



CRIMINAL, CIVIL AND PARTNERSHIP DISRUPTION OPTIONS FOR PERPETRATORS OF CHILD AND ADULT VICTIMS OF EXPLOITATION

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1. FOREWORD

Disrupting Exploitation can be an intimidating challenge, especially with emerging trends and the effects of exploitation across our society not being fully understood by all who work in the field of safeguarding. Disruption is not the focus of a single agency, but requires us all to work collectively to create safe spaces for our children and young people today.

An important aspect in the development of the Disruption Toolkit for workforces from all professional disciplines is to empower, to be as creative as possible and to utilise all the opportunities available to them.

Kay Wallace – our Police and Justice Lead, has worked hard to consult with many individuals with extensive experience to create this toolkit, and I would like to thank all those who have so readily contributed. In particular, a big thank you to Barnardo's and the National Counter Trafficking Service who have been partners in this work.

Sheila Taylor MBE
CEO NWG

Understanding disruption through a 'trauma lens'

The impact of violence and trauma activates an individual's survival response and behaviours should be analysed through a trauma lens.

Our extensive work with individuals experiencing exploitation and abuse has evidenced that the very nature of grooming and coercion blur a child and adult's ability to recognise exploitation, instead often normalising high levels of harm and abuse, or if they see it, they are often unable to verbalise it to others. This is a typical trauma response.

An important principle to hold central is that individuals cannot choose to be exploited in the same way they cannot consent not to be abused. If offenders have motivation and access to vulnerable people, they are likely to be successful in harming them. Individuals who do not see the risk posed to them are often those that are at highest risk of serious injury and death because they have normalised such high levels of harm and are often resistant to help.

Therefore, disruption approaches are crucial in implementing targeted, persistent and robust safeguarding responses, enabling professionals to step in to safeguard in a timely way, even where individuals resist and appear to be making a 'choice' to return to the sources of harm.

**Amanda Naylor - Assistant Director IMPACT
Child Sexual Abuse, Barnardo's**

2. INTRODUCTION

Exploitation poses a national threat, which transcends geographical boundaries; the scale and nature of the problem can devastate the lives of individuals, impact upon families and entire communities.

There is a requirement on agencies to respond to increasingly complex safeguarding and public protection risks, linked to exploitation. As offenders use more sophisticated methods to commit crime, identify, groom and exploit individuals, so must partners and agencies work together to explore innovative and creative opportunities for intervention.

Practice is constantly evolving with the exploration of new tactics, covert and overt, to identify and pursue offenders, incorporating learning from; legislation, prosecutions, investigations and applications for civil orders. This toolkit aims to provide guidance for relevant agencies, to assist in combatting exploitation. It provides a menu of options to consider in developing disruption and safeguarding plans. This should not be viewed as an exhaustive list and where new and creative options are used, we would urge you to share this practice widely.

This toolkit is divided into sections covering powers to protect child victims and adult victims of exploitation, powers to pursue and disrupt offenders and powers to target harden and secure locations used to exploit individuals. By breaking the toolkit up into these sections (Victim, Offender, Location), we aim to ensure the toolkit can be easily navigated.

This toolkit is aimed at statutory and voluntary agency professionals involved in the safeguarding and investigation of exploitation. It can be used by individuals or organisations, in single agency settings, multi-agency settings, exploitation investigations, safeguarding focussed meetings or perpetrator disruption focussed meetings (the list is not exhaustive). The aim of this toolkit is to consider options available to disrupt perpetrators, using a variety of different powers and tools, which are available through a multi-agency approach.

Risks to the victim when implementing disruption tactics.

Disruption of perpetrators is vital and should always be considered as it is their actions, not the actions of the victim, which poses the risk. When considering disruption of perpetrators, any potential safeguarding issues which may arise out of the disruption tactic must be eradicated or reduced to a minimum.

The welfare of victims is always the absolute priority. Exploitation can be very difficult to safeguard people from: it can include extreme violence or risk to life for the victims and/or their families. All risks to victims and 3rd parties must be considered and mitigated against prior to any disruption option being employed.

3. SAFEGUARDING

This document does not replace existing national and local safeguarding procedures. This is a toolkit to assist you in developing robust disruption considerations. Safeguarding Children’s Board and Safeguarding Adult’s Board procedures must be followed in cases where risk of harm is identified.

The basis of this document is English law and procedures, however if you are accessing this document from Wales, then welsh legislation should be followed; [The Social Services and Well-being \(Wales\) Act 2014](#)

4. DEFINITION OF EXPLOITATION

Exploitation of an individual is not defined in law; however anyone can be exploited, particularly young people and adults at risk. It can affect any person regardless of age, gender, social or ethnic background. Exploitation can still occur, even where the activity appears consensual. Exploitation may involve force and/or coercion and is often accompanied by violence or threats of violence. It is typified by some form of power imbalance in favour of those perpetrating the exploitation.

Exploitation can be perpetrated by individuals or groups, males or females, and children or adults. Examples of exploitation are; sexual exploitation, forced labour and criminal exploitation including county lines.

There are overlaps between different forms of exploitation. Victims may be subjected to more than one form of exploitation, therefore it is important that practitioners are able to recognise and address multiple forms of exploitation.

County lines is a term used to describe the importation of illegal drugs into different areas within the UK by gangs and organised criminal networks, using dedicated mobile phone lines. Children and vulnerable adults are trafficked and exploited to move and store drugs, money and weapons, and they will often experience coercion, intimidation and violence, including sexual violence.

Criminal exploitation occurs where an individual or group takes advantage of an imbalance of power to coerce, control, manipulate or deceive a person into any criminal activity in exchange for something the victim needs or wants, for the financial or other advantage of the perpetrator or facilitator, through violence or the threat of violence. The victim may have been criminally exploited even if the activity appears consensual. Criminal exploitation does not always involve physical contact, it can also occur through the use of technology. There are many types of criminal exploitation.

Grooming is almost always present in the exploitation of an individual. A definition of grooming is;

Grooming is when someone builds an emotional connection with an individual to gain their trust for the purposes of sexual abuse, exploitation or trafficking.

(NSPCC definition)

Trafficking is an integral part of the exploitation process;

“Trafficking of persons shall mean the recruitment, transportation, transfer, harbouring or receipt of person, by means of the threat of or use of force, or other forms of coercion, of abduction, of fraud, of deception, of abuse of power, (...), for the purpose of exploitation.”

Palermo Protocol (2000)

In effect, trafficking is the movement of a person for the purpose of exploitation. Most victims of exploitation are also victims of trafficking.

5. CHILD VICTIMS

5.1 CHILDREN ACT 1989

5.2

Under Section 47 of the Children Act 1989, where a local authority has reasonable cause to suspect that a child (who lives or is found in their area) is suffering or is likely to suffer significant harm, it has a duty to make such enquiries as it considers necessary to decide whether to take any action to safeguard or promote the child's welfare. Such enquiries, supported by other organisations and agencies, as appropriate, should be initiated where there are concerns about all forms of abuse, neglect. This includes Female Genital Mutilation and other Honour-Based Violence, and extra-familial threats including radicalisation and sexual or criminal exploitation.

5.3

Under Section 17 of the Children Act 1989, A child in need is defined as a child who is unlikely to achieve or maintain a reasonable level of health or development, or whose health and development is likely to be significantly or further impaired, without the provision of services; or a child who is disabled. Children in need may be assessed under Section 17 of the Children Act 1989 by a social worker. Section 17 of the Children Act 1989 puts a duty on the local authority to provide services to children in need in their area, regardless of where they are found.

5.4

Under Section 10 of the Children Act 2004[5], the local authority is under a duty to make arrangements to promote cooperation between itself and organisations and agencies to improve the wellbeing of local children. This co-operation should exist and be effective at all levels of an organisation, from strategic level through to operational delivery

Fears about sharing information must not be allowed to stand in the way of the need to promote the welfare, and protect the safety, of children, which must always be the paramount concern.

5.5

Section 11 Children Act 2004

These duties placed on the local authority can only be discharged with the full cooperation of other partners, many of whom have individual duties when carrying out their functions under Section 11 of the Children Act 2004.

5.6 CARE ORDER

Section 31 Children Act 1989

A local authority or authorised person (an authorised person being the NSPCC or a person authorised by the Secretary of State) may apply for a Care Order. This would allow for a child to be placed into the care of a designated local authority and enables the local authority to share parental responsibility for the child.

The Application must be made prior to the child reaching the age of 17.

Applications for a Care Order may only be made by a court if it is satisfied that threshold is met and the child concerned is suffering or likely to suffer significant harm or the child is beyond parental control.

5.7 SECURE ACCOMMODATION ORDER

Section 25 Children act 1989

Should a local authority deem a child to be at significant risk of harm then it can accommodate a child in secure accommodation for a period of no more than 72 hours without an Order of the Court.

A Secure Accommodation Order will only be granted where:

- the child has a history of absconding and is likely to abscond from accommodation which isn't secure; and

- if he/she runs away, he/she is likely to suffer significant harm;

or

- if he/she isn't in secure accommodation, he/she is likely to injure himself or someone else

A Secure Accommodation Order can only be made with respect to a looked after child – (a child is looked after if they are subject to a Care Order or accommodated with the consent of those adults with parental responsibility for the child). A child accommodated under s20(3) Children Act 1989 – (which places a duty on local authorities to accommodate a child who has reached the age of 16 and whose welfare would be seriously prejudiced without such accommodation) then an application may be made to the Court even if they have reached the age of 16 or 17.

The first Order will be for a maximum period of 3 months. If the child continues to meet the criteria for secure accommodation, then an application for a further Order can be made.

Accommodating a child in secure accommodation leads to the restriction of liberty and should only occur when there is no alternative. Less restrictive options should have been exhausted where possible.

5.8 EMERGENCY PROTECTION ORDER

Section 44 Children Act 1989

An Emergency Protection Order enables the immediate removal of a child from the care of their parent or carer therefore the evidence must demonstrate that the child is at imminent risk of harm and allows a child to be removed to a place of safety, for up to a period of no more than 8 days. The Court will only grant an Order where it can be evidenced that the child is at imminent risk of harm.

The local authority or authorised person can make an application where they are satisfied that the child is likely to suffer significant harm if;

- he/she is not removed to accommodation provided by or on behalf of the applicant; or
- he/she does not remain in the place in which he/she is then being accommodated.

An application may also be made by a local authority where s47 enquiries are ongoing and those enquiries are being frustrated by access to the child being unreasonably refused to the local authority and access to the child is required as a matter of urgency

5.9 POLICE PROTECTION

Section 46 Police Powers of Protection

If a police constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, they may:

- Remove the child to suitable accommodation and keep him there
- Take such steps as are reasonable to ensure that the child's removal from any hospital, or other such place, in which he/she is then being accommodated is prevented.

A child in this context is a person under 18 years.

This is a key power which should be considered whenever potential victims are found in the company of potential perpetrators. Where the victim does not present as willing to accompany the police voluntarily, this power can be used to remove the victim to suitable accommodation.

Suitable accommodation can include the child's home address or care placement where it is deemed safe and appropriate. A police station is not suitable accommodation. A child under police protection should not be brought to a police station except in exceptional circumstances, e.g. lack of immediately available local authority accommodation.

If it is necessary to take the child to a police station every effort should be made to ensure their physical safety, comfort, access to food and drink and access to toilet and washroom facilities.

5.10 RECOVERY ORDER

Section 50 Children Act 1989

Where a child has been unlawfully taken or kept away from a person with lawful control of the child, a court can make a Recovery Order directing the person to produce the child to a specified person, usually police. The Order

also requires anyone with information about the whereabouts of the child to disclose the information to police. In addition, if the Court is satisfied there are reasonable grounds to believe the child is present at specified premises then the Order will authorise the police to enter those premises to search for the child.

