

## SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



Contact: Zoe Bryanston-Cross  
Tel: 03.90.21.59.62

Date: 14/03/2023

**DH-DD(2023)313**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1468<sup>th</sup> meeting (June 2023) (DH)

Item reference: Action Plan (10/03/2023)

Communication from the United Kingdom concerning the case of V.C.L. and A.N. v. the United Kingdom  
(Application No. 77587/12)

\* \* \* \* \*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1468<sup>e</sup> réunion (juin 2023) (DH)

Référence du point : Plan d'action (10/03/2023)

Communication du Royaume-Uni concernant l'affaire V.C.L. et A.N. c. Royaume-Uni (requête n° 77587/12)  
**(anglais uniquement)**

---

**Execution of Judgments of the European Court of Human Rights  
ACTION PLAN**

***VCL and AN v the United Kingdom***  
**Application numbers 77587/12 and 74603/12**

**Judgment final on 5 July 2021**

**Information submitted by the United Kingdom Government on 10 March 2023**

**Case summary**

The joined cases concern two Vietnamese young people who were discovered working on cannabis farms in 2009 and were subsequently convicted of drug cultivation offences, to which they pleaded guilty.

The applicants challenged the Court of Appeal's decisions to dismiss their appeals against prosecution, which had been made on the basis that the Competent Authority had made a 'Conclusive Grounds Decision' in each case that it was more likely than not that the applicants were victims of human trafficking. The applicants therefore contended that they should not have been prosecuted for offences that had a nexus with their trafficking; and that if they were prosecuted, the proceedings should have been stayed by order of the judge.

The European Court of Human Rights ('the Court') found in each case violations of Article 4 (prohibiting slavery and forced labour) on account of: failure to take sufficient operational measures to protect minors prosecuted despite credible suspicion they were trafficking victims; failure to make sufficient initial and prompt assessment of trafficking status; and not having adequate reasons to continue prosecution despite a positive competent authority decision.

The Court also found in each case violations of Article 6 (right to a fair trial) on account of: failure to investigate potential trafficking affecting overall fairness of proceedings; evidence constituting a fundamental aspect of their defence not being secured; no waiver of guilty pleas that were made without full awareness of the facts; and defect not being remedied by subsequent reviews by domestic authorities relying on inadequate reasons.

**Individual measures**

The Court awarded EUR 25,000 in non-pecuniary damage to each applicant, on the basis that "[t]he Court has no doubt that the applicants suffered distress on account of the criminal proceedings and have faced certain obstacles on account of their criminal records" (paragraph 219). The Court also awarded EUR 20,000 in costs and expenses to each applicant. These amounts have been paid and evidence of payment has been previously supplied.

In addition to receiving these sums awarded by way of just satisfaction, it is open to the applicants to apply to the Criminal Case Review Commission (CCRC) or the Scottish Criminal Case Review Commission (SCCRC), which are independent public bodies, to investigate their case. Applications can be made to the CCRC if an individual believes they have been wrongly convicted of a criminal offence or wrongly sentenced in a criminal court in England, Wales, or Northern Ireland, including when they have lost their appeal. In Scotland, an individual can apply to the SCCRC in the same circumstances. Both the CCRC and SCCRC are independent; it is not the responsibility of the State to pursue a CCRC or SCCRC review.

The Government understands that both applicants have applied to the CCRC and reviews of the applicants' cases are in progress.

The Government considers that payment of the sums awarded by way of just satisfaction is sufficient to address the past consequences of the violations, and the ability of the applicants to avail themselves of a mechanism for review of their cases is sufficient to address the ongoing consequences of their convictions. Therefore no further individual measures are considered necessary.

## **General measures**

### Relevant legislation

Since the domestic cases of VCL and AN in 2009, legislation across the UK to tackle modern slavery offending has been significantly strengthened and provides enhanced protection for victims, including to ensure the UK meets its domestic and international obligations. In 2015, separate legislation was introduced across the four nations in the UK, leading to changes in operational policy and practice to ensure the response to modern slavery identifies, protects and supports victims, whilst also bringing those who exploit individuals to justice.

#### *England and Wales*

In England and Wales, the [Modern Slavery Act \(MSA\) 2015](https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted)<sup>1</sup> was introduced to consolidate existing offences. In recognition of the seriousness of these crimes, the MSA 2015 increased the maximum sentences for slavery, servitude, forced or compulsory labour and human trafficking offences from 14 years to life imprisonment. It also introduced a new measure under section 45 of the MSA 2015 to provide a statutory defence for victims of modern slavery to protect individuals from prosecution for crimes they have been compelled or forced to commit as a result of their exploitation. For example, cannabis cultivation or drug supply, as the UK considers that these offences fit with the types of crimes that victims are forced to commit.

The section 45 defence was designed to provide further encouragement to victims of slavery to come forward and give evidence without fear of being convicted for offences connected to their slavery or trafficking situation. It also enhanced the suite of measures available to the Crown Prosecution Service (CPS) under existing non-punishment principle rules.

The defence does not apply in certain cases where serious offences have been committed. Schedule 4 of the MSA 2015 sets out the offences to which the defence does not apply, which includes serious sexual or violent offences, to avoid creating a legal loophole that would allow those who have committed serious offences to escape justice. In cases where the defence does not apply or cannot be evidenced to the criminal standard, the CPS can still exercise its discretion and decide whether it is in the public interest to prosecute.

There is a different test in the defence for adults and children (those under 18 years). In the case of an adult, it is a defence for an individual to show that they have been compelled to commit the offence; the compulsion is attributable to slavery or to relevant exploitation; and a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act. In the case of a child, the threshold test is lower. It is a defence for a child to show that they have committed the offence as a direct consequence of being, or having been, a victim of slavery or relevant exploitation, and a reasonable person in the same situation and having the person's relevant characteristics would commit the offence. The absence of compulsion and the

---

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

lower threshold for meeting the reasonable person test is in recognition of the unique vulnerabilities of children.

