

Updated January 2018

Introduction

This guide is intended to assist lawyers and professionals to recognise children who may be the victims of child criminal exploitation (CCE), with a focus on the widespread problem of criminal exploitation of children by county lines gangs.

The guide will provide:

- information about how gangs recruit, groom and exploit children;
- practical guidance on the signs that should warn lawyers that their client might be a victim of CCE by county lines gangs;
- an overview of the statutory defence under section 45 of the Modern Slavery Act 2015 for offences committed as a direct result of exploitation and the relevant Crown Prosecution Service guidance;
- advice on defence lawyers' safeguarding duties to clients whom they suspect might be the victim of CCE;
- advice on the practical steps that should be taken if a defence lawyer suspects that their client is a victim of CCE.

'County lines' is the police term for urban gangs supplying drugs, mainly heroin and crack cocaine, to suburban areas, market and coastal towns.¹ Gangs typically use children to deliver drugs around the country. County lines is one of the main generators of gang-related exploitation of children.²

Child trafficking is defined as the 'recruitment, transportation, transfer, harbouring or receipt' of a child for the purpose of exploitation.³

The Modern Slavery Act 2015 states 'A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited'.⁴

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Key Points

- Child criminal exploitation (CCE) is a growing issue where gangs target vulnerable children to get them to carry out criminal activity.
- Children who have been exploited and/or trafficked should be treated as victims rather than suspects.
- Lawyers should be alert to the factors that may raise concerns about children who may be victims of CCE.

¹ Home Office (2017) *Criminal Exploitation of children and vulnerable adults: County Lines guidance*

² Detective Inspector Brittany Clarke, Trident, Metropolitan Police at Westminster Briefing on 29 June 2017

³ Article 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

⁴ Modern Slavery Act 2015, Section 2

It is irrelevant whether the victim consents to travelling and the travelling can be between or *within* any country. The Act makes it an offence to hold a person in a position of slavery or to require a person to perform servitude forced or compulsory labour.⁵

County lines gangs and child victims

County line gangs get children to deliver drugs around the country by using intimidation, debt bondage, violence and/or grooming.⁶ Gangs utilise children because they are cheaper, more easily controlled and less likely to get picked up by the police. The fact that children are sent to different locations within the United Kingdom to carry out tasks for the gangs means that this type of CCE falls within the legal definition of trafficking in the Modern Slavery Act 2015 (see below). Where gangs have targeted a particular area, they typically use a local property, generally belonging to a vulnerable person, as a base for their activities (this is known as 'cuckooing').⁷

Targeting of vulnerable children

Gangs specifically target vulnerable children and those who do not have support networks. Children with special educational needs, mental health problems or disabilities are known to be purposely targeted. Gangs also look for emotional vulnerability, such as children experiencing problems at home, absent/busy parents or bereavement. The gangs seek to fill that emotional gap for the child and become 'their family'.⁸

Male children are most commonly exploited but female children are also used and exploited by gangs. It is thought that 15-16 years is the most common age for children to be exploited by these gangs but there are reports of children below the age of 11 years being used.⁹ Gangs are increasingly looking to recruit 'clean skins' i.e. children with no previous criminal record who are unlikely to be stopped by the police, including children from white, middle class backgrounds and from further afield.

Looked after children

Gangs target looked after children, particularly those in residential children's homes and children in pupil referral units. Children who have been placed out of their home area are particularly vulnerable.

⁵ Modern Slavery Act 2015, Section 1

⁶ National Crime Agency (2016) *County lines gang violence, exploitation and drugs supply*

⁷ www.nationalcrimeagency.gov.uk/news/958-county-lines-drug-networks-now-a-nation-wide-issue

⁸ Sheldon Thomas, Consultant on gangs and serious youth violence, Gangsline at Westminster Briefing on 29 June 2017

⁹ National Crime Agency (2016) *County lines gang violence, exploitation and drugs supply*

Child sexual exploitation

Although child sexual exploitation (CSE) is not the driving factor in county lines gangs exploiting children, a clear link exists between county lines and CSE.¹⁰ Girls are most at risk but there is evidence of sexual abuse of boys within county lines as well.