The application can be made by the local authority if the child is subject to a Care Order or Emergency Protection Order or by the police if the child is subject to Police Powers of Protection.

Deliberate obstruction of an officer carrying out actions defined by the order is an offence and could lead to a fine being imposed.

5.11 POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)

Section 17 (1) Police and Criminal Evidence Act 1984 (PACE)

S17(1) PACE provides the police with the power of entry and to search a premises where they have reasonable grounds to believe a person they seek are within the dwelling. If a child is present in the dwelling and the police believe the child to be at risk of harm, then the police may exercise their powers of protection to remove the child from the dwelling to a place of safety

5.12 INHERENT JURISDICTION

Inherent Jurisdiction Section 100 Children Act 1989

The nature of inherent jurisdiction proceedings

It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Act 1989.

The court may under its inherent jurisdiction, in addition to all of the orders which can be made

in family proceedings, make a wide range of injunctions for the child's protection of which the following are the most common –

- (a) orders to restrain publicity;
- (b) orders to prevent an undesirable association;
- (c) orders relating to medical treatment;
- (d) orders to protect abducted children, or children where the case has another substantial foreign element; and
- (e) orders for the return of children to and from another state.

The court's wardship jurisdiction is part of and not separate from the court's inherent jurisdiction. The distinguishing characteristics of wardship are that –

- (a) custody of a child who is a ward is vested in the court; and
- (b) although day to day care and control of the ward is given to an individual or to a local authority, no important step can be taken in the child's life without the court's consent.

Transfer of proceedings to Family Court

Whilst the Family Court does not have jurisdiction to deal with applications that a child be made or cease to be a ward of court, consideration should be given to transferring the case in whole or in part to Family Court where a direction has been given confirming the wardship and directing that the child remain a ward of court during his/her minority or until further order.

The Family Court must transfer the case back to the High Court if a decision is required as to whether the child should remain a ward of court.

The following proceedings in relation to a ward of court will be dealt with in the High Court unless the nature of the issues of fact or law makes them more suitable for hearing in the Family Court –

- (a) those in which an officer of the Cafcass High Court Team or the Official Solicitor is or becomes the litigation friend or children's guardian of the ward or a party to the proceedings;
- (b) those in which a local authority is or becomes a party;

- (c) those in which an application for paternity testing is made;
- (d) those in which there is a dispute about medical treatment;
- (e) those in which an application is opposed on the grounds of lack of jurisdiction;
- (f) those in which there is a substantial foreign element;
- (g) those in which there is an opposed application for leave to take the child permanently out of the jurisdiction or where there is an application for temporary removal of a child from the jurisdiction and it is opposed on the ground that the child may not be duly returned.

Parties

Where the child has formed or is seeking to form an association, considered to be undesirable, with another person, that other person should not be made a party to the application. Such a person should be made a respondent only to an application within the proceedings for an injunction or committal. Such a person should not be added to the title of the proceedings nor allowed to see any documents other than those relating directly to the proceedings for the injunction or committal. He or she should be allowed time to obtain representation and any injunction should in the first instance extend over a few days only.

Removal from jurisdiction

A child who is a ward of court may not be removed from England and Wales without the court's permission. Practice Direction 12F (International Child Abduction) deals in detail with locating and protecting children at risk of unlawful removal.

Criminal Proceedings

Case law establishes that:

There is no requirement for the police or any other agency carrying out statutory powers of investigation or enforcement to seek the permission of the court to interview a child who is a ward of court. The fact that a child is a ward of court does not affect the powers and duties of the police or other statutory agencies in relation to their investigations. Provided that the relevant statutory requirements are

complied with, the police or other agencies are under no duty to take any special steps in carrying out their functions in relation to a child who is a ward of court.

Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child is, or subsequently becomes, a ward of court, the permission of the court is not required for the child to be called as a witness in the criminal proceedings.

Where the police or other statutory agencies take any action in relation to a child who is a ward of court, the person(s) with day to day care and control of the child, or where applicable the local authority, should bring the relevant information to the attention of the court as soon as practicable. Where wardship proceedings are continuing, any children's guardian appointed for the child must be informed of the situation by the other parties.

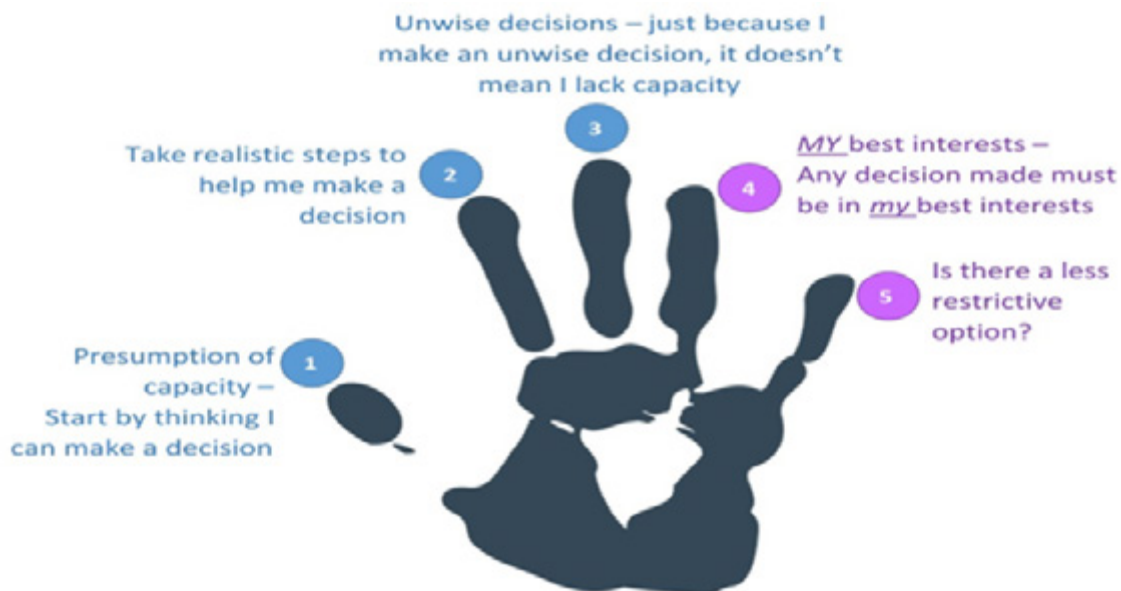
5.13 MENTAL CAPACITY ACT 2005

<https://www.legislation.gov.uk/id/ukpga/2005/9>

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

This legislation and its accompanying Code of Practice, applies from age 16years upwards. The Mental Capacity Act 2005 (MCA hereafter) embodies a legal framework to empower people to make decisions for themselves as much as possible and to protect people who may not be able to make some decisions. There are five key principles in relation to the Mental Capacity Act;

- A person is **assumed** to have capacity unless it is established that do not.
- A person is not to be treated as unable to make a decision unless **all practicable** steps to help have been taken without success.
- A person is not to be treated as unable to make a decision merely because they have made an **unwise** decision.
- An act done or decision made under this Act for or on behalf of an incapacitated person must be done or made in his **best interests**.
- The **least restrictive** option must be considered.



Mental Capacity is the ability to make a decision e.g.

- Daily life decisions.
- Serious or significant decisions
- Decisions that may have legal consequences.

These decisions must be viewed as

- ✓ Time specific – capacity and decisions must be reviewed at agreed times or it may even be possible to wait until a more appropriate time if that is better for the person.
- ✓ Decision specific – what is the decision to be made? Always keep going back to the decision in question, it's easy to drift away from the actual decision.
- ✓ Consider – does the decision have to be made now, can it wait if likely to regain capacity? Is this the best time of day for the person? Have you made all efforts to support the decision making before assessing capacity? Are the right people there to support the person? Do you need to ask someone with more experience in capacity assessments to support the assessor?

Assessing Capacity

If you have taken steps to fully support the person to make a decision but doubt their ability to make it then you should complete the capacity assessment. Have you ensured:

- ✓ The person knows their capacity is being assessed
- ✓ You and they are clear on the decision to be made
- ✓ Any communication aids for example interpreters/signing, hearing aids, dentures and glasses are in place and working?
- ✓ The person has those present who make them feel safe and supported?
- ✓ This is the best time of day for the person? Are they at their best in the morning or evening?
- ✓ They have not had medication or drugs/ alcohol that affects decision making?
- ✓ Anything that makes them anxious or distracted has been removed or reduced?
- ✓ The environment is helpful to making decisions e.g. not too noisy or uncomfortable?
- ✓ You are able to record your findings and share them with the person

Section 2 Mental Capacity Act

'A person lacks capacity in relation to a matter if at the material time he is **unable to make a decision** for himself in relation to the matter because of an **impairment of, or a disturbance in the functioning of**, the mind or brain.'

This leads to the two-stage test being applied;

Stage One: The Diagnostic Test;

Does the person have an impairment or disturbance of the mind or brain which prevents them from making THIS decision at THIS time? Examples of this can be substance misuse, brain injury, a learning disability. If yes then proceed to stage two.

Stage two - The Functional test;

A person is unable to make a decision for himself if he is unable –

- to understand the relevant information to the specific decision:
Yes/No – evidence: They can demonstrate they can remember the information which is in proportion to making the decision.
- to retain that information for as long as necessary to make the decision:
Yes/No – evidence: They can demonstrate they can remember the information which is in proportion to making the decision. E.g. information about a blood test for as long as the blood test takes, if it's to move to a new home this would be something the person should be able to remember for a longer period, in proportion to the long term consequences.
- to use or weigh that information as part of the process of making the decision:
Yes/No - evidence: can the person tell you the pro's and cons of the decision? E.g. 'I know the antibiotics would make my infection better quicker and prevent further serious complications but they always give me thrush and I prefer to wait and take over the counter remedies to see if it improves first'

- to communicate his decision:
Yes/No – evidence: can they tell you their decision? This may be through various means and you may need a speech and language expert or interpreter to ensure you understand the person's wishes

Best Interests – Section 4 Mental Capacity Act 2005

In determining what is in a person's best interests, the person making the determination must not make it merely on the basis of -

- a person's age or appearance, or
- a condition of his or an aspect of his behaviour which might lead others to make unjustified assumptions about his capacity

The following decisions can never be taken on behalf of someone under best interests:

- Marriage
- Civil Partnership
- Divorce
- Sexual relationships
- Adoption
- Voting
- Consent to fertility treatment

The decision maker is required to consider all relevant circumstances and;

- Consider if, and if so when, the person may regain capacity
- Encourage the person to participate as much as possible in the decision making
- Consider the person's wishes and feelings, beliefs and values and other factors that the person may consider were he able to do so
- Consult anyone specified by the person, engaged in caring for, or interested in the person, any valid and applicable Lasting power of Attorney or Deputy-ship.