The defence applies throughout the criminal justice process to ensure that victims can be identified at all stages. However, for the defence to be made out, there must be a nexus between the offence committed and the individual's slavery or trafficking situation. This ensures that those identified as a victim at some stage, do not go on to have immunity from prosecution for offences committed before or after they were identified as a victim of slavery or trafficking. Each case will be assessed on its own facts and merits.

There is currently no data available on the use of the section 45 defence, as this is not routinely recorded by the CPS, police or the courts. The Home Office acknowledges this is an evidence gap and is committed to continuing to work with criminal justice partners to explore how data on the use of section 45 can be captured, to better understand its effectiveness.

The section 45 defence for victims of modern slavery presents a significant change in legislation since the domestic cases of VCL and AN, which addresses key elements of the concerns raised by the Court. The section 45 defence is relevant to the prohibition of slavery and forced labour (Article 4) and the right to a fair trial (Article 6) by providing protection from prosecution/conviction for crimes victims are forced to commit by their exploiters or as a consequence of fleeing their exploiters and thereby ensuring relevant circumstances are considered at court.

### *Northern Ireland*

In Northern Ireland, the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\)](#)<sup>2</sup> (HTEA) was introduced in 2015 to provide a more robust legal framework to prosecute traffickers and those subjecting people in Northern Ireland to slavery and improved support for victims, whilst also tackling the demand for the services of trafficked victims.

Section 22 of the HTEA (Northern Ireland) 2015 creates a statutory defence for victims of human trafficking and slavery-like offences who have been compelled to commit certain offences. The defence under section 22 does not apply in respect of more serious offences.

There is a different test in the defence for adults and children (those under 18 years). The tests are similar to that of section 45 defence in England and Wales, with exception of the test for children in Northern Ireland, where a child would not need to show that a "reasonable person in the same situation and having the person's relevant characteristics would commit the offence".

Accurate data on the use of section 22 defence is difficult to access as it would require a manual search across a wide range of cases across various offences. The Department of Justice is considering as part of its long-term modern slavery and human trafficking strategy, a review of the section 22 defence. Any such review would take a victim-centred approach, including capturing survivors' experiences and will be measured based on the number of cases where the section 22 defence was successfully used to protect victims from prosecution.

---

<sup>2</sup> <https://www.legislation.gov.uk/ni/2015/2/enacted>

## *Scotland*

In Scotland, the [Human Trafficking and Exploitation \(Scotland\) Act 2015<sup>3</sup> \(HTEA\)](#) was introduced in 2015 and provides police and prosecutors with greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for victims. The HTEA (Scotland) 2015 included two new criminal offences: i) human trafficking and ii) slavery, servitude and forced or compulsory labour. The maximum penalty for either offence is life imprisonment.

Section 8 of the HTEA (Scotland) 2015 places a duty on the Lord Advocate to issue and publish instructions for prosecutors about the prosecution of suspected or confirmed adult and child victims of the offence of human trafficking and the offence under section 4 (slavery, servitude and forced or compulsory labour). The Lord Advocate's Instructions were issued and published in 2016 (with updates since) and continue to be applied by prosecutors.

The instructions direct prosecutors that if there is sufficient evidence that an adult has committed an offence and there is credible and reliable information to support the fact that: a) the adult is a victim of human trafficking or exploitation; b) the adult has been compelled to carry out the offence; and c) the offending took place in the course of or as a consequence of the adult being the victim of human trafficking or exploitation, then there is a strong presumption against prosecution. The threshold test for the presumption against prosecution is lower in the case of a child victim (under 18 years), compared to that applied in the case of an adult victim.

The Crown Office and Procurator Fiscal Service (COPFS) does not keep a record of the nature of defences lodged by those accused in a manner that allows for extraction of information on when a defence is used by victims of modern slavery.

## *Additional legislation – Nationality and Borders Act 2022*

Part 5 of the Nationality and Borders Act (NABA) 2022 contains provisions relating to modern slavery<sup>4</sup>, which are intended to provide legislative clarity to victims and decision makers on victims' rights and prevent misuse of the protection and support afforded to victims of modern slavery through the National Referral Mechanism (NRM). The majority of the provisions came into force on 30 January 2023. Some aspects in Part 5 extend to the whole of the UK while other clauses extend to England and Wales only. The measures can be summarised as follows:

- Section 60 of the NABA 2022, and accompanying changes to relevant guidance, are intended to ensure decision making is robust and consistent. This brings our domestic legislation into closer alignment with our international obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, and the Devolved Administrations' decision-making thresholds. This is to enable the provision of assistance and support where there are reasonable grounds to believe the individual is (rather than may be) a victim of slavery or human trafficking.
- Section 61 puts the recovery period on a statutory footing (subject to section 63) for a potential victim, for a minimum of 30 days.
- Section 62 introduces a presumption that for successive NRM referrals resulting in a positive reasonable grounds (RG) decision, there is no recovery period ("additional recovery period") if that individual has already benefitted from a recovery period. This applies where the latest positive RG decision is made in relation to a period of exploitation that took place wholly prior to

---

<sup>3</sup> <https://www.legislation.gov.uk/asp/2015/12/contents/enacted>

<sup>4</sup> Further information about modern slavery provisions in the NABA can be found at: <https://www.legislation.gov.uk/ukpga/2022/36/part/5/enacted>

the previous positive RG decision. Unless an additional recovery period is granted, no entitlements associated with a recovery period will apply. However, this is not a blanket presumption and cases will be considered on a case-by-case basis, taking into account an individual's circumstances and vulnerabilities. A further recovery period can be granted where the competent authority considers it appropriate in the particular case.

