any time during proceedings. Therefore, although the NLP has not discontinued proceedings against an accused person that may not be the final decision. Should further information become available, such as a Positive Conclusive Grounds Decision from the National Referral Mechanism, the NLP may decide to discontinue proceedings on receipt of that information.

² The data on nature of charges refers to one of the charges labelled against an accused person.

						<p>Section 49(1)</p> <p>Police and Fire Reform (S) Act 2012 Section 90(2)(a)</p> <p>Road Traffic Act 1988 Section 87(1) Section 143(1) and (3) Section 103(1)(b)</p> <p>Attempted Murder</p> <p>Assault to danger of life</p> <p>Attempt to pervert the course of justice</p> <p>Fraud</p> <p>Theft</p>
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