Section 5 Mental Capacity Act – Protection from liability

If a person does an act in connection with the care or treatment of another person, and

- has taken reasonable steps to establish capacity, and
- has concluded he lacks capacity and the act is in his best interests

Then

You do not incur any liability that you would not have incurred if

- the person had had capacity and
- had consented to the act

S6 MCA - Restraint

The act allows for the use of restraint for a *non-negligible* length of time if

- It is necessary in order to protect the person from harm, and
- the level of restraint is proportionate to the likelihood and seriousness of the harm

What constitutes a non-negligible length of time is derived from case law. See Page 32 of <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=2a-hUKewi6k5ychuLIAhWLasAKHddfAzcQFJA-JegQIARAC&url=https%3A%2F%2Fwww.lawsociety.org.uk%2Fsupport-services%2Fdocuments%2Fdeprivation-of-liberty---a-practical-guide%2F&usg=AOvVaw1XlAslgJ7n0tq9uqN-h42Qr>

Making an application to the Court of Protection;

The powers of the Court are to;

- Make declarations about a person's capacity
- Make decisions regarding the personal welfare or finances of an incapacitated person
- Make decisions regarding serious medical treatment relating to providing, withdrawing or withholding treatment to an incapacitated person

- Appoint a Deputy to manage welfare and / or financial matters on behalf of an incapacitated person
- Make decisions about a Lasting Power, such as considering its validity or scope

Mental Capacity Act and Consent

It is important that all practitioners working in the field of exploitation have a thorough understanding of the Mental Capacity Act. In particular, practitioners should understand the extent to which the controlling and coercive behaviour of perpetrators of exploitation can impact on a child's ability to make an informed decision.

Practitioners need to be alert to the likelihood that a child has been subjected to a process of grooming, control and coercion. If a person has been subject to a grooming process then practitioners need to consider the extent to which the controlling and coercive behaviour, deployed as part of the grooming process is likely to affect their ability to understand risk. Many child victims of exploitation may have an existing impairment or disturbance in the functioning of the mind or brain, and as such their decision making needs to be assessed under the provisions of the Mental Capacity Act 2005.

5.15 THE CHILDREN ACT VERSUS THE MENTAL CAPACITY ACT

It is possible to transfer from the Family Court to the Court of Protection and back again.

The essential consideration is, whether looking at the individual needs of the specific young person, it can be said that their welfare will be better safeguarded within the Court of Protection than it would be under the Children Act.

5.16 DEPRIVATION OF LIBERTY SAFEGUARDS: DOLS

The Deprivation of Liberty Safeguards were added in 2007 to the Mental Capacity Act 2005 as a system to assess and authorise deprivation of liberty in care homes and hospitals for those aged 18 years and over. Any deprivations occurring outside care homes and hospitals must be authorised by the Court of Protection. A deprivation of liberty is defined by the 'Acid Test' following seminal case law in 2014. The test applies to those who lack capacity to consent to their care and support arrangements and is as follows:

- Is this person free to leave (whether they are compliant or not) AND
- is this person subject to continuous supervision and control?

There are then three elements that need to be satisfied to assess for DoLS;

- The objective element – that the person is confined for a non negligible period of time
- The subjective element – the person lacks capacity to consent to that confinement
- It is imputable to the state – the state responsible for the deprivation, either directly, via its arrangements or by failing to prevent the person from being unlawfully deprived of their liberty?

How does this apply to children?

Where an adult or a young person is at risk of, or being exploited, arrangements to safeguard that person should be assessed as to whether they amount to a deprivation of liberty.

The Deprivation of Liberty Safeguards (DoLS) are not applicable to those under 18. The right to liberty, however, is enshrined in Article 5 of the Human Rights Act 1998 There is new and developing case law in respect of deprivation of liberty regarding children.

Parents can give consent for deprivation of liberty if it falls within the zone of parental responsibility (**always seek legal advice on this**). Deprivation of liberty can also be lawful if warranted under statute i.e. Section 25 of the Children Act 1989 secure accommodation provisions. <http://www.legislation.gov.uk/ukpga/1989/41/section/25>

Where a child is looked after by the Local Authority, different considerations apply even where the parents' consent to deprivation of liberty. Their consent may be adequate where this falls in the zone of parental responsibility but where the child is the subject of an Interim Care Order or Care Order it is unlikely a parent could consent, neither can the local authority.

Where there is a deprivation of liberty the local authority must either use a statutory route if Section 25 of the Children Act 1989 or the Mental Health Act 1983 is applicable, or approach the high court to invoke its inherent jurisdiction to make an order for deprivation of the child's liberty. Services have a responsibility to keep abreast of the law to recognise and respond to actual and potential deprivations of liberty of children. Legal advice is recommended but in brief terms:

1. Under 16, confined and lack of capacity (or the child refuses to give consent), parents can give valid consent provided it is an appropriate exercise of parental responsibility
 - 16 and 17 year olds who are confined and lack capacity (or do have capacity and refuse), those with parental responsibility cannot give valid consent, it must be referred to the Courts.
 - Under 18 subject to an interim or final care order, confined and lack capacity, they should be referred to the Courts until the Liberty Protection Safeguards are enacted.

The Mental Capacity (Amendment) Act 2019 has now received Royal Assent and become law, it is expected to come into force in late 2020.

The legislation provides for the repeal of the Deprivation of Liberty Safeguards (DoLS) contained in the Mental Capacity Act 2005 (MCA), and their replacement with a new scheme called the Liberty Protection Safeguards (LPS)

The LPS establishes a process for authorising arrangements, enabling care or treatment which give rise to a deprivation of liberty within the meaning of Article 5(1) of the European Convention on Human Rights (ECHR), where the person lacks capacity to consent to the arrangements. It also provides for safeguards to be delivered to people subject to the scheme.

One of the key changes the LPS will bring is to include young people of 16 years plus within the authorisation process for restrictive care for those who lack capacity to consent to their arrangements.

In place of the local authority, hospitals (both NHS and private sector) become responsible for authorising their own DoL cases for in-patients, and CCGs will become responsible for authorising packages of care in the community, which are NHS continuing healthcare funded. The local authority remains responsible for the residual cases.

The revised statutory Code of Practice will set out how the LPS can be integrated into existing statutory frameworks relevant to looked after children, young people with special education needs and those requiring in-patient psychiatric care. Potential conflicts between the LPS scheme and the existing rights of young people and their parents under the Children Act 1989 must be addressed in particular, Section 20 arrangements where a young person objects.

Tim Spencer-Lane of the Law Commission, has summarised the effect of the key amendments as follows:

1. Extending the Liberty Protection Safeguards to 16 and 17-year olds;
2. Replacing the term “unsound mind” with “mental disorder;”
3. Explicitly stating that the cared-for person must be consulted with;
4. Explicitly stating that the cared-for person’s wishes and feelings must be considered as part of the necessary & proportionate assessment;
5. Requiring responsible bodies to decide if care home managers should arrange the assessments and statement or if the responsible body takes on these functions;
6. Requiring that assessments cannot be carried out by someone with a financial conflict of interest;
7. Confirmation that the responsible body arranges the pre-authorisation review;
8. A duty to appoint an Independent Mental Capacity Advocate (IMCA) if a person does not have an ‘appropriate person’

representing them, unless it is in the person’s best interests not to have an IMCA;
- The code will look at parental roles versus advocacy in young people

9. Removing the requirement that a care home manager must notify the responsible body whether or not an IMCA should be appointed;
10. Requiring that medical and capacity assessments must be completed by those with appropriate experience and knowledge.

In conclusion, at this stage the LPS will require health and social care professionals to, arguably for the first time, apply the MCA to 16- and 17-year olds the way it was intended at inception in 2005. A key part of this will be upholding the presumption of capacity to 16 year olds, balanced with the right to make unwise decisions (free from undue influence) and how this interfaces with the Children Act and child protection principles. The MCA requires any decisions made on behalf of a person who lacks capacity to make a decision are evidenced to be in their best interests, necessary and proportionate to the risk. They must also be taken in the context of the persons biography and ensure the least restrictive option available is applied.

[Supreme Court case ‘Child D’](#)

5.17 NATIONAL REFERRAL MECHANISM (NRM)

[National Referral Mechanism](#)

[Modern Slavery Act 2015](#)

The Modern Slavery Act 2015 reiterates existing powers and introduced new powers in relation to trafficking and exploitation. Under the act, agencies have a statutory ‘Duty to Notify’ in relation to anyone who is believed to be a victim of Human Trafficking (including internal trafficking within the UK).

NRM is the UK framework for identifying and referring potential victims of trafficking.

NRM referrals can only be made by first responders who are: Police forces, UK Border Force, Home Office, Local Authority,

Health, Salvation Army, Barnardos, NSPCC, Refugee Council and other voluntary sector organisations.

First Responder organisations have the following responsibilities:

- identify potential victims of modern slavery and recognise the indicators of modern slavery
- gather information in order to understand what has happened to them
- refer victims into the NRM via the NRM form
- provide a point of contact for the Single Competent Authority (SCA) to assist with the Reasonable and Conclusive Grounds decisions and to request a reconsideration where a First Responder believes it is appropriate to do so

Reasonable Grounds Decision-

The SCA will aim to make a **reasonable grounds** decision within 5 working days.

The reasonable grounds decision is based on the threshold of 'I suspect but cannot prove' that on the information available this individual is a victim of trafficking, slavery, servitude or forced labour.

Conclusive Grounds Decision-

'On the balance of probabilities, there is enough information to conclude the child has been trafficked'

The SCA gathers further information relating to the referral form the first responder and other agencies

There is no target to make conclusive grounds decision within 45 days. The timescale for making a conclusive grounds decision will be based on the circumstances of the case

Modern slavery is a term that covers:

- slavery
- servitude and forced or compulsory labour
- human trafficking

From 31 July 2015, potential victims of slavery, servitude and forced or compulsory labour in England and Wales recognised with a positive

reasonable grounds decision may also have access to support previously only offered to potential victims of human trafficking.

Human trafficking

For a child to have been a victim of human trafficking there must have been:

- **action** (recruitment, transportation, transfer, harbouring or receipt, which can include either domestic or cross-border movement)
- **purpose** of exploitation or intent to exploit (eg sexual exploitation, criminal exploitation, forced labour, domestic servitude, slavery, removal of organs)

NRM should be considered for any child where there are concerns relating to movement for the purpose of exploitation. There does not need to be conclusive evidence, the threshold is that trafficking is 'suspected but cannot be proved'.

Referrals to the NRM should be made for all potential victims of trafficking and modern slavery, who can be of any nationality, and may include **British nationals**, such as those trafficked within UK for child sexual exploitation or those trafficked as drug carriers internally in the UK. **A referral into the NRM does not replace or supersede established child protection processes, which should continue in tandem.** All potential victims of trafficking, irrespective of their immigration status, are entitled to safeguarding and protection under the law. **Children do not need to give consent for a referral to be made to NRM.**

People who may travel by public transport to premises where they are being exploited, can still be described as trafficked where the arrangements for this travel are made by someone who has power over them by virtue of grooming, coercion or threat. An individual does not have to directly move a person (e.g. collection by a car driven by trafficker) for consideration to be given to trafficking offences.

NRM provides several safeguarding and disruption opportunities in relation to victims and offenders. Trafficking can be shown evidentially to have taken place, without reliance on a vulnerable victim's testimony. It is especially useful where victims are aged between 16 years and 18 years as the age, the

'legal' consent to sexual activity does not impact upon prosecutions for trafficking offences in the same way that it may for sexual offences. Trafficking offences can be prosecuted without a statement from a victim and can carry a maximum sentence of life imprisonment.

An NRM positive conclusive grounds decision can lead to successful appeal of convictions; even for convictions pre- 31st July 2015 (Modern Slavery Act enactment).

This provision may result in victims being more willing to disclose their abuse and in turn lead to a perpetrators subsequent arrest.

In order to submit a collaborative NRM referral, obtain all relevant information from the various involved agencies, ensuring the SCA can make a confident judgement. In the case of a child it may be prudent to make a formal child protection referral and hold a strategy meeting, where all relevant parties can share information and collate relevant details for the NRM referral.

Example-

Historic incident of trafficking

An individual who has been trafficked in the past can still be classed as a trafficked victim. Therefore, historic NRM applications can be made, and used in any subsequent appeal against historic criminal convictions.