Nationality/Immigration

Gangs will also target children who are not UK citizens or do not have immigration status. There are estimated to be around 120,000 undocumented children in the UK, around half of whom were born in the UK.¹¹ The precariousness of their immigration status is an additional vulnerability that enables gangs to target them. Gangs will also use children they have trafficked from abroad. Common examples would be Vietnamese children trafficked to the UK for sexual exploitation or forced labour in cannabis farms or nail bars. In 2016, 1,278 children were identified in the UK as potential trafficking victims, 1,023 of whom were non-UK nationals.¹²

Grooming and coercion

Gangs often use threats, coercion and violence to force children to do what they want. They punish gang members for making mistakes or failing to meet drugs sales targets. The punishments are extremely violent such as stabbings, anal injuries caused by jagged objects and acid attacks. Gangs may also trick children into getting into their debt, for example, by giving them a mobile phone only to later demand repayment for the cost of the phone. The child will then be in 'debt bondage' to the gang, owing it labour or services as security for the repayment for the debt or other obligation.

Peer grooming is common and takes place in schools and via social media.¹³ Music videos on YouTube are used to glamorise gangs and to draw in children from wider social and geographical areas. These methods can lead to children firmly believing they have made an active choice to join the gangs and to deny that they have been exploited and, at the same time, leave them so terrified that they will do anything they are told.

Victim not suspect

There is currently poor awareness and understanding of CCE and it is often the case that victims are mistakenly viewed as having made a 'choice' to engage in criminal behaviour.

¹⁰ National Crime Agency (2016) *County lines gang violence, exploitation and drug supply*

¹¹ www.compas.ox.ac.uk/project/undocumented-migrant-children-in-the-uk/ Findings

¹² www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file

¹³ APPG on Runaway and Missing Children and Adults (2017) *Briefing report on the roundtable on children who go missing and are criminally exploited by gangs*

This is often exacerbated by the child's refusal to recognise themselves as a victim. Comparisons have been drawn between CCE and Child Sexual Exploitation (CSE) and there are calls for CCE to be treated similarly to CSE. Children who are being exploited by gangs for their criminal purposes are victims and they should be safeguarded, not criminalised.

This principle has been enshrined in UK law following the ratification of The Council of Europe Convention against Trafficking in Human Beings which states 'each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so'.¹⁴

The duties of the lawyer

If a lawyer suspects that a child may be the victim of county lines gangs, they will need to consider both the child's legal position and their welfare needs. There will be occasions when lawyers will need to consider making a disclosure to the authorities about the child's predicament. In these circumstances they may find their professional duties are in conflict.

Below are the practical steps lawyers may take in order to fulfil their duties: duty to act with integrity (SRA principle 2; BSB core duty 3), duty to act in the best interests of the client (SRA principle 4; BSB core duty 2) and duty of confidentiality (SRA Handbook 2011 Code 4; BSB core duty 6).¹⁵

Child victims of exploitation are extremely vulnerable and as stated above may not perceive themselves as victims. They are likely to still be under the control of the exploiters at the time of arrest and as proceedings continue. Attempts may be made to coerce or abduct the child. The child may be in danger and lawyers must be alert to the possibility that steps they take might increase the danger the child is in, for example, by alerting gangs to the possibility that children are being encouraged to provide evidence against them. Professional discretion is required to assess such risks and to avoid placing the child, or anyone else, in danger.

The legal position

If a child is suspected of being the victim of exploitation by county lines gangs, defence lawyers should consider whether the section 45 statutory defence under the Modern Slavery Act 2015 is available to their clients. The definition of trafficking is wide and a child could be the victim of trafficking even if they have never been out of the United Kingdom (section 2, Modern Slavery Act 2015). The nature of county lines activity means that children who have committed offences for gangs may well fall within this definition.

¹⁴Council of Europe Convention on Action against Trafficking in Human Beings 2005, Article 26

¹⁵ SRA Code of Conduct 2011; The Bar Standards Board Handbook 2017

The law referred to in this guide is relevant to England and Wales, not Scotland or Northern Ireland.

Lawyers working with children who are not UK nationals must be aware that children will likely need legal advice on their immigration status. If they are undocumented they will need legal advice on potential applications for leave to remain. If they were born in the UK but are not British, they will need advice on a potential nationality application. If they fear returning to their home country as a result of their trafficking or other issues they will need advice on asylum. If they have immigration status (such as limited or indefinite leave to remain) they will need advice about the effect the criminal issues will have on their status. If they are an EEA national, they may need advice on exercising their treaty rights or whether they have permanent residence. It is important that lawyers identify when a child may need advice and refer them to a regulated immigration adviser. For further information on legal representation for migrant children, please see the further reading section below.