- Section 63 provides a definition for public order which will make it operationally possible to withhold modern slavery protections and entitlements in certain circumstances, in line with the provision set out in the Council of Europe Convention on action against Trafficking in Human Beings. This definition includes individuals who have been convicted of the most serious offences, such as those in Schedule 4 of the MSA 2015, which includes crimes such as manslaughter, murder, violent acts and sexual offences, as well as those involved in terrorism related activity or who pose a risk to national security. Decisions will be taken on a case-by-case basis using a robust decision-making framework set out in guidance, balancing the threat to public order against the need to safeguard victims of exploitation.
- Section 63 also provides the power to withhold access to the recovery period and modern slavery specific assistance and support where an individual has claimed to be a victim of modern slavery or human trafficking in bad faith. An individual may be considered to have claimed to be a victim of modern slavery in bad faith where they, or someone acting on their behalf, have knowingly made a dishonest statement in relation to being a victim of modern slavery. The disqualification will be applied where there is, on the balance of probabilities, sufficient evidence to conclude that an individual has claimed to be a victim of modern slavery or human trafficking in bad faith. However, the bad faith disqualification is not a blanket disqualification and cases will be considered on a case-by-case basis, based on the strength of the available evidence. The decision maker may also consider credible explanations for gaps in evidence for example where there is evidence that an individual may have experienced trauma.
- Under section 64, those identified as potential victims, following an RG decision, will be entitled to any necessary support and assistance for the purpose of assisting the person receiving it in their recovery from any physical, psychological or social harm arising from the conduct which resulted in the positive RG decision in question. This provides certainty to potential victims of modern slavery that they will be provided with necessary support to aid their recovery from any physical, psychological or social harm arising from their modern slavery experience.
- Through section 65, the Government has made clear for the first time in primary legislation, that confirmed victims of modern slavery are eligible for temporary permission to stay in the UK. This is supported by the introduction of, in the October 2022 Immigration Rules changes, the Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery. The policy objective is to deliver a fair and effective permission to stay process in relation to confirmed victims of modern slavery, allowing those who are cooperating with public authorities in the investigation and/or prosecution of their exploiters to stay in the UK for that purpose. We have made clear that confirmed victims are entitled to temporary permission to stay where it is necessary to assist with their recovery from psychological or physical harm resulting from their exploitation, or where it is necessary for them to seek compensation against their exploiters. This is subject to the exemptions set out in section 63 of the NABA 2022.

Additional provisions under section 58, which cover slavery or trafficking information notices for those who have made a protection or human rights claim, are expected to come into force later this year. The notice will require an individual to provide relevant information relating to being a victim of slavery or human trafficking within a specified period and, if providing information outside of that period, to provide a statement setting out the reasons for doing so. Section 59 sets out the consequences if an individual aged 18 or over provides information outside of the specified period without good reason. The aims in terms of modern slavery and trafficking are to ensure that we are

able to identify possible victims of modern slavery as early as possible in order to best support their needs and streamline decision making.

The provisions in NABA 2022 are compatible with the UK's international obligations related to modern slavery. The changes affecting the process and type of information required as part of modern slavery decisions seeks to ensure robust and consistent decisions, including to try to facilitate getting the right information as early as possible to enable victim identification, which aligns with the action we are taking to implement the judgment in *VCL and AN*, whilst ensuring referrals with very little information can still be considered.

### *Other relevant legislation*

The Illegal Migration Bill was introduced into Parliament on 7 March 2023. The Bill makes provision for, and in connection with, the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control – and also includes a provision for victims of slavery or human trafficking. This legislation, subject to its passage through the UK Parliament, may have relevance to the UK's implementation of the judgment in *VCL and AN*. The Home Office, working with key partners, will monitor progress of the draft legislation and consider its implications for implementation of the ruling.

### Relevant existing practice

#### *Victim identification*

There is now even greater awareness among public authorities about the need to identify and safeguard victims of modern slavery than at the time of the domestic cases of *VCL* and *AN*. Under section 52 of the MSA 2015, public authorities that are First Responders in England and Wales have a statutory Duty to Notify the Home Office when they come across potential victims of modern slavery.

Similar provisions were created under the HTEA (Scotland) 2015 and HTEA (Northern Ireland) 2015, but are not yet in force. In Northern Ireland, the Department of Justice undertook a public consultation between 13 March and 27 May 2022 with a view to seeking to put on a statutory footing the duty to notify provision for First Responders. The views expressed in the public consultation<sup>5</sup> will be taken into account in the development of refined policy and draft legislative proposals. Introducing the Duty to Notify provisions in Northern Ireland will require regulations to be laid before the Assembly subject to affirmative resolution. Changes to the HTEA (Northern Ireland) 2015 (as amended) cannot be taken forward in the absence of the Executive and Assembly.

The Scottish Government remains committed to the implementation of section 38 (Duty to Notify) of the HTEA (Scotland) 2015 and is currently taking forward preparatory work with a view to bringing it into force in due course.

UK legislation on modern slavery is underpinned by operational policy and practice. Bespoke training and guidance for staff has been produced by law enforcement agencies and prosecution services across the UK and is routinely reviewed and updated. In addition, statutory guidance<sup>6</sup> on identifying and supporting victims of modern slavery was issued under section 49 of the MSA 2015

<sup>5</sup> A summary of responses to the consultation can be found at: <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/consultation%20report%2C%20summary%20of%20responses%20and%20next%20steps.pdf>

<sup>6</sup> Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>



for professionals in England and Wales in March 2020 and has been updated as required since. It also acts as non-statutory guidance for professionals in Northern Ireland and Scotland. The statutory guidance is aimed at competent authority staff across the UK and staff in England and Wales within public authorities who may encounter potential victims of modern slavery, and/or who are involved in supporting victims. These individuals and organisations must have regard to the guidance to ensure victims are identified and receive the available and appropriate support.

The NRM is the UK's framework for identifying and referring potential victims of modern slavery to ensure they receive appropriate support. Designated First Responders (a combination of public authorities, which includes the police and non-governmental organisations) are responsible for ensuring that suspected victims of trafficking are referred to the NRM. Competent authority staff across the UK make decisions on whether or not an individual is a potential victim/victim of modern slavery for the purpose of the NRM, wherever in the UK a potential victim is identified.

The Duty to Notify under section 52 of the MSA 2015 is discharged by public authorities in England and Wales by either referring a potential victim into the NRM where they are a child or consenting adult, or by notifying the Home Office where an adult does not consent to enter the NRM. In the case of adults, referral into the NRM is by consent. Child victims do not have to consent to be referred into the NRM and must first be safeguarded and then referred. The Duty to Notify is not currently in force in Scotland or Northern Ireland, however, if an adult did not consent to enter the NRM, the COPFS in Scotland and the Public Prosecution Service (PPS) in Northern Ireland may still be made aware to highlight that evidence of exploitation was present but the person did not provide consent to enter the NRM.