As a result of the convention obligations, on 21st June 2013, three people (who were children at the time of their convictions), from Vietnam who were trafficked to the UK and forced to work for criminal gangs, had their criminal convictions overturned.

The children were arrested in 2011 after police raids on cannabis factories and later convicted of drug offences. The Court of Appeal overturned the convictions and issued guidance to courts about how potential trafficking victims should be treated by the criminal justice system. One of the children, now 18, told police he was "relieved to see them" when he was arrested at a house in Bristol where cannabis was being grown. The court found his criminal activities were "integral" to his status as a trafficked child. Another victim, 18 at the time, was caught tending to cannabis plants in Harrow in 2009 after escaping from the care of Kent County Council two years earlier. He was sentenced for two years in a young offenders' institution. The third was sentenced to eight months' detention after he was found barefoot by police near to a house full of cannabis plants. He admitted looking after the crop but said he did not know it was illegal.

National Referral Mechanism (NRM) decision-making process



All decisions are now made by the Single Competent Authority (they are no longer split between NCA and UKVI). This new Single Competent Authority (SCA) sits within the Serious and Organised Crime directorate of the Home Office. The SCA now makes all NRM decisions, regardless of nationality or immigration status of the potential victim

The NRM is changing and will soon be digitalised.

NRM forms can be accessed here:

<https://www.modernslavery.gov.uk/start>

The updated Competent Authority Guidance is here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797903/victims-modern-slavery-competent-auth-v7.0-ext.pdf

5.18 FORCED MARRIAGE PROTECTION ORDER (FMPO)

Family Law Act 1996 - Section 63A (Forced Marriage Protection Order)

An FMPO can be obtained by the police through Legal Services or by any person with permission of the court, including local authorities, a relevant third party, or by the individual being threatened with forced marriage/in a forced marriage, even if they are a child.

The Order aims to protect any person from being forced into marriage.

The Order can contain any prohibitions, restrictions and requirements as are considered necessary by the court.

A power of arrest can be attached to a FMPO. A breach of this Order is deemed to be contempt of court and could result in a fine or imprisonment.

5.19 INDEPENDENT SEXUAL VIOLENCE ADVISORS (ISVA) AND SEXUAL ASSAULT REFERRAL CENTRES (SARC)

Any victim of sexual assault, including exploitation victims, can be taken to a SARC for forensic and medical examination to gather evidence for criminal investigation. This requires the consent of the victim. Victims do not have had to report to police to access these services. The SARC can also provide support and advice for the victim. All victims of sexual assault are eligible for a referral to an ISVA who can support the victim with a range of issues including taking them through any court processes and proceedings and offering post court support.

6. ADULT VICTIMS;

6.1 MENTAL CAPACITY ACT 2005

<https://www.legislation.gov.uk/id/ukpga/2005/9>

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

This legislation and its accompanying Code of Practice, applies from age 16years upwards. The Mental Capacity Act 2005 (MCA hereafter) embodies a legal framework to empower people to make decisions for themselves as much as possible and to protect people who may not be able to make some decisions. There are five key principles in relation to the Mental Capacity Act;

- A person is **assumed** to have capacity unless it is established that do not.
- A person is not to be treated as unable to make a decision unless **all practicable** steps to help have been taken without success.
- A person is not to be treated as unable to make a decision merely because they have made an **unwise** decision.
- An act done or decision made under this Act for or on behalf of an incapacitated person must be done or made in his **best interests**.
- The **least restrictive** option should be considered.

Section 2 Mental Capacity Act

'A person lacks capacity in relation to a matter if at the material time he is **unable to make a decision** for himself in relation to the matter because of an **impairment of, or a disturbance in the functioning of**, the mind or brain.'

This leads to the two-stage test being applied;

Stage One: The Diagnostic Test;

Does the person have an impairment or disturbance of the mind or brain which prevents them from making THIS decision at THIS time? Examples of this can be substance misuse, brain injury, a learning disability. If yes then proceed to stage two.

Stage two: The Functional test;

A person is unable to make a decision for himself if he is unable –

- to understand the relevant information to the specific decision: Yes/No – evidence: They can demonstrate they can remember the information which is in proportion to making the decision.
- to retain that information for as long as necessary to make the decision:
Yes/No – evidence: They can demonstrate they can remember the information which is in proportion to making the decision. E.g. information about a blood test for as long as the blood test takes, if it's to move to a new home this would be something the person should be able to remember as it has long term consequences.
- to use or weigh that information as part of the process of making the decision:
Yes/No - evidence: can the person tell you the pro's and cons of the decision? E.g. 'I know the antibiotics would make my infection better quicker and prevent further serious complications but they always give me thrush and I prefer to wait and take over the counter remedies to see if it improves first'
- to communicate his decision:
Yes/No – evidence: can they tell you their decision? This may be through various means and you may need a speech and language expert or interpreter to ensure you understand the person's wishes

A lack of capacity cannot be established merely by reference to;

- a person's age or appearance, or
- a condition of his or an aspect of his behaviour which might lead others to make

unjustified assumptions about his capacity”
ss(3)

In principle, legal capacity depends upon understanding rather than wisdom; the quality of the decision is irrelevant as long as the person understands what he is deciding”

Best Interests – Section 4 Mental Capacity Act 2005

In determining what is in a person’s best interests, the person making the determination must not make it merely on the basis of -

- a person’s age or appearance, or
- a condition of his or an aspect of his behaviour which might lead others to make unjustified assumptions about his capacity

The following decisions can never be taken on behalf of someone under best interests:

- Marriage
- Civil Partnership
- Divorce
- Sexual relationships
- Adoption
- Voting
- Consent to fertility treatment

The decision maker is required to consider all relevant circumstances and;

- Consider if, and if so when, the person may regain capacity
- Encourage the person to participate as much as possible in the decision making
- Consider the person’s wishes and feelings, beliefs and values and other factors that the person may consider were he able to do so
- Consult anyone specified by the person, engaged in caring for, or interested in the person, any Attorney under an LPA or Deputy

Section 5 Mental Capacity Act – Protection from liability

If a person does an act in connection with the care or treatment of another person, and

- has taken reasonable steps to establish capacity, and
- has concluded he lacks capacity and the act is in his best interests

Then

You do not incur any liability that you would not have incurred if

- the person had had capacity and
- had consented to the act

S6 MCA - Restraint

The act allows for the use of restraint for a non-negligible length of time if

- It is necessary in order to protect the person from harm, and
- the level of restraint is proportionate to the likelihood and seriousness of the harm

What constitutes a non-negligible length of time is derived from case law. See Page 32 of <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=2ahUKewi6k5ychuLIAhWLasAKHddfAzCQFjAJegQIARAC&url=https%3A%2F%2Fwww.lawsociety.org.uk%2Fsupport-services%2Fdocuments%2Fdeprivation-of-liberty---a-practical-guide%2F&usg=AOvVaw1XlAsIgl7n0tq9uqN-h42Qr>

Making an application to the Court of Protection;

The powers of the Court are to;

- Make declarations about a person’s capacity
- Make decisions regarding the personal welfare or finances of an incapacitated person
- Make decisions regarding serious medical treatment relating to providing, withdrawing or withholding treatment to an incapacitated person

- Appoint a Deputy to manage welfare and / or financial matters on behalf of an incapacitated person
- Make decisions about a Lasting Power, such as considering its validity or scope

Mental Capacity Act and Consent

It is important that all practitioners working in the field of exploitation have a thorough understanding of the Mental Capacity Act. In particular, practitioners should understand the extent to which the controlling and coercive behaviour of perpetrators of exploitation can impact on a person's ability to make an informed decision.

Practitioners need to be alert to the possibility that a person has been subjected to a process of grooming, control and coercion. If a person has been subject to a grooming process then practitioners need to consider the extent to which the controlling and coercive behaviour, deployed as part of the grooming process is likely to affect their ability to understand risk. Many victims of exploitation may have an existing impairment or disturbance in the functioning of the mind or brain, and as such their decision making needs to be assessed under the provisions of the Mental Capacity Act 2005.

6.2 DEPRIVATION OF LIBERTY SAFEGUARDS: DOLS

There are three elements that need to be satisfied;

- The objective element
- The subjective element – can and does the person consent to the arrangements?
- It is imputable to the state – is the state responsible for the deprivation, either directly or by failing to prevent the person from being deprived of their liberty?

The Mental Capacity (Amendment) Act 2019 has now received Royal Assent and become law.

The legislation provides for the repeal of the Deprivation of Liberty Safeguards (DoLS) contained in the Mental Capacity Act 2005 (MCA), and their replacement with a new scheme called the Liberty Protection Safeguards (LPS)

The LPS establishes a process for authorising arrangements enabling care or treatment which give rise to a deprivation of liberty within the meaning of Article 5(1) of the European Convention on Human Rights (ECHR), where the person lacks capacity to consent to the arrangements. It also provides for safeguards to be delivered to people subject to the scheme.

In place of the local authority, hospitals (both NHS and private sector) become responsible for authorising their own DoL cases for in-patients, and CCGs will become responsible for authorising packages of care in the community which are NHS continuing healthcare funded. The local authority remains responsible for the residual cases.

(Vikki Gray-Designated Nurse Safeguarding Adults,NHS Camden Clinical Commissioning Group)

6.3 THE CARE ACT 2014

The Care Act 2014

Assessment of an adult's needs for care and support

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—
 - (a) whether the adult does have needs for care and support, and
 - (b) if the adult does, what those needs are.
- (2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.
- (3) The duty to carry out a needs assessment applies regardless of the authority's view of—
 - (a) the level of the adult's needs for care and support, or
 - (b) the level of the adult's financial resources.
- (4) A needs assessment must include an assessment of—
 - (a) the impact of the adult's needs for care and support on the matters specified in section 1(2),

- (b) the outcomes that the adult wishes to achieve in day-to-day life, and
 - (c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.
- (5) A local authority, in carrying out a needs assessment, must involve—
- (a) the adult,
 - (b) any carer that the adult has, and
 - (c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.
- (6) When carrying out a needs assessment, a local authority must also consider—
- (a) whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and
 - (b) whether the adult would benefit from the provision of anything under section 2 or 4 or of anything which might be available in the community.
- (7) This section is subject to section 11(1) to (4) (refusal by adult of assessment).

- (b) Where someone is 18 or over but is still receiving children's services and a safeguarding issue is raised, the matter should be dealt with through adult safeguarding arrangements. For example, this could occur when a young person with substantial and complex needs continues to be supported in a residential educational setting until the age of 25 (see also chapter 16). Where appropriate, adult safeguarding services should involve the local authority's children's safeguarding colleagues as well as any relevant partners (for example, the Police or NHS) or other persons relevant to the case. However, the level of needs is not relevant, and the young adult does not need to have eligible needs for care and support under the Care Act, or be receiving any particular service from the local authority, in order for the safeguarding duties to apply as long as the conditions in (a) are met.

There are relevant parts of the Care Act 2014 in relation to adult safeguarding;

Safeguarding adults at risk of abuse or neglect.

- **Section 42 – The Care Act 2014 (Section 42)** requires that each local authority must make enquiries, or cause others to do so, if it believes an adult with needs for care and support is experiencing, or is at risk of, abuse or neglect. An enquiry should establish whether any action needs to be taken to prevent or stop abuse or neglect, and if so, by whom.
- **Section 44 – The Care Act 2014 (Section 44)** Safeguarding adults reviews

A Safeguarding Adult Review must take place to review a case involving an adult with needs for care and support (whether or not the local authority has been meeting any of those needs) if—

- (a) there is reasonable cause for concern about how the Safeguarding Adult Board (SAB), members of it or other persons with relevant functions worked together to safeguard the adult, and
- (b) condition 1 or 2 is met.