Identifying CCE

It may not be easy to identify that a child is the victim of gang exploitation. However, there are a number of factors which should alert defence lawyers to this possibility:

- They have been arrested for possession and intent to supply of significant quantities of drugs, particularly heroin and crack cocaine;
- They were arrested away from their own home area;
- They were arrested on public transport, particularly a train;
- They were arrested in a cuckooed address;
- They are in care, particularly residential care;
- They were carrying a weapon when arrested;
- They have an unexplained injury, possibly caused by a knife;
- They were arrested with or are accompanied by older males or females.

If a lawyer suspects that a child is the victim of exploitation, they should make further enquiries when speaking to their client. It is unlikely that the child will openly talk about the fact they are being exploited by a gang. They may not be aware that they are being exploited and many children who have been groomed by gangs will vehemently deny that they are victims of exploitation. There is some evidence that children are trained by the gangs to 'handle' contact with the police and other agencies, for example, by saying 'no comment' and refusing to speak.

The kind of information which lawyers should ask about in order to properly represent the child may also help ascertain whether they are the victim of exploitation:

- *Evidence of vulnerability*

Gangs target vulnerable children such as those with special educational needs, those in care and those experiencing problems at home.

Further relevant information may be obtained from parents, carers, family or YOTs. The Home Office has issued guidance setting out the kinds of indicators that might signal that a child is vulnerable to exploitation or currently being exploited by county lines gangs.¹⁶

- *Lack of supportive/caring adult*

Gangs target children who do not have an adult looking out for them for obvious reasons.

- *Background to the offence*

Evidence of children moving between locations may be an indicator of CCE.

Other indicators of gang involvement include:

- Persistently going missing from school or home
- Regularly being found away from the home area;
- Unexplained acquisition of money, clothes, or mobile phones;
- Excessive receipt of texts / phone calls;
- Relationships with controlling / older individuals or groups;
- Leaving home / care without explanation;
- Suspicion of physical assault / unexplained injuries;
- Significant decline in school results / performance;
- Self-harm or significant changes in emotional well-being.

Disclosing concerns

Lawyers are bound by strict rules regarding client confidentiality and privilege which prevent them from revealing any confidential information to a third party without their client's express consent. The Law Society's Practice Note on Criminal Prosecution of Victims of Trafficking states there are no specific exceptions to this duty in the Solicitors Code of Conduct.

¹⁶ Home Office (2017) *Criminal exploitation of children and vulnerable adults: county lines*

However, if a child '*reveals information which indicates continuing sexual or other physical abuse but refuses to allow disclosure of such information*' (Part 4.01, para. 13) there may be a conflict between duties of confidentiality and the solicitor's ability to act with integrity, as stipulated by Principle 2 of the SRA Handbook.

The Note states that: '*Whether your duties conflict will depend on the materiality of the information in question. You must consider whether the threat to the child's life or health, both mental and physical, is sufficiently serious to justify a breach of the duty of confidentiality*' (para. 6.6).

For further information on this practice note, including a dedicated support line, solicitors can contact The Law Society's [Practice Advice Service](#) or the [Bar Council Ethics Line](#).

Steps to take if you believe you suspect a child has been exploited / trafficked but you do not yet have sufficient grounds for a disclosure

If a lawyer is unsure whether there are grounds to make a disclosure, it is important they safeguard their client's interests by making a written note setting out the facts as they know them at that stage. Lawyers should set out in writing anything relevant that may indicate the child they are representing is the victim of exploitation. They should sign and date the written note and, depending on whether it is appropriate, they should ask their client to sign and date the note. If it is not appropriate to ask the client to sign the note, the lawyer should discuss any safeguarding concerns with a senior partner or senior member of chambers and ask them to countersign and date the note. This is in order to protect the client's best interests should the lawyer need to rely on the information disclosed to them at a later stage in the proceedings. Lawyers may be able to produce this document as a contemporaneous note should there be further legal proceedings.

Consequences of disclosure

Disclosures to the Local Authority may result in care proceedings.

Disclosures to either the Local Authority or the police may result in a referral through the National Referral Mechanism (NRM) since both are 'competent authorities' to make the referral to the NRM.