E-learning training for First Responders across the UK has been produced by the Home Office and sets out their roles and responsibilities in the identification and referral of potential victims of modern slavery. The Home Office also published [guidance](#)<sup>7</sup> for Scotland and Northern Ireland on the NRM process. The Home Office monitors First Responder training to ensure it is up to date and provides effective training to relevant organisations with responsibility for ensuring the identification of victims. While the training is targeted at designated First Responder Organisations, training and guidance is publicly available<sup>8</sup> and may be accessed by organisations or staff who, despite not being a First Responder organisation, may have an interest, for example frontline professionals within healthcare or social services who may encounter potential victims.

In Northern Ireland, training continues to be delivered to frontline professionals including police, health trust staff, medical students, prison officers. Outreach to other high-risk sectors is ongoing to ensure there is broader awareness in identifying and reporting cases of MSHT. This is very much a partnership approach involving both statutory and non-statutory training partners. The Department of Justice is currently exploring options to develop tailored e-learning modules that can be rolled out more widely across a range of sectors.

In March 2021, the Scottish Government launched an NRM toolkit for First Responders, developed as a resource to improve the formal identification of adult and child victims through the NRM in Scotland and ensure that both professionals and potential victims are clear on the process and possible outcomes of this national pathway to identification and protection.

---

<sup>7</sup> <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/national-referral-mechanism-guidance-adult-northern-ireland-and-scotland>

<sup>8</sup> For example, see '[Modern Slavery Awareness and Victim Identification Guidance](#)', published on the Modern Slavery and Organised Immigration Crime Unit website, aimed at a range of public sector staff who could potentially witness indicators of modern slavery.



## *Investigation*

In October 2016, the Home Office invested £8.5m of funding to support the establishment of the Modern Slavery Police Transformation Unit. This provided for a modern slavery intelligence hub, regional analysts and operational coordinators, improved training and thematic experts brought together to support individual police forces. The Home Office has continued to fund this Programme, now the Modern Slavery and Organised Immigration Crime (MSOIC) Programme, with a total of £16.5 million since 2016. This has supported the police to increase modern slavery investigations and prosecutions. Through the lifetime of the Programme, the number of live police modern slavery operations has increased from 188 in December 2016 to at least 3,724 in February 2023<sup>9</sup>.

Police Scotland's Strategic Assessment 2023-2028 places Trafficking and Exploitation firmly as a Force priority for the next five years. The National Human Trafficking Unit (NHTU), which was established in 2013, supports localised modern slavery activity and contributes to the Scottish Government's modern slavery policy and strategy. In 2020 an investigations team was created to enhance the Unit's investigative capability. The NHTU undertake complex human trafficking investigations, develop intelligence into actionable products, develop and deliver training and guidance to promote national consistency and develop partnership working with national and international statutory law enforcement and third sector partners. The Unit supports a network of around 60 Human Trafficking Specialists in Territorial Policing Divisions throughout Scotland. The NHTU also works in partnership with the organisation Justice and Care with two Victim Navigators embedded in the Unit, who provide support to victims and specialist advice to investigators.

In Northern Ireland, a dedicated Modern Slavery and Human Trafficking Unit is in place within the Serious Crime Branch of the Police Service Northern Ireland (PSNI), whose work includes international collaboration in Joint Investigation Teams.

Where a criminal offence has been committed (for example the offence of cannabis cultivation) and, during the course of an investigation into this offence, evidence of potential modern slavery arises, the police in England, Wales and Northern Ireland would investigate this evidence as part of the primary investigation and an NRM referral would be made (where the individual consents, in the case of an adult). Where a case is investigated for offences under the MSA 2015 and referred to the CPS for charge, the CPS will flag the case as modern slavery even if the case proceeds on a different offence. The selection of charge will be determined by the evidence referred by the police. In cases where the police do not investigate as modern slavery, but evidence obtained later supports modern slavery offences, the case would also be flagged as modern slavery. [Counting rules](#)<sup>10</sup> are in place in England and Wales to set out how and when modern slavery offences should be recorded by police, including following an NRM referral. In applicable cases, police may also raise the s45 defence under the MSA 2015 (or the defence under section 22 of the HTEA (Northern Ireland) 2015) where relevant to an offence committed by the victim.

Similar counting rules exist in Scotland and Northern Ireland. Police Scotland are required to adhere to the Scottish Crime Recording Standard (SCRS), which outlines how and when crimes of trafficking and exploitation should be recorded.

In Scotland, where an adult is identified as having committed a criminal offence and signs of modern slavery or exploitation are evident, the person would be asked if they would consent to entering into

<sup>9</sup> This does not include investigations from certain forces, including the Metropolitan Police Service (London). Due to data collection processes, the actual figure is almost certainly higher.

<sup>10</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/992849/count-reported-incidents-jun-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992849/count-reported-incidents-jun-2021.pdf)

the NRM, and a crime report would be raised for trafficking and exploitation. As there is no equivalent of the section 45 defence in England and Wales under the HTEA (Scotland) 2015, if the person was reported to the COPFS alleging the commission of an offence, COPFS would be made aware that the person concerned has been identified as a suspected victim of exploitation. If the person did not consent to enter the NRM, COPFS would still be made aware to highlight that evidence of exploitation was present but the person did not consent to entering the NRM. COPFS would apply the relevant test in the Lord Advocate's instructions, although it would be necessary to make a decision without the benefit of the outcome of the NRM.

Where an individual discloses that exploitation has occurred outside of the UK, the offence would fall outside of the jurisdiction for investigation by the UK police and would not be routinely investigated, unless the victim is a UK national or the offence has been committed by a UK national. In these circumstances, where the nationality of the victim is known, police across the UK would refer the incident to law enforcement counterparts overseas. On this basis, in the case of victims who are non-UK nationals, investigation usually occurs where the potential modern slavery/exploitation has happened within the UK.