Safeguarding Under the Care Act 2014

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

- (a) The safeguarding duties apply to all adults who:
- has needs for care and support (whether or not the local authority is meeting any of those needs)
 - is experiencing, or at risk of, abuse or neglect
 - as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect

- Condition 1 is met if—

the adult has died, and

the SAB knows or suspects that the death resulted from abuse or neglect (whether or not it knew about or suspected the abuse or neglect before the adult died).

- Condition 2 is met if—

the adult is still alive, and

- the SAB knows or suspects that the adult has experienced serious abuse or neglect.
- [Section 45](#) – The **Care Act 2014 (Section 45)** introduces a duty for Safeguarding Adults Boards. Section 45 of the Care Act means that:

A person must supply information on request by the SAB if he/she is likely to have information relevant to the SAB's functions. The request places the person it is made to under a duty to disclose the supply of information to assist the safeguarding adults boards to fulfil their functions

N.B. The Care Act 2014 can be used for victims who have care and support needs as a result of the trauma they have suffered through abuse or exploitation

6.4 NATIONAL REFERRAL MECHANISM (NRM)

National Referral Mechanism

Modern Slavery Act 2015

The Modern Slavery Act 2015 reiterates existing powers and introduced new powers in relation to trafficking and exploitation. Under the act, agencies have a statutory 'Duty to Notify' in relation to anyone who is believed to be a victim of Human Trafficking (including internal trafficking within the UK).

[NRM](#) is the UK framework for identifying and referring potential victims of trafficking.

NRM referrals can be only be made by [first responders](#) who are: Police forces, UK Border Force, Home Office, Local Authority, Health, Salvation Army, Barnardos, NSPCC, Refugee Council and other voluntary sector organisations.

First Responder organisations have the following responsibilities:

- identify potential victims of modern slavery and recognise the indicators of modern slavery
- gather information in order to understand what has happened to them
- refer victims into the NRM via the NRM form
- provide a point of contact for the Single Competent Authority (SCA) to assist with the Reasonable and Conclusive Grounds decisions and to request a reconsideration where a First Responder believes it is appropriate to do so

Reasonable Grounds Decision-

The SCA will aim to make a **reasonable grounds** decision within 5 working days.

The reasonable grounds decision is based on the threshold of 'I suspect but cannot prove' that on the information available this individual is a victim of trafficking, slavery, servitude or forced labour.

Conclusive Grounds Decision-

'On the balance of probabilities, there is enough information to conclude the child has been trafficked'

The SCA gathers further information relating to the referral form the first responder and other agencies

There is no target to make conclusive grounds decision within 45 days. The timescale for making a conclusive grounds decision will be based on the circumstances of the case

Modern slavery is a term that covers:

- slavery
- servitude and forced or compulsory labour
- human trafficking

From 31 July 2015, potential victims of slavery, servitude and forced or compulsory labour in England and Wales recognised with a positive reasonable grounds decision may also have access to support previously only offered to potential victims of human trafficking.

Human trafficking

For an adult to have been a victim of human trafficking there must have been:

- **action** (recruitment, transportation, transfer, harbouring or receipt, which can include either domestic or cross-border movement)
- **means** (the method of control -threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability - however, there does not need to be a 'means' for children as they are not able to give informed consent)
- **purpose** of exploitation (eg sexual exploitation, forced labour or domestic servitude, slavery, removal of organs)

NRM should be considered for any person where there are concerns relating to movement for the purpose of exploitation. There does not need to be conclusive evidence, the threshold is that trafficking is 'suspected but cannot be proved'.

Referrals to the NRM should be for all potential victims of trafficking and modern slavery, who can be of any nationality, and may include **British nationals**, such as those trafficked within UK for exploitation or those trafficked as drug carriers internally in the UK. All potential victims of trafficking, irrespective of their immigration status, are entitled to safeguarding and protection under the law.

People who may travel by public transport to premises where they are being exploited, can still be described as trafficked where the arrangements for this travel are made by someone who has power over them by virtue of grooming, coercion or threat. An individual does not have to directly move a person (e.g. collection by a car driven by trafficker) for consideration to be given to trafficking offences.

NRM provides several safeguarding and disruption opportunities in relation to victims and offenders. Trafficking can be shown evidentially to have taken place, without reliance on a vulnerable victim's testimony. It is especially useful where victims are adults, as the age, the 'legal' consent to sexual activity does not impact upon prosecutions for trafficking offences in the same way that it may for sexual offences. Trafficking offences can be prosecuted without a statement from a victim and can carry a maximum sentence of life imprisonment.

In order to submit a collaborative NRM referral, obtain all relevant information from the various involved agencies, ensuring the SCA can make a confident judgement.

National Referral Mechanism (NRM) decision-making process



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The NRM is changing and will soon be digitalised.

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The updated Competent Authority Guidance is here:

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Slavery, servitude and forced or compulsory labour

For a person to have been a victim of slavery, servitude and forced or compulsory labour there must have been:

- means (being held, either physically or through threat of penalty – eg threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability).
- service (an individual provides a service for benefit, eg begging, sexual services, manual labour, domestic service)

Forced or compulsory labour may be present in trafficking cases. However, not every person who is exploited through forced labour has been trafficked.

There will be cases of exploitation that do not meet the threshold for modern slavery – for example someone may choose to work for less than the national minimum wage, or in undesirable conditions, without being forced or deceived. **These cases should not be referred into the NRM but you may want to refer them to the police.**

How to refer cases to the NRM

Modern slavery is a complex crime and may involve multiple forms of exploitation. Victims may not be aware that they are being trafficked or exploited, and may have consented to elements of their exploitation, or accepted their situation. If you think that modern slavery has taken place, the case should be referred to the NRM so that the SCA can fully consider the case.

Adults will only be accepted into the NRM if the consent section of the form has been completed. Informed consent requires that the potential victim have the NRM, the referral process, and potential outcomes, clearly explained to them.

Duty to notify the Home Office of suspected victims of modern slavery

From 1 November 2015, specified public authorities are required to notify the Home Office about any potential victims of modern slavery they encounter in England and Wales. Completing this NRM form is sufficient to satisfy this duty to notify as long as all of the sections marked with a † are completed.

However, if the potential adult victim does not want to be referred to the NRM, then an MS1 form should be completed and sent to dutytonotify@homeoffice.gov.uk. The MS1 form can be anonymous. The [MS1 form and guidance](#) is available.

Access to support for adults

Individuals who are recognised as a potential victim of modern slavery through the NRM have access to specialist bespoke support for a period of at least 45 days while their case is considered, which may include:

- access to relevant legal advice
- accommodation
- protection
- independent emotional and practical help

Support for adults in England and Wales is currently delivered by the Salvation Army and a number of subcontractors. The Salvation Army will assess each potential victim to determine what support is most appropriate.

You must explain this process to the potential victim and seek their consent before filling out the NRM form. If they consent to being referred they should sign the form, and also sign if they wish to access support.

You should contact the Salvation Army as soon as possible to make the support referral (prior to the reasonable grounds decision which has a target of 5 working days).

Completing the form

The NRM form should only be completed for adults when a member of staff from a designated First Responder organisation suspects someone is a victim of modern slavery and where the individual concerned has understood the implications of, and consented to, a referral.

The referral should contain sufficient information from the first responder organisation and relevant partner to enable the SCA to reach a decision.

Consent

Consent is required for an adult to be referred to the NRM. So they can give their informed consent, you must explain:

- what the NRM is
- what support is available through it
- what the possible outcomes are for an individual being referred

You should also make it clear that information may be shared or sought by the SCA from other public authorities, such as the police and local authorities, to gather further evidence on an NRM referral.

No consent

If an adult does not consent to enter the NRM, a separate duty to notify form should be completed. **Note;** If there are concerns the adult does not have capacity to consent, then refer to the Mental Capacity Section (6.1) of this document.

An NRM positive conclusive grounds decision can lead to successful appeal of convictions; even for convictions pre- 31st July 2015 (Modern Slavery Act enactment).

This provision may result in victims being more willing to disclose their abuse and in turn lead to a perpetrators subsequent arrest

Examples-

Historic incidents of trafficking

An individual who has been trafficked in the past can still be classed as a trafficked victim. Therefore, historic NRM applications can be made, and used in any subsequent appeal against historic criminal convictions.

Adult conviction overturned;

As a result of the convention obligations, a Ugandan woman in her mid-30s also had her conviction overturned. She had been sentenced to six months in prison in 2011 after pleading guilty to possessing a false passport. But the court heard she was suffering from complex post-traumatic stress disorder after “prolonged exposure to involuntary prostitution and enforced control” and that the passport offered her the prospect of escape. The CPS said its policy clearly stated that “very careful consideration” should be given before charges are brought against victims of trafficking. It added: “In light of the fresh evidence received in all of these cases the CPS did not resist these appeals. Had the evidence of trafficking been available at the time of the decision to prosecute the CPS would not have prosecuted.

6.5 INDEPENDENT SEXUAL VIOLENCE ADVISORS (ISVA) AND SEXUAL ASSAULT REFERRAL CENTRES (SARC)

Any victim of sexual assault, including exploitation victims, can be taken to a SARC for forensic and medical examination to gather evidence for criminal investigation. This requires the consent of the victim. Victims do not have had to report to police to access these services. The SARC can also provide support and advice for the victim. All victims of sexual assault are eligible for a referral to an ISVA who can support the victim with a range of issues including taking them through any court processes and proceedings and offering post court support.

7. PERPETRATORS OF CHILD AND ADULT VICTIMS;

This section of the toolkit has not been separated out into individual sections as many of the disruption options can be used for perpetrators of child or adult victims, however at the bottom of each disruption option there is a direction in red as to which perpetrator the disruption option can be used against.

7.1 DOMESTIC VIOLENCE PREVENTION NOTICES AND ORDERS.

Crime and Security Act 2010

Officers have a duty to take or initiate steps to make a victim as safe as possible. Officers should consider domestic violence protection notices (DVPN) and domestic violence protection orders (DVPO) at an early stage following a domestic abuse incident as part of this duty. These notices and orders may be used following a domestic incident to provide short-term protection to the victim when an arrest has not been made but positive action is required, or where an arrest has taken place, but the investigation is in progress.

This could be where a decision is made to caution the perpetrator or take no further action (NFA), or when the suspect is bailed without conditions.

NB; Cautioning of domestic abuse perpetrators needs a caveat of consideration for the victim's safety, cautioning is not deemed to be good practice. Conditional Cautioning is also not permitted according to [CPS Prosecuting DA Guidance](#)

The DVPN/ DVPO process is designed to give breathing space to victims by granting a temporary respite from their abuser and allowing referral to support services without interference. The point at which victims seek help or leave their abuser can be when they are most at risk.

The DVPN/DVPO process can be pursued **without the victim's active support, or even against their wishes, if this is considered necessary to protect them from violence or threat of violence.** The victim also does not have to attend court. This can help by removing responsibility from the victim for taking action against their abuser.

For the police, it provides an alternative to allowing the suspect to remain at or return home. DVPNs and DVPOs are governed by sections 24 to 33 of the [Crime and Security Act 2010](#) (CSA).

It is a two-stage process involving both the police and the magistrates' court. Once the police have served a DVPN on the suspect, an application must be made to the magistrates' court for the DVPO within 48 hours of the DVPN being served. There are strict conditions which apply at each stage. Breach of either the notice or the order carries a power of arrest.

(Applies to perpetrators of Child and Adult Victims)

Domestic violence protection notices

For a DVPN to be available:

- the suspect must be over 18
- there must be reasonable grounds for believing that the suspect has been violent or has threatened violence towards an associated person, **and**
- that the DVPN is necessary to protect the associated person from violence or threat of violence by the suspect.