The NRM is a framework for identifying victims of human trafficking or modern slavery, which includes internal trafficking and exploitation by county lines gangs. The consent of the child would not be required for a referral to be made.

National Referral Mechanism (NRM)

There are two stages of investigation which may follow referral. The results of these investigations will affect the client's case, particularly if they wish to rely on the defence under section 45 of the Modern Slavery Act 2015.

Stage one – ‘Reasonable grounds’

The NRM team has a target date of five working days from receipt of referral in which to decide whether there are reasonable grounds to believe the individual is a potential victim of human trafficking or modern slavery. This may involve seeking additional information from the first responder or from specialist NGOs or social services. The threshold at Reasonable Grounds stage for the trained decision makers is; ‘from the information available so far I believe but cannot prove’ that the individual is a potential victim of trafficking or modern slavery.

Stage two – ‘Conclusive decision’

During the 45 day reflection and recovery period the Competent Authority gathers further information relating to the referral from the first responder (i.e. the authority that made the referral) and other agencies.

This additional information is used to make a conclusive decision on whether the referred person is a victim of human trafficking or modern slavery. The expectation is that a Conclusive Grounds decision will be made as soon as possible following day 45 of the recovery and reflection period. There is no target to make a conclusive grounds decision within 45 days. The timescale for making a conclusive grounds decision will be based on all the circumstances of the case.

The trained decision maker’s threshold for a Conclusive Decision is that on the balance of probability ‘it is more likely than not’ that the individual is a victim of human trafficking or modern slavery.

If after investigation, there is clear evidence that a defence might apply, Crown Prosecution Service may decide not to prosecute.

Independent Child trafficking Advocates pilot scheme

A government pilot scheme in Greater Manchester, Hampshire and Wales started in January 2017 intends that victims of child trafficking (including British children) should be identified and referred to an advocate to help them with their various issues. Lawyers working in those areas should be aware of the scheme.

Legal overview

Lawyers representing children who they believe to be victims of exploitation by county lines gangs should consider the following:

1. Whether a NRM referral has been made about the client;
2. Drafting written representations to the CPS challenging the decision to prosecute.
The representations should refer to the CPS guidance and the non punishment

principle in The Council of Europe's *Convention on Action against Trafficking in Human Beings*;

3. Making an application to the court to stay proceedings based on the argument that the prosecution is an abuse of process;
4. Relying on section 45 Modern Slavery Act 2015 – the statutory defence for child victims of trafficking and slavery.

Section 45 Modern Slavery Act 2015 - Statutory defence for child victims of trafficking and slavery

Where a child commits an offence and they do so as a direct consequence of being or having been a victim of slavery or 'relevant exploitation', then section 45 Modern Slavery Act 2015 may provide a defence.

- (4) A person is not guilty of an offence if—
 - (a) the person is under the age of 18 when the person does the act which constitutes the offence,
 - (b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
 - (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.

(Section 45, Modern Slavery Act 2015)

'Relevant exploitation' is exploitation, within the meaning of section 3, Modern Slavery Act 2015 (see below), that is attributable to the exploited person being, or having been, a victim of human trafficking (section 45(5) Modern Slavery Act 2015).

'Trafficking' occurs where 'a person arranges or facilitates the travel of another person ('V') with a view to V being exploited' (section 2(1) Modern Slavery Act 2015). The definition of trafficking is wide and a child could be the victim of trafficking even if they have never been out of the United Kingdom (section 2(5) Modern Slavery Act 2015).

A child is the victim of exploitation where a person uses or attempts to use them:

- (a) to provide services of any kind,
- (b) to provide another person with benefits of any kind, or
- (c) to enable another person to acquire benefits of any kind.

(Section 3, Modern Slavery Act 2015)

Once it is established that a child is a victim of trafficking for the purposes of exploitation, the relevant consideration is whether there is a sufficient nexus between the trafficking

for the purposes of exploitation and the offence; it is not necessary to go so far as to show there was compulsion to commit the offence as required in the case of an adult ([R v VSJ and Others \(Anti-Slavery International Intervening\) \[2017\] EWCA Crim 36](#), para. 35).

The defence clearly captures children who are used by county lines gangs to transport drugs around the country. It might also, depending on the circumstances i.e. whether there has been the relevant travel, provide a defence for other offences that have been committed as a direct result of their exploitation by gangs.