### *NRM Decision-making*

The SCA (one of the UK's competent authorities responsible for decision-making in the NRM) makes decisions based on information within a referral, as well as other information it may gather as appropriate from inside the Home Office and from other external organisations. Since 8 November 2021, an additional competent authority (the Immigration Enforcement Competent Authority (IECA)) has had responsibility for NRM decision-making in certain cases, as set out in the [Modern Slavery Statutory Guidance](#)<sup>11</sup>. The decision-making process taken by the SCA and IECA is the same. Actions taken to implement the judgment, discussed below, will be reflected in both competent authorities as appropriate.

Two types of decisions are made within the NRM process: reasonable grounds (RG) decisions and conclusive grounds (CG) decisions. Once an NRM referral is submitted, the competent authority aims to make an RG decision within five working days wherever possible. A positive RG decision leads to a minimum 30-day recovery period under Modern Slavery Statutory Guidance. A CG decision will take place at such time when sufficient information has been gathered to reach the CG standard of proof "on the balance of probabilities" to decide that the individual is a victim of modern slavery.

When a potential victim is referred into the NRM, it is important they receive a decision as quickly as possible to provide certainty and secure the appropriate support to assist with their recovery. However, we recognise the system is currently facing challenges as the number of referrals of potential victims has increased by nearly 450% between 2014 and 2021, which in turn has impacted the average time to make CG decisions.

The capacity of Home Office competent authorities is monitored as part of standard operational processes. The SCA has recruited to significantly increase its decision-making capacity. In February 2023, another large recruitment campaign for decision makers was launched, and will be followed by a number of smaller campaigns for roles to support the decision-making process. There are early signs of a gradual decrease in the number of cases awaiting a decision, and it is expected that the

---

<sup>11</sup> Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1133140/Modern\\_Slavery\\_Statutory\\_Guidance\\_\\_EW\\_\\_Non-Statutory\\_Guidance\\_\\_SNI\\_\\_v3.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133140/Modern_Slavery_Statutory_Guidance__EW__Non-Statutory_Guidance__SNI__v3.0.pdf)

further recruitment campaigns will continue to improve this. Intensive training, mentoring and ongoing dip sampling is in place to ensure quality of decisions. All decisions are subject to various levels of scrutiny from within the department before being served.

The UK Government will continue to keep decision making times under review to ensure victims get a quality, timely decision and the support they need to assist their recovery.

### *Interaction of modern slavery support with wider child safeguarding procedures*

In England and Wales, local authorities are responsible for safeguarding and promoting the welfare of all children in their area, including child victims of modern slavery. If a trafficked child becomes 'looked after' (i.e. in the care of the relevant local authority) they will be entitled to the same level of support and care as all looked after children regardless of their nationality or immigration status. Local children's services work in close co-operation with the police and other statutory agencies to offer potentially trafficked children the protection and support they require.

In addition to this statutory support, the Government has rolled out Independent Child Trafficking Guardians (ICTG), who advocate on behalf of a child to ensure their best interests are reflected in the decision-making processes undertaken by the public authorities who are involved in the child's care. An ICTG's advocacy and involvement throughout the decision-making process is intended to ensure the child is protected from further harm, prevent possible repeat victimisation, re-trafficking or going missing, and promote the child's recovery.

In June 2021, the Home Office launched a pilot to test devolving the responsibility to make NRM decisions for child victims of modern slavery from the Home Office to local authorities<sup>12</sup>. In Autumn 2022 a further competition was launched to recruit an additional 10 pilot sites, which will go live during the period February-April 2023. The pilot aims to test whether determining if a child is a victim of modern slavery within existing safeguarding structures is a more appropriate model for making modern slavery decisions for children. This approach will enable decisions about whether a child is a victim of modern slavery to be made by those involved in their care and ensure the decisions made are closely aligned with the provision of local, needs-based support and any law enforcement response. The Home Office will continue to work closely with local authorities and stakeholders to monitor the pilots and assess our next steps, but initial evaluations have been very positive.

### *Scotland*

Child trafficking and exploitation victims must be cared for and supported within the context of Scotland's child protection system and the national Getting it right for every child approach. When there is reason to believe that a child may have been trafficked or exploited an immediate child protection response is required and an inter-agency referral discussion (IRD) should be undertaken.

In September 2021, the Scottish Government published the revised National Guidance for Child Protection<sup>13</sup>, which includes detailed advice for all practitioners who support children and families on

<sup>12</sup> Further information is available at: <https://www.gov.uk/government/publications/piloting-devolving-decision-making-for-child-victims-of-modern-slavery/devolving-child-decision-making-pilot-programme-general-guidance-accessible-version>

<sup>13</sup> Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/09/national-guidance-child-protection-scotland-2021/documents/national-guidance-child-protection-scotland-2021/national-guidance-child-protection-scotland-2021/govscot%3Adocument/national-guidance-child-protection-scotland-2021.pdf>

identifying and supporting victims of human trafficking and exploitation, including criminal and sexual exploitation.

A statutory Independent Child Trafficking Guardianship (ICTG) Service will come into force from April 2023. The ICTG service will fulfil the duty on Scottish Ministers set out under section 11 of the HTEA (Scotland) 2015. These guardians will provide ongoing practical help and support to refugee children and young people, including victims of trafficking. Guardians will work closely with other professionals such as lawyers and social workers to support a child navigating asylum and trafficking processes.

### *Northern Ireland*

The Police Service of Northern Ireland (PSNI) and Health and Social Care Trusts (HSCT) have operational responsibility for the investigation of all forms of child abuse, including human trafficking and ensuring the effective protection of children.

Any child or young person who is known or suspected to be a victim of human trafficking or modern slavery is by definition a child in need of protection and should be the subject of an investigation under the provisions of Article 66 of The Children (NI) Order (a child protection investigation). A needs assessment is conducted in such cases and an Independent Guardian is appointed to represent the child's best interests.

Guidance<sup>14</sup> issued by PSNI and the Health and Social Care Board sets out arrangements in place to identify and support child victims, as well as the provision of ongoing support and leaving care provisions for those who cease to be looked after at age 18. Support for victims of modern slavery or trafficking forms an integral part of a child or young person's relevant safeguarding meetings. Work is ongoing to increase awareness of MSHT and the NRM across the Health Trusts at both a senior and front-line level.