Although breach of a DVPN is not a crime carrying a formal sanction, there are consequences for the suspect. If an officer has reasonable grounds to believe that the suspect has breached the DVPN, the person should be arrested under [section 25\(1\)\(b\)](#) Crime and Security Act 2010.

(Applies to perpetrators of Child and Adult Victims)

Domestic violence protection orders

The content of the application must establish that:

- there are **reasonable grounds** for believing that the perpetrator has been **violent or has threatened violence** towards an **associated person**, and
- that the DVPO is **necessary to protect** the person from violence or threat of violence by the perpetrator.

Breach of a DVPO is a civil contempt of court under [section 63](#) of the Magistrates' Courts Act 1980. The court can order a fine not exceeding £50 per day up to a maximum of £5,000 or up to two months' imprisonment. As it is not a criminal offence, it is not recordable.

(Applies to perpetrators of Child and Adult Victims)

7.2 CONTROLLING OR COERCIVE BEHAVIOUR IN AN INTIMATE OR FAMILY RELATIONSHIP

[Serious Crime Act 2015 s76](#)

Controlling or coercive behaviour is a key component of exploitation, and it is an offence where it is committed within an intimate or familial relationship.

A person commits an offence if they:

- repeatedly or continuously engage in behaviour towards another person that is controlling or coercive,
- at the time of the behaviour, the offender and victim are personally connected (includes in an intimate relationship) the behaviour has a serious effect on the victim, and
- the offender knows or ought to know that the behaviour will have a serious effect on the victim.

The behaviour is deemed to have a serious effect on the victim if:

- it causes them to fear, on at least two occasions, that violence will be used against them

- it causes them serious alarm or distress which has a substantial adverse effect on their usual day-to-day activities

This offence is punishable by a fine or imprisonment of up to five years.

(Applies to perpetrators of Child and Adult Victims)

7.3 RESTRAINING ORDERS

[Section 12 Domestic Violence, Crime and Victims Act 2004](#)

Restraining orders should be considered by police in any exploitation related prosecution, even where the victim has not requested the order to be made. Restraining orders are made by a court under Section 12 of the Domestic Violence, Crime and Victims Act 2004 and allow a court to make an Order either on the conviction or acquittal of a defendant for any offence where the court believes a restraining order is necessary to protect a person from harassment. The terms may be set by the court. If the Restraining Order is breached, the defendant may be subject to imprisonment for a term not exceeding five years, or a fine, or both.

(Applies to perpetrators of Child and Adult Victims)

7.4 NON-MOLESTATION ORDERS

[Section 42 Family Law Act 1996](#)

Non-Molestation Orders can be considered where an offender is deemed to be an 'associated person' and can restrict contact and harassment of a victim. 'Associated persons' are usually family members or spouses, however there is eligibility for one member of a non-cohabiting couple where there has been an intimate personal relationship with each other which was of significant duration.

(Applies to perpetrators of Child and Adult Victims)

7.5 CHILD ABDUCTION WARNING NOTICES (CAWN)

Section 2 Child Abduction Act 1984

Child Abduction Warning Notices (CAWNs) are issued by the police to disrupt contact between an adult and a child, where the child is aged under 16 years or aged under 18 years if they are in the care of the local authority.

It is an offence for a person not connected to the child to take the child away 'without legal authority'. In such cases, the police may remove the child to a place of safety and issue a formal warning to the perpetrator. CAWNs are issued to individuals who are believed to place the child at risk of offences being committed against them. There is a requirement for the child's parent or guardian to give permission for the CAWN to be served.

Breach of a CAWN is not a criminal offence, however, breaches of CAWNs provide evidence to support a prosecution under s2 Child Abduction Act 1984 and/or to support applications for Sexual Risk Orders, Civil Injunctions or evictions.

Offences of Abduction of Children in Care / Abduction of a child by other person should be considered in the event of a breach of a CAWN.

(Applies ONLY to perpetrators of Child Victims)

7.6 EXPLOITATION WARNING NOTICE;

The Exploitation Warning Notice has been developed by Merseyside police, is not a Court Order or any form of conviction or caution. The purpose of it is to formally advise a suspected perpetrator of exploitation that the police have identified them as being involved in the exploitation of individuals.

The Notice outlines that there is intelligence available which links the suspect perpetrator and / or associates to the exploitation of children or vulnerable people in or outside of Merseyside. This form could be easily adopted for respective police forces using the [Merseyside Police template](#).

(Merseyside Police - DCI Cath Haggerty)

Breach of an Exploitation Warning Notice is not a criminal offence, however, breaches of Exploitation Warning Notices provide evidence to support applications for Slavery and Trafficking Risk Orders, Civil Injunctions or evictions.

(Applies to perpetrators of Child and Adult Victims)

7.7 ABDUCTION OF CHILDREN IN CARE

Section 49 Children Act 1989

It is an offence if someone knowingly and without lawful authority or reasonable excuse:

- takes a child who is subject of a care order, emergency protection order (EPO) or powers of police protection, away from the responsible person,
- keeps the child away from the responsible person
- induces, assists or incites such a child to run away or stay away from the responsible person.

Criminal charges for Abduction of a Child in Care can result in imprisonment for up to six months, a fine not exceeding £5000 or both.

(Applies ONLY to perpetrators of Child victims)

7.8 ABDUCTION OF CHILD BY OTHER PERSONS

Section 2 Child Abduction Act 1984

A person commits an offence if, without lawful authority or reasonable excuse, he takes or detains a child under the age of sixteen;

- so as to remove him/her from the lawful control of any person having lawful control of the child; or
- so as to keep him/her out of the lawful control of any person entitled to lawful control of the child.

(Applies ONLY to perpetrators of Child victims)

7.9 SEXUAL OFFENCES

Sexual Offences Act 2003

The Sexual Offences Act 2003 introduced a range of offences that recognise the grooming, coercion and control of children.

Section 47 Paying for the Sexual Services of a Child

A person commits an offence if;

- he intentionally obtains for himself the sexual services of another person
- before obtaining those services, he has made or promised payment for those services to **B** or a third person, or knows that another person has made or promised such a payment, and
- either;
- **B** is under 18, and he does not reasonably believe that B is 18 or over, or
- **B** is under 13.

(Applies ONLY to perpetrators of Child victims)

Section 48 Causing or Inciting the Sexual Exploitation of a Child

A person commits an offence if—

he intentionally causes or incites another person **B** to be sexually exploited in any part of the world, and

either;

- **B** is under 18, and A does not reasonably believe that B is 18 or over, or
- **B** is under 13.

A person guilty of an offence under this section is liable;

- on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(Applies ONLY to perpetrators of Child victims)

Section 49 Controlling a Child in relation to Sexual Exploitation

A person commits an offence if—

he intentionally controls any of the activities of another person **B** relating to **B**'s sexual exploitation in any part of the world, and

either

- **B** is under 18, and A does not reasonably believe that B is 18 or over, or
- **B** is under 13.

A person guilty of an offence under this section is liable;

- on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(Applies ONLY to perpetrators of Child victims)

Section 50 Arranging or Facilitating the Sexual Exploitation of a Child

Sexual Offences Act 2003

A person commits an offence if;

he intentionally arranges or facilitates the sexual exploitation in any part of the world of another person **B**, and

either;

- **B** is under 18, and A does not reasonably believe that B is 18 or over, or
- **B** is under 13.

A person guilty of an offence under this section is liable;

- on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(Applies ONLY to perpetrators of Child victims)

Operation Summer- West Midlands Police pro-active operation to safeguard victims of CSE:

There are various tactics deployed to safeguard exploitation victims. Operation SUMMER involved the seizure of underwear from victims of CSE which provided the platform to produce credible indisputable evidence. It presents the opportunity to;

- Map offenders across areas
- Link to other criminality and opportunities that present themselves for alternative enforcement
- Tiered intervention plans to mitigate or manage the threat posed including the application for civil interventions such as SROs

Follow link to [Operation Summer document](#).

Sexual Activity with a person with a mental disorder impeding choice

Section 30 Sexual Offences Act 2003

Sexual activity with a person with a mental disorder impeding choice

- (1) A person (A) commits an offence if—
 - (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B is unable to refuse because of or for a reason related to a mental disorder, and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if—
 - (a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or
 - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of an offence under this section, if the touching involved—
 - (a) penetration of B's anus or vagina with a part

of A's body or anything else,

- (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.

(Applies to perpetrators of Child and Adult Victims)

Rape

Section 1 Sexual Offences Act 2003

The elements of rape are:

- (A) intentionally penetrates the vagina, anus or mouth of another person (B) with his penis;
- (B) does not consent to the penetration, and
- (A) does not reasonably believe that (B) consents

Penetration of the mouth is included.

Rape is a crime of basic intent, and the influence of substances including alcohol or drugs is no defence.

(Applies to perpetrators of Child and Adult Victims)

Assault by penetration

Section 2 Sexual Offences Act 2003

The elements of assault by penetration are:

- A person (A) intentionally penetrates the vagina or anus of another person (B) with a part of their body or anything else:
 - The penetration is sexual
 - (B) does not consent to the penetration, and
 - (A) does not reasonably believe that (B) consents.

The meaning of sexual, consent, reasonable belief and the evidential and conclusive presumptions all apply to this offence.

(Applies to perpetrators of Child and Adult Victims)

Sexual Assault section 3 Sexual Offences Act 2003

The elements of the offence of sexual assault are:

- A person (A) intentionally touches another person (B)
- the touching is sexual
- (B) does not consent to the touching, and
- (A) does not reasonably believe that (B) consents.

(Applies to perpetrators of Child and Adult Victims)

Causing sexual activity without consent section 4 Sexual Offences Act 2003

The elements of this offence are:

- A person (A) intentionally causes (B) to engage in activity
- the activity is sexual
- (B) does not consent to engaging in the activity
- (A) does not reasonably believe that (B) consents.

This offence covers situations where, for example:

- a victim is forced to carry out a sexual act involving their own person, such as masturbation,
- to engage in sexual activity with a third party, who may be willing or not, or
- to engage in sexual activity with the offender e.g. woman forces a man to penetrate her.

(Applies to perpetrators of Child and Adult Victims)

Sexual Offences Against Children

The 2003 Act identifies three categories of offences against children of different age. They are:

- Offences against those under 13;
- Offences against those under 16;
- Offences against those under 18.

Offences against children under 13yrs- sections 5 – 8 Sexual Offences Act 2003

- Sections 5-8 apply the main non-consensual offences to children under 13, except that consent in these offences is irrelevant. A child under 13 does not, under any circumstances, have the legal capacity to consent to any form of sexual activity.

Section 5 Sexual Offences Act 2003: Rape of a child under 13

- Section 5 makes it an offence for a person intentionally to penetrate with his penis the vagina, anus or mouth of a child under 13.
- In cases where a defendant admits sexual activity with a child under 13 but states that the victim consented, the proper course is to invite the court to hold a Newton hearing. On no account should a section 1 rape count be added as an alternative.

(Applies ONLY to perpetrators of Child victims)

Section 6 Sexual Offences Act 2003: Assault of a child under 13 by penetration

- Section 6 makes it an offence for a person intentionally to penetrate sexually the vagina, or anus of a child under 13 with a part of his body, or with anything else.
- A defendant indicted for assault of a child under 13 by penetration may, on appropriate facts, be acquitted of the offence charged and convicted in the alternative of the lesser offence of sexual assault.

(Applies ONLY to perpetrators of Child victims)

Section 7: Sexual assault of a child under 13

- Section 7 makes it an offence for a person to touch a child under 13 sexually.