The defendant will need to:

- (i) adduce evidence to raise the issue of whether the child was a victim of trafficking or slavery. It will be for the Crown to prove beyond reasonable doubt that they were not a victim, if this is not accepted.
- (ii) prove that on the balance of probabilities that a reasonable person in the same situation and with the same characteristics of the defendant, would have done that act.¹⁷

Offences subject to this defence include theft (pick pocketing), cultivation of cannabis, offences related to prostitution and immigration offences. Lawyers should note that Schedule 4 of the Act lists 140 offences which are exempt from the statutory defence, many of which are common in child trafficking cases, for example arson. Other offences which are excluded include murder, kidnap and false imprisonment.

Crown Prosecution Service

In cases referred to the CPS for a charging decision and for which a defence under section 45 could apply, a prosecutor will require proper information to inform a decision on charge and make an assessment on the availability of the defence.

Information and evidence relevant to an assessment of whether a section 45 defence may apply should include any credible evidence to support all the elements of the defence, including:

- whether the suspect is a victim of trafficking or slavery. This could include a conclusive grounds decision on their trafficking /slavery status under the NRM.
- evidence of relevant characteristics of the suspect which will be considered for the reasonable person test.

If there is no such evidence to support the trafficking status of the child or other elements of the statutory defence are not met, prosecutors can still consider the CPS guidance on suspects in a criminal case who might be victims of trafficking or slavery to decide whether it is in the public interest to prosecute. Crown prosecutors should be

¹⁷ Law Society (2016) *Criminal prosecutions of victims of trafficking*. London: The Law Society

reminded of the public interest stage of the Full Code Test of the Code for Public Prosecutors (see, in particular paras 4.7 and 4.8) which requires prosecutors to consider whether there are any public interest factors tending against prosecution which outweigh those factors tending in favour of prosecution.

The CPS legal guidance on Human Trafficking, Smuggling and Slavery states:

'...Where there may be consideration of charge and prosecution of vulnerable children or adults, prosecutors should consider applying the statutory defence or CPS policy on the non-prosecution of suspects who may be victims of trafficking.'

'When considering whether to prosecute a child victim of trafficking/slavery, prosecutors will only need to consider whether or not the offence is committed as a direct consequence of, or in the course of trafficking / slavery.'

In [R v O \[2008\] EWCA Crim 2835](#) the Court of Appeal emphasised the duty of both prosecutors and defence lawyers to make proper enquiries in criminal prosecutions involving individuals who may be victims of trafficking. The Court of Appeal further emphasised this duty in [L, HVN, THN and T v R \[2013\] EWCA Crim 991](#).

Further reading

Helpful guidance

[Criminal exploitation of children and vulnerable adults: county lines, Home Office, September 2017](#)

[Modern Slavery Bill, Factsheet: Defence for victims \(Clause 45\) Home Office, November 2014](#)

[CPS Legal Guidance on Human Trafficking, Smuggling and Slavery](#)

[Human Trafficking: Practical Guidance \(Home Office, 2013\) – for guidance on indicators of trafficking](#)

[Safeguarding Children and Young People from Sexual Exploitation \(Department for Children, Schools and Families\)](#)

[Law Society's Practice Note – Criminal prosecutions of victims of trafficking \(2 November 2016\)](#)

[United Nations Office on drugs and Crime: Human Trafficking Indicators, undated](#)

Case law

[R v O \[2008\] EWCA Crim 2835](#)

[L, HVN, THN and T v R \[2013\] EWCA Crim 991](#)

[R v VSJ and Others \(Anti-Slavery International Intervening\) \[2017\] EWCA Crim 36](#)

[LM & Ors \[2010\] EWCA Crim 2327](#)

Child Criminal Exploitation: county lines gangs, child trafficking & modern slavery defences for children

Other reading

[YJLC legal update on section 45 of the Modern Slavery Act 2015](#)

[YJLC legal update on victims of child sexual exploitation who commit criminal offences](#)

[County Lines Gang Violence, Exploitation & Drug Supply 2016](#), National Crime Agency, 2016 – provides useful background on county lines gangs

[Better support, better protection. Steps lawyers and guardians can take to better identify and protect trafficked children](#), ECPAT/React, November 2016

Immigration

www.childrenslegalcentre.com/seeking-support

www.childrenslegalcentre.com/resources/legal-aid

www.childrenslegalcentre.com/resources/legal-representation

www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner

www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/

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