### *Prosecution*

In England and Wales and Northern Ireland, the CPS and PPS respectively have responsibility for the prosecution of criminal cases that have been investigated by the police and other investigative agencies, operating independently of the police and Government. The police are responsible for the decision to start or continue an investigation. Police may approach prosecutors for early investigative advice during the course of an investigation, about possible reasonable lines of enquiry and evidential requirements with a view to building the most effective prosecution case. In cases where the common law defence of duress, or the statutory defence for victims of modern slavery (under either section 45 of the MSA 2015 or section 22 of the HTEA (Northern Ireland) 2015) do not apply, the CPS/PPS can exercise prosecutorial discretion and decide whether it is in the public interest to prosecute. Prosecution can be discontinued if the test for prosecution is no longer met. Where the statutory defence applies, the CPS/PPS may raise it during the course of the investigation.

In Scotland, the COPFS is responsible for public prosecutions and, in accordance with the Lord Advocate's instructions, applies a strong presumption against prosecution of accused persons in respect of whom the relevant test in those instructions is satisfied. This is where there is credible and reliable information to support the fact that: a) the adult is a victim of human trafficking or exploitation; b) the adult has been compelled to carry out the offence; and c) the offending took place

---

<sup>14</sup> Available at: <https://www.health-ni.gov.uk/sites/default/files/publications/health/working-arrangements-potential-child-victims-of-human-trafficking-and-modern-slavery.pdf>

in the course of, or as a consequence of, the adult being the victim of human trafficking or exploitation. The threshold test for the presumption against prosecution is lower in the case of a child victim (under 18 years), compared to that applied in the case of an adult victim.

The statutory defence (under the MSA 2015 or the HTE (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 in Northern Ireland) for victims of modern slavery operates independently of the NRM. A referral into the NRM is not a requirement to apply the statutory defence. However, in recognition that NRM decisions are relevant within criminal justice proceedings, in accordance with paragraph 11.24 of the Modern Slavery Statutory Guidance, Home Office Competent Authorities can expedite cases where a potential victim of modern slavery is subject to prosecution, in the event that there is either: i) a custody time limit; or ii) a trial date.

## **State of execution of judgment**

Developments in legislative provision and operational practice since the domestic cases of VCL and AN address, to a significant extent, the Article 4 and 6 issues raised by the judgment. However, the UK Government has a continued commitment to ensure victims of modern slavery are identified and protected from prosecution for crimes committed as a result of exploitation in line with the threshold tests set out in relevant legislation.

The Home Office has worked with relevant police leads across UK forces, prosecution services across the UK, the competent authorities responsible for NRM decision-making, as well as policy officials in the Devolved Administrations in Northern Ireland and Scotland, to consider further action to implement the judgment.

The UK assesses that the key issues raised by the judgment include:

- i. the early identification of victims of modern slavery
- ii. investigating potential modern slavery
- iii. insofar as possible, waiting for a trafficking decision before taking a prosecution decision
- iv. the need to record clear reasons for taking a decision to prosecute despite the individual having received a positive trafficking decision

With regard to (iii), in the context of UK modern slavery legislation and the process for identifying and supporting victims, we have interpreted the ‘trafficking decision’ to be the CG decision made by Home Office competent authorities following a referral of a potential victim into the NRM and an assessment of all relevant information. Given the presence of this dedicated decision-making resource, we consider this to be the most appropriate interpretation (as opposed to, for example, an assessment made by prosecution services as to the trafficking status of an individual when considering whether to prosecute that individual, despite this being an important consideration made in appropriate cases in line with the relevant prosecutor guidance). It is also separate from the assessment made by the prosecuting authority in respect of an individual accused of trafficking, in accordance with the relevant Code for Prosecutors.

The UK does not consider that further legislative change is required to implement the judgment. Remaining actions to implement the judgment, beyond the significant developments in legislation and practice since the cases of VCL and AN, will be taken forward through policy and operational changes to ensure appropriate measures are in place to prevent prosecution in cases comparable to *VCL and AN*. These are set out below covering each element of the judgment (i)-(iv) above respectively.

The intention is to ensure there is adequate awareness among appropriate agencies of the findings of the judgment to improve and strengthen operational policy and practice by: raising awareness of the

need for early identification of victims and the investigation of potential modern slavery in appropriate cases; strengthening knowledge and expertise in the identification and investigation of modern slavery; ensuring clarity among prosecutors of the need to wait for a trafficking decision insofar as possible before taking a decision to prosecute, and the circumstances in which this may not be possible; and ensuring clear reasons are recorded when a decision to prosecute is taken despite a positive CG decision from the Home Office Competent Authorities.

In addition to the actions set out below, the relevant organisations, including police and prosecution services across the UK, have taken steps to disseminate the judgment and its implications, and publish revised guidance to raise awareness of police and prosecutors of the changed approach. This should prevent inappropriate prosecution of those compelled to commit criminal offences through early identification of victims and investigation of potential modern slavery.

Importantly, prosecutor guidance across the UK has been revised to reflect the findings of the judgment; this includes the need to wait for a trafficking decision insofar as possible before taking a decision to prosecute and, where the decision is taken to continue a prosecution where a positive trafficking decision has been made, the need to endorse clear reasons for disagreeing with the trafficking decision. For example, where there is credible evidence which proves (to the criminal standard) that the suspect is not a victim, or there is evidence that there was no nexus between the offence committed and the trafficking status of the suspect. Whilst the judgment referred to the need to provide clear reasons *which are consistent with the definition of trafficking contained in the Palermo Protocol and the Anti-Trafficking Convention*, where these international obligations are not specified explicitly in guidance, those definitions have been transposed into domestic UK legislation.