(Applies ONLY to perpetrators of Child victims)

Section 8: Causing or inciting a child under 13 to engage in sexual activity

- Section 8 makes it an offence for a person intentionally to cause or incite a child (B) under the age of 13 to engage in sexual activity.

(Applies ONLY to perpetrators of Child victims)

Sections 9 to 15 of the Sexual Offences Act 2003 are designed to protect children under 16.

Section 9 Sexual Offences Act 2003- Sexual Activity with a Child

A person aged 18 or over (A) commits an offence if—

- he intentionally touches another person (B),
 - the touching is sexual, and
- either—

B is under 16 and A does not reasonably believe that B is 16 or over, or

B is under 13.

A person guilty of an offence under this section, if the touching involved—

- penetration of B's anus or vagina with a part of A's body or anything else,
- penetration of B's mouth with A's penis,
- penetration of A's anus or vagina with a part of B's body, or
- penetration of A's mouth with B's penis

(Applies ONLY to perpetrators of Child victims)

Section 10 Sexual Offences Act 2003- Causing or inciting a child to engage in sexual activity

Causing or inciting a child to engage in sexual activity

A person aged 18 or over (A) commits an offence if—

- he intentionally causes or incites another person (B) to engage in an activity,
 - the activity is sexual, and
- either—

B is under 16 and A does not reasonably believe that B is 16 or over, or

B is under 13.

A person guilty of an offence under this section, if the activity caused or incited involved—

- penetration of B's anus or vagina,
- penetration of B's mouth with a person's penis,

- penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
- penetration of a person's mouth with B's penis,

(Applies ONLY to perpetrators of Child victims)

Section 11 Sexual Offences Act 2003-Engaging in sexual activity in the presence of a child

Engaging in sexual activity in the presence of a child

A person aged 18 or over (A) commits an offence if—

- he intentionally engages in an activity,
- the activity is sexual,
- for the purpose of obtaining sexual gratification, he engages in it—
 - when another person (B) is present or is in a place from which A can be observed, and
 - knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, and
- (d) either—
 - B is under 16 and A does not reasonably believe that B is 16 or over, or
 - B is under 13.

(Applies ONLY to perpetrators of Child victims)

Section 12 Sexual Offences Act 2003-Causing a child to watch a sexual act

A person aged 18 or over (A) commits an offence if—

- for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
 - the activity is sexual, and
- either—
- B is under 16 and A does not reasonably believe that B is 16 or over, or
 - B is under 13.

(Applies ONLY to perpetrators of Child victims)

Section 13 Sexual Offences Act 2003-Child Sex offences committed by children or young persons

A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 if he were aged 18.

(Applies ONLY to perpetrators of Child victims)

Section 14 Sexual Offences Act 2003 -Arranging or facilitating the commission of a child sex offence

A person commits an offence if—

- he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and
- doing it will involve the commission of an offence under any of sections 9 to 13.

(Applies ONLY to perpetrators of Child victims)

Section 15 Sexual Offences Act 2003-meeting a child following sexual grooming

A person aged 18 or over (A) commits an offence if—

- (a) A has met or communicated with another person (B) on at least two occasions and subsequently—
 - (i) A intentionally meets B,
 - (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or
 - (iii) B travels with the intention of meeting A in any part of the world,
- (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,
- (c) B is under 16, and
- (d) A does not reasonably believe that B is 16 or over.

(Applies ONLY to perpetrators of Child victims)

7.10 INHERENT JURISDICTION-IN RESPECT OF A CHILD

Inherent Jurisdiction.

Section 100 Children Act 1989

The nature of inherent jurisdiction proceedings

It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Act 1989.

The court may under its inherent jurisdiction, in addition to all of the orders which can be made in family proceedings, make a wide range of injunctions for the child's protection of which the following are the most common –

- (a) orders to restrain publicity;
- (b) orders to prevent an undesirable association;
- (c) orders relating to medical treatment;
- (d) orders to protect abducted children, or children where the case has another substantial foreign element; and
- (e) orders for the return of children to and from another state.

The court's wardship jurisdiction is part of and not separate from the court's inherent jurisdiction. The distinguishing characteristics of wardship are that –

- (a) custody of a child who is a ward is vested in the court; and
- (b) although day to day care and control of the ward is given to an individual or to a local authority, no important step can be taken in the child's life without the court's consent.

Transfer of proceedings to family Court

Whilst the family court does not have jurisdiction to deal with applications that a child be made or cease to be a ward of court, consideration should be given to transferring the case in whole or in part to family court where a direction has been given confirming the wardship and directing that the child remain a ward of court during his minority or until further order.

The family court must transfer the case back to the High Court if a decision is required as to whether the child should remain a ward of court.

The following proceedings in relation to a ward of court will be dealt with in the High Court unless the nature of the issues of fact or law makes them more suitable for hearing in the family court –

- (a) those in which an officer of the Cafcass High Court Team or the Official Solicitor is or becomes the litigation friend or children's guardian of the ward or a party to the proceedings;
- (b) those in which a local authority is or becomes a party;
- (c) those in which an application for paternity testing is made;
- (d) those in which there is a dispute about medical treatment;
- (e) those in which an application is opposed on the grounds of lack of jurisdiction;
- (f) those in which there is a substantial foreign element;
- (g) those in which there is an opposed application for leave to take the child permanently out of the jurisdiction or where there is an application for temporary removal of a child from the jurisdiction and it is opposed on the ground that the child may not be duly returned.

Parties

Where the child has formed or is seeking to form an association, considered to be undesirable, with another person, that other person should not be made a party to the application. Such a person should be made a respondent only to an application within the

proceedings for an injunction or committal. Such a person should not be added to the title of the proceedings nor allowed to see any documents other than those relating directly to the proceedings for the injunction or committal. He or she should be allowed time to obtain representation and any injunction should in the first instance extend over a few days only.

Removal from jurisdiction

A child who is a ward of court may not be removed from England and Wales without the court's permission. Practice Direction 12F (International Child Abduction) deals in detail with locating and protecting children at risk of unlawful removal.

Criminal Proceedings

Case law establishes that:

There is no requirement for the police or any other agency carrying out statutory powers of investigation or enforcement to seek the permission of the court to interview a child who is a ward of court. The fact that a child is a ward of court does not affect the powers and duties of the police or other statutory agencies in relation to their investigations. Provided that the relevant statutory requirements are complied with, the police or other agencies are under no duty to take any special steps in carrying out their functions in relation to a child who is a ward of court.

Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child is, or subsequently becomes, a ward of court, the permission of the court is not required for the child to be called as a witness in the criminal proceedings.

Where the police or other statutory agencies take any action in relation to a child who is a ward of court, the person(s) with day to day care and control of the child, or where applicable the local authority, should bring the relevant information to the attention of the court as soon as practicable. Where wardship proceedings are continuing, any children's guardian appointed for the child must be informed of the situation by the other parties.

(Applies to perpetrators of Child victims)

7.11 INHERENT JURISDICTION- IN RESPECT OF AN ADULT

Court's inherent jurisdiction

Adults who are vulnerable but who have capacity are outside the jurisdiction of Mental Capacity Act 2005. The High Court can use its inherent jurisdiction to intervene to protect vulnerable adults by making freezing orders to prevent money or property being disposed of. These powers can also be used to recover funds and set aside asset transfers procured by undue influence, duress or fraud or where there is evidence that a vulnerable donor is, for some other reason, unable to make a free decision or is incapacitated or disabled from giving or expressing real and genuine consent.

6.3 Human Rights Act 1998

The Human Rights Act 1998 applies the principles of the European Convention on Human Rights (ECHR). Local authorities must use their powers without infringing those rights. Article 8 of the ECHR gives individuals the freedom to enjoy private and family life. The provisions of MCA 2005 have been held to be compatible with this freedom.

Facts

A local authority applied to the High Court on 19 April 2011 to use its inherent jurisdiction to protect an elderly husband and wife who were subject to undue influence and duress from their son with whom they lived. The son used bullying behaviour to coerce his parents to move out of their home, to prevent them from seeing friends and to disrupt the help offered by carers visiting their home. The husband was subsequently found to lack capacity and so his needs came within the jurisdiction of MCA 2005. Mrs Justice Theis granted an interim injunction under section 48 of the MCA 2005 (for the husband) and under the court's inherent jurisdiction (for the wife) restraining the son's abusive behaviour towards his parents, their carers and friends. The son appealed to the Court of Appeal on 16 January 2012 arguing that the inherent jurisdiction of the court had not survived the passing of MCA 2005.

Decision

After reviewing the pre-2005 case law and the consultation process that culminated in MCA 2005, the Court of Appeal held the following:

- The inherent jurisdiction of the court was still available and had not been ousted by the MCA 2005 statutory jurisdiction. It was clear from case law post 2005 such as *Westminster City Council v C* [2008] EWCA Civ 198, that this jurisdiction still existed alongside the statutory code and was available to cover circumstances outside the scope of MCA 2005. Further, it would have been open to parliament to restrict the use of the inherent jurisdiction in cases that were not within MCA 2005 if that was what it had intended.
- In affirmation of Munby J's decision in *Re SA* (Vulnerable adult with capacity: marriage) [2005] EWHC 2942 (Fam), the inherent jurisdiction of the court was available to all vulnerable adults whether that vulnerability was as a result of:
 - mental incapacity,
 - inability through physical impairment to communicate a decision, or
 - external factors such as coercion, constraint, undue influence or anything else that deprives the individual of the capacity to make a decision.
- The inherent jurisdiction of the court existed to facilitate the process of unencumbered decision-making by those who would otherwise be restrained by external pressure or physical disability.
- Re-establishing the individual's autonomy of decision-making by using the powers of the court under its inherent jurisdiction would enhance rather than breach a vulnerable adult's Article 8, ECHR right to privacy and family life.

Comment

This affirmation of the existence of an inherent jurisdiction to protect vulnerable adults outside the scope of the MCA 2005 is significant. Practitioners who suspect that the decisions of elderly clients may be vitiated by undue influence or coercion should remember the court's inherent jurisdiction to grant injunctive relief even where the elderly client has capacity.

The 2011 Law Commission Report on Adult Social Care acknowledges that the existing legal framework for adult protection is “neither systematic nor co-ordinated, reflecting the sporadic development of safeguarding policy over the last 25 years”. The Report recommends substituting the definition of vulnerable adult with a wider concept of an adult at risk. This would place the emphasis on the behaviour of abusers rather than any inherent vulnerability of the coerced or constrained adult. The safety net of the court’s inherent jurisdiction, as affirmed by the Court of Appeal, would fit well within this framework for protecting vulnerable adults.

[Case: DL v A Local Authority and others \[2012\] EWCA Civ 253.](#)

(Applies to perpetrators of Adult victims)

7.12 INJUNCTIONS

[Section 222 Local Government Act 1972.](#) A local authority can bring criminal or civil proceedings in its own name, including applying for injunctions, where it considers it expedient for the promotion or protection of the interests of the inhabitants of their area. Local authorities may use this provision to enforce their Children Act duties – as such wide-ranging injunctions could be obtained against known perpetrators.

Injunction under the High Court’s inherent Jurisdiction. The case of Birmingham City Council v Riaz demonstrates that the High Court is willing to exercise its inherent jurisdiction to grant Injunction Orders against perpetrators of CSE. It is important to note that the High Court does not have jurisdiction to attach powers of arrest to any term of the injunctions, which makes the policing of these orders very difficult.

R (QSA and others) v Secretary of State for the Home Dept and Secretary of State for Justice [2018] EWHC 407 (Admin) - [read judgment](#)

The High Court ruled on 2nd March 2018 that three women forced into prostitution as teenagers will no longer have to disclose related convictions to potential employers.