i. the early identification of victims of modern slavery

Action to be taken	Status/timeframe for completion	Organisation responsible
<b>Disseminate the implications of the judgment and raise awareness of non-prosecution principles (through relevant statutory defences) within police forces.</b>		
England and Wales: S45 guidance to be issued in a bulletin for all forces.	Bulletin issued on 16 December 2021.	MSOIC
Scotland: Briefing to Human Trafficking Champions across local policing divisions, with instructions for specialists. Publish briefing on intranet for all.	Briefing completed 9 October 2021; guidance published 19 October 2021. MSHT champions continue to receive monthly updates and guidance on implementation of VCL and AN.	Police Scotland
Northern Ireland: Update PSNI guidance (on Police internal computer system) on section 22 defence cases to reflect VCL and AN ruling.	To be completed March 2023.	PSNI
<b>Training for police on non-prosecution principles</b>		
England and Wales: Training police officers, mainly investigators, on the s45 defence (including the need to consider from the outset of an investigation whether someone is a victim of modern slavery). Update Modern Slavery General Awareness course which includes indicators of MSHT and is delivered to all new staff.	S45 training made available from 23 March 2021. Approximately 4,500 staff have attended. Updated General Awareness course released June 2022.	MSOIC

<p>Scotland: Incorporate requirements of judgment into specialist Human Trafficking training for Operational Command, Sexual Offences Liaison Officers, Advanced Detective Officers, Senior Investigation Officers and Human Trafficking Investigator Courses.</p> <p>All probationary constables on joining Police Scotland to receive face to face human trafficking and exploitation training incorporating the VCL and AN judgment, in addition to the mandatory human trafficking online training all front line constables must complete.</p> <p>Guidance on the essential elements of HTE (Scotland) Act 2015 for reporting officers and case markers to improve the quality and clarity of human trafficking case writing.</p>	<p>Completed 19 October 2021.</p> <p>First course delivered February 2023. To date 82% of officers in Scotland have completed.</p> <p>Guidance completed 19 October 2021</p>	<p>Police Scotland</p> <p>Police Scotland; COPFS</p>
<p>Northern Ireland: Amend Modern Slavery Specialist Investigators Course to include VCL and AN considerations.</p>	<p>Complete – updated training available since May 2022.</p>	<p>PSNI</p>
<p><b>Raising awareness of non-prosecution principles (through relevant statutory defences) among legal defence and judiciary</b></p> <p>Share new prosecutor guidance with the Law Society to inform a practice note which reflects updated guidance.</p> <p>Share new guidance with the Senior Presiding Judge to alert judiciary.</p> <p>In addition to ensuring awareness of updated guidance, these actions aim to raise awareness of the need for early consideration of modern slavery in relevant cases.</p>	<p>Completed on 2 December 2021.</p> <p>Completed on 2 December 2021.</p>	<p>CPS</p> <p>CPS</p>
<p>Through the newly created First Responder Forum, ensure greater opportunities for First Responder Organisations (FRO) to share best practice and input into developing policy for FROs.</p>	<p>Ongoing</p>	<p>HO (MSU)</p>
<p>Improve the training and support given to First Responders, who are responsible for referring victims into the NRM. This will support First Responders to identify victims at the earliest opportunity and build on our existing package of e-learning training for First Responders.</p>	<p>Ongoing</p>	<p>HO (MSU)</p>
<p>Introduce Duty to Notify provisions in Scotland and Northern Ireland.</p>	<p>Preparatory work ongoing (further details covered above in section outlining current relevant practice for victim identification).</p>	<p>Devolved Administrations</p>
<p>Continue to monitor decision-making capacity of Home Office competent authorities and consider ways to reduce the current delays in NRM decision making.</p>	<p>Ongoing</p>	<p>HO (MSU and competent authorities)</p>
<p>Continue to work with Department for Education and Local Authorities on prevention of child exploitation (including in county lines cases).</p>	<p>Ongoing</p>	<p>HO (MSU/County lines policy)</p>

ii. investigating potential modern slavery

Action to be taken	Status/timeframe for completion	Organisation responsible
<p>Reiterating the need for <b>dual investigation of criminal offence and potential trafficking</b> that may have led to that offence. In many instances this would be the existing practice of police forces across the UK.</p> <p>England and Wales: include in bulletin to all forces.</p> <p>Scotland: Publish guidance on Intranet and issue memo to all Police Scotland staff. Guidance includes the formal reporting mechanism from</p>	<p>Bulletin containing VCL and AN guidance issued on 16 December 2021.</p> <p>Guidance published 19 October 2021; memo</p>	<p>MSOIC</p> <p>Police Scotland</p>



- iii. the need for prosecutors to:
  - a. insofar as possible, wait for a trafficking decision before taking a prosecution decision
  - b. record clear reasons for taking a decision to prosecute despite the individual having received a positive trafficking decision

---

15

<p>NRM for a decision to be taken before referring a case to the CPS for a charging decision. Prosecutors will also work with police to ensure victims are correctly identified.</p> <p>Where the offence is a serious offence which would normally require a remand in custody, a threshold decision in accordance with Part 5 of the <a href="#">Code for Crown Prosecutors</a><sup>15</sup> will be made, but with a requirement for the police to continue investigating and await the NRM decision, before prosecutors make a full code test decision to charge. Prosecutors must comply with the policies and guidance of the CPS issued on behalf of the Director of Public Prosecutions at each stage of a case, unless it is determined there are exceptional circumstances.</p> <p>The guidance changes instruct prosecutors to:</p> <ul style="list-style-type: none"> <li>– Await the decision from Home Office Competent Authorities before making a charging decision.</li> <li>– Record clear reasons for taking a decision to prosecute when contrary to a NRM (trafficking) decision.</li> <li>– Set out where it may be appropriate not to wait for an NRM (trafficking) decision (where the offence is serious).</li> </ul> <p>Similar amendments to emphasise the need to wait for an NRM decision insofar as possible before taking a decision to prosecute have been made in the <a href="#">Lord Advocate's instructions to prosecutors</a><sup>16</sup> in Scotland, and in the <a href="#">Policy for Prosecuting Cases of Modern Slavery and Human Trafficking</a><sup>17</sup>.</p>	<p>Completed 25 August 2021</p> <p>Completed 18 October 2021.</p>	<p>COPFS</p> <p>NI PPS</p>
<p><b>Training for prosecutors:</b></p> <p>CPS (England and Wales): Update training pack for delivery by leads in CPS Areas. This will be mandatory requirement for all relevant prosecutors. Training will include need for prosecutors to set out clear reasons (and what constitutes clear reasons) for taking decision to prosecute when contrary to a trafficking decision. Reasons for prosecuting despite a positive NRM decision must be endorsed, setting out reasons on either why the statutory definition of trafficking does not apply to the individual; and/or why there was no nexus between the trafficking and the offence.</p> <p>COPFS (Scotland): Provide training to MSHT lead prosecutors.</p> <p>PPS (Northern Ireland): Training for prosecutors and counsel instructed on behalf of PPS on the updated prosecution policy following the judgment. The policy will provide prosecutors with helpful guidance on how to take decisions on these cases.</p>	<p>Online training delivered. 190 prosecutors trained nationally on 26 Jan 2023. Further updated training pack to be delivered to legal training to deliver locally by 31 March 2023.</p> <p>Completed 26 August 2021.</p> <p>Training offered to all prosecutors February 2022; 2 events held. Bespoke training event delivered to MSHT specialist prosecutors.</p>	<p>CPS</p> <p>COPFS</p> <p>PPS</p>

In addition, to ensure the effective identification and investigation of modern slavery, we will continue to monitor and develop appropriate communication and channels to share information between relevant agencies, including the police, prosecutors and the Home Office Competent

<sup>15</sup> <https://www.cps.gov.uk/publication/code-crown-prosecutors>

<sup>16</sup> <https://www.copfs.gov.uk/publications/prosecution-policy-and-guidance?showall=&start=4>

<sup>17</sup>

<https://www.ppsni.gov.uk/sites/ppsnifiles/publications/PPS%20Policy%20for%20Prosecuting%20Cases%20of%20Modern%20Slavery%20and%20Human%20Trafficking.pdf>

Authorities. This will also assist in making sure that relevant information pertaining to potential modern slavery is available in judicial processes surrounding an offence linked to modern slavery.

### **Relevant caselaw**

There have been a number of related decisions in domestic courts which we have noted as a result of their relevance to prosecutions linked to modern slavery and/or NRM decisions. We do not consider these to conflict with *VCL and AN*.

The judgment in *R. v Brecani* [2021] related to the admissibility of a positive CG decision by a Home Office competent authority as evidence in a criminal trial, once that decision has been considered by the prosecution and a decision has been made to prosecute following consideration of the positive CG decision, and admissibility of expert trafficking evidence which contained an opinion on victim status. The Court considered whether anything in the then recent decision of the ECtHR in *VCL and AN* compelled a different response, but concluded that in *VCL and AN*, the critical feature of the ECtHR was the CPS had disagreed with the conclusion of the competent authority without substantial reasons. This is not considered to be in conflict with the findings in *Brecani*, which excluded the CG decision as evidence of victim status for the purpose of the criminal trial, and the lack of expert status of the caseworkers in criminal proceedings, following a decision to prosecute in the event there has been after considering the a positive CG decision (which should precede the decision to prosecute in accordance with the findings in *VCL and AN*).

The judgment in *R v AAD* [2022] related to the abuse of process. The Court reinforced that it is the duty of the CPS to consider the trafficking status of a potential victim, notwithstanding they had committed an offence under schedule 4 MSA 2015 (offences to which the section 45 defence does not apply). Failure to have due regard to CPS guidance or a lack of rational basis for departure by the prosecution from a CG decision could lead to an application to stay proceedings. This is not considered to be in conflict with the ECtHR judgment in *VCL and AN*, and confirms a remedy which remains available (even in the most serious cases) where prosecutors have failed to consider the trafficking status or follow the CPS legal guidance.

The judgment in *R v AFU* [2023] EWCA Crim 23 provided further guidance on abuse of process in cases where a victim of trafficking is prosecuted for offences they have been forced to commit, even where the individual has provided a guilty plea. The judgment confirms that an argument that the prosecution is an abuse of process is available even where a defendant has entered an unequivocal guilty plea despite legal advice on the availability of a defence. The court found that at the time of the offence [2016] there were operational failures in the identification of the applicant as a victim of trafficking and in the application of the relevant CPS guidance in force at the time. No full investigation had taken place, despite clear indicators of trafficking from the outset, which lead to breach of Article 4, ECHR. The conviction was found to be unsafe.

## **GLOSSARY**

**CG** – Conclusive Grounds (Decision)

**CPS** – Crown Prosecution Service (England and Wales)

**COPFS** – Crown Office and Procurator Fiscal Service, responsible for public prosecutions in Scotland

**HO** – Home Office

**IECA** – One of the UK's competent authorities responsible for decision-making in the NRM

**MSHT** – Modern slavery and human trafficking

**MSOIC** – Modern Slavery and Organised Immigration Crime programme, national (England and Wales) policing lead for Modern Slavery and Organised Immigration Crime

**MSU** – Modern Slavery Unit

**NRM** – the National Referral Mechanism, the UK’s framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support

**PPS** – The Public Prosecution Service of Northern Ireland

**PSNI** – Police Service of Northern Ireland

**RG** – Reasonable Grounds (Decision)

**SCA** – One of the UK’s competent authorities responsible for decision-making in the NRM

## **Publication**

The judgment has been published on the European Database of Asylum Law website at:

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20V.C.L.%20AND%20A.N.%20v.%20THE%20UNITED%20KINGDOM.pdf>.

It has also been reported by general media and specialist websites, for example:

- <https://www.lawgazette.co.uk/news/strasbourg-uk-failed-to-protect-child-trafficking-victims/5107444.article>
- <https://yjlc.uk/resources/legal-updates/vcl-and-v-united-kingdom-positive-step-forward-victims-modern-day-slavery>

## **Dissemination**

A summary of the judgment has been disseminated to relevant individuals in the following organisations: police forces across the UK, the Home Office, Crown Prosecution Service, Crown Office and Procurator Fiscal Service in Scotland, and Northern Ireland Public Prosecution Service.