The claimants challenged the criminal record disclosure scheme which required them to reveal details of multiple decades-old

convictions for ‘loitering or soliciting’ for the purposes of prostitution.

The women had been groomed, coerced or forced into sex work, two of them when they were children. They were required to divulge their convictions under the regime of the DBS (Disclosure and Barring Service) governed by Part V of the Police Act 1997. DBS checks (previously CRB checks) are made when an applicant seeks certain paid or voluntary work involving children or vulnerable adults. While the claimants weren’t strictly barred from such jobs, they had to inform would-be employers of their historical convictions. They said this placed them at an unfair disadvantage, caused embarrassment and put them off applying in the first place. They argued that this interference with their private and working lives was unjustified by the scheme’s aims and unlawful. The Court agreed.

The facts

The Court’s factual summary is a sad read. The first claimant (“C1”) was forced into prostitution when she was only 14 and under a care order. Her first conviction was for soliciting at the age of 16, and the last was eight years later, in 1998.

The second claimant, Fiona Broadfoot, waived her right to anonymity and is an active campaigner against sexual exploitation. She was 15 years old when coerced into sex work, and her convictions date between around 1984 and 1988.

The third claimant (“C3”) was groomed into prostitution aged 18 and first convicted aged 21. Her last offence was in 1992.

Lord Justice Holroyde and Mrs Justice Nicola Davies both contributed to the judgment, which noted at the outset that C1 and Ms Broadfoot were themselves victims of crime; they were underage when procured to have sexual intercourse with others. Having considered their evidence, the Court also had “no difficulty in accepting that all three claimants have, even as adults, been victims in many other ways”.

The Court noted that “greatly to their credit”, the women escaped prostitution many years ago. Nonetheless, they did so with considerable criminal records – over 100 offences between them. While the penalties were comparatively minor, in most cases being fines, their effect

resonated throughout their lives. Ms Broadfoot, in an interview with BuzzFeed News last August, spoke of the “humiliating” effects of her

<https://ukhumanrightsblog.com/2018/03/06/women-groomed-pimped-and-trafficked-as-teenagers-not-required-to-disclose-prostitution-convictions-to-employers/>

(Applies to perpetrators of Child and Adult victims)

7.13 SEXUAL RISK ORDERS (SROs)

Section 113 Anti-Social Behaviour, Crime and Policing Act 2014

Sexual Risk Orders (SROs) can be made by a court, where a person has carried out an act deemed to be of a sexual nature and who, as a result, is believed to pose a risk of harm.

“Acts of a sexual nature” are not defined in legislation so can be dependent upon the individual case circumstances, context and apparent motive.

An SRO prohibits the defendant from doing anything described in the Order and can include a prohibition on foreign travel and Internet use.

An SRO can be granted for a minimum of 2 years and has no maximum duration. The Order may specify different time periods for different prohibitions. Interim SROs can be granted while a suspect is on bail and even if the criminal case fails, the SRO application could continue.

SROs make the individual subject to full notification requirements for registered sex offenders for the duration of the Order. Other benefits are that an offender does not need to be in Court for the Order to be granted and they can also be served on under 18s who pose a sexual risk.

Breach of a Sexual Risk Order is a criminal offence which has a power of arrest and is punishable by a maximum of five years’ imprisonment.

(Applies to perpetrators of Child and Adult victims)

7.14 SEXUAL HARM PREVENTION ORDERS (SHPOs)

Section 113 Anti-social Behaviour, Crime and Policing Act 2014

Sexual Harm Prevention Orders (SHPOs) can be applied for where an individual already has a schedule 3 or 5 offence under the Sexual Offences Act 2003, which incorporates a wide variety of offences and it can be argued that someone is likely to cause further sexual harm. An SRO would automatically become a SHPO if an offender is convicted of a schedule 3 or 5 offence. SHPOs prohibit the defendant from doing anything described in the Order and can include a prohibition on foreign travel and Internet use. A prohibition contained in a SHPO has effect for a fixed period, specified in the Order, of at least 5 years and there is no maximum time period. The Order may specify different periods for different prohibitions. A SHPO makes the individual subject to full notification requirements for registered sex offenders for the duration of the Order. Breach of a Sexual Harm Prevention Order is a criminal offence which has a power of arrest and is punishable by a maximum of five years’ imprisonment.

(Applies to perpetrators of Child and Adult victims)

7.15 NOTIFICATION ORDERS

Section 97 Sexual Offences Act 2003

Notification Orders can be applied for by police where an individual has been convicted or cautioned of a specified sexual offence in a country outside of the UK on or after 1st September 1997.

The police do not have to evidence that the individual poses a risk to the public, and if the Order is granted the individual will be subject to notification requirements for registered sex offenders.

Police are encouraged to conduct thorough checks into perpetrators who may have travelled overseas or come to the UK from another country.

Breach of the order is a criminal offence which has a power of arrest and is punishable by a maximum of five years imprisonment.

(Applies to perpetrators of Child and Adult victims)

7.16 HUMAN TRAFFICKING

Part 1 Section 2 Modern Slavery Act 2015

A person commits an offence if they arrange or facilitate the travel of another person with a view to that person being exploited. It is irrelevant whether the victim consents to the travel, whether they are an adult or a child. A person may arrange or facilitate travel by recruiting, transporting, transferring, harbouring or receiving the victim, or by transferring or exchanging control over them. To proceed with criminal charges for the offence of Human Trafficking, evidence must show that:

- the person intends to exploit the victim during or after the travel, or
- the person knows or ought to know that another person is likely to exploit the victim during or after the travel

The offence of Human Trafficking carries a maximum sentence of life imprisonment.

(Applies to perpetrators of Child and Adult victims)

7.17 SLAVERY AND TRAFFICKING RISK ORDERS (STROs)

Section 23 Modern Slavery Act 2015

A Slavery and Trafficking Risk Order (STRO) can be obtained by police, National Crime Agency (NCA) or immigration officers by making an application to court. The STRO may be made if there is a risk that the defendant will commit a slavery or human trafficking offence, and that the Order is necessary to protect against the risk of harm from the defendant committing the offence. It may impose any restriction the Court deems necessary for the purposes of protecting the public from harm. An Interim Slavery and Trafficking Risk Order will prohibit

the defendant from doing anything described in the order and can be used where an application for a Slavery and Trafficking Risk Order is yet to be determined. STROs can be made for a minimum of 2 years, with no maximum duration. Breach is a criminal offence and could result in up to 5 years imprisonment.

(Applies to perpetrators of Child and Adult victims)

7.18 SLAVERY AND TRAFFICKING PREVENTION ORDERS (STPOs)

Section 14 - Section 15 Modern Slavery Act 2015

Slavery and Trafficking Prevention Orders (STPOs) can be obtained by police, National Crime Agency (NCA) or immigration officers. The purpose is to prevent and prohibit convicted defendants from activities, which enabled them to commit offences of human trafficking and slavery. The court can impose any prohibition they deem necessary for the purpose of protecting an individual's physical or psychological harm. STPOs on application enable the courts to place restrictions on individuals convicted or cautioned for modern slavery type offences whether the offence took place before or after Part 2 of the Modern Slavery Act 2015 which commenced on 31 July 2015. Convictions include spent convictions. STPOs can be served for a minimum of five years and breach is an offence punishable with up to five years imprisonment.

An example of the successful use of STPO by South Wales Police can be found [here](#)

(Applies to perpetrators of Child and Adult victims)

7.19 ARRANGEMENTS FOR ASSESSING RISKS POSED BY CERTAIN OFFENDERS

Section 325 Criminal Justice Act 2003

The police and probation services as the 'responsible authority' have a duty to establish

arrangements for assessing and managing the risks posed by sex offenders and other potentially dangerous offenders in the community.

Exploitation Perpetrators could be considered for management through MAPPA (Multi-Agency Public Protection Arrangements) / Exploitation Perpetrator Forums or other procedures for managing offenders, due to their potential to cause serious harm by committing sexual or violent offences.

The responsible authority for each area must, in the course of discharging its functions under arrangements established by it under Section 325, consider whether to disclose information in its possession about the relevant previous convictions of any offender managed by it to any particular member of the public.

The disclosure of information to third parties is a useful 'restrictive intervention' to reduce opportunities for harmful behaviour.

(Applies to perpetrators of Child and Adult victims)

7.20 TACTICAL OPTIONS

MAPPA Referral – If the appropriate criteria are met, you could refer the perpetrator into MAPPA (Multi-Agency Public Protection Arrangements), PDP (Potentially Dangerous Persons) or Serial Perpetrators of Violence (SPOV) project.

(Applies to perpetrators of Child and Adult victims)

7.21 FALSE IMPRISONMENT.

In the UK, unlawful imprisonment is a **common-law offence**. The maximum criminal sentence is life imprisonment.

Throughout the UK, unlawful imprisonment involves these general criteria;

- custody of a person (or otherwise restriction of that person's general freedom of movement);
- **and** the custody is wilful (i.e. intentional);
- **either** the custody is without legal authority
- **or** the custody is reckless (i.e. without

justification: without reasonable suspicion)

The courts have interpreted "custody" to include the act of restraining that person by some means (i.e. includes the use of restraints).

Examples of unlawful detention;

- A person locking another person in a room without consent or by force.
- A person physically grabbing onto another person without consent and continuing to hold that person so that they cannot leave (i.e. detaining them by force).
- A person taking over control of another person's home without consent, victim of cuckooing
- A person holding something valuable belonging to another person with the intention of making them remain in a certain place without permission (i.e. holding belongings hostage so that they are compelled to stay at that place).

Consent

- If a person **consents** to being confined (and that consent did not come with any form of duress, coercion or fraud), then they cannot later claim they had been unlawfully detained.

(Applies to perpetrators of Child and Adult victims)

7.22 INJUNCTIONS TO PREVENT GANG-RELATED VIOLENCE AND DRUG-DEALING ACTIVITY

Section 51 Serious Crime Act 2015.

Applications for a 'gang injunction' can be made by a Local Authority or by the police. The court will grant the injunction if it will;

- prevent the respondent from engaging in, encouraging or assisting, gang-related violence or gang-related drug-dealing activity or;
- protect the respondent from gang-related violence or gang-related drug dealing activity.

The injunction can remain in place for a

maximum of 2 years. Breach of the injunction will be in contempt of court, and can be subject to a fine or imprisonment, depending on the nature of the breach.

(Applies to perpetrators of Child and Adult victims)

7.23 CIVIL INJUNCTIONS

Section 1 Anti-Social Behaviour, Crime and Policing Act 2014

Local authorities, police or housing providers can apply to the court for these civil injunctions. An injunction stops or prevents individuals engaging in anti-social behaviour. This can include conduct that has caused, or is likely to cause, harassment, alarm or distress; or conduct capable of causing nuisance, including housing-related nuisance. An injunction can include prohibitions and positive requirements. Breach of an injunction does not automatically result in an arrest; however an application can be made for a warrant of arrest where an injunction is breached. This could result in imprisonment not exceeding 2 years and/or a fine.

(Applies to perpetrators of Child and Adult victims)

7.24 COMMUNITY PROTECTION WARNING NOTICE

Section 43-58 Anti-Social Behaviour, Crime and Policing Act 2014.

Community Protection Warning Notices can be served by police, council or housing department. A warning notice cannot be legally challenged and can be served on anyone aged 16yrs and above. If the person who the warning notice is to be served upon is under 16yrs then the warning notice should be served on the child's parents and a copy given to the child. When deciding whether to use a warning notice, the police, council or housing officer should still be satisfied that there is evidence that anti-social behaviour has occurred or is likely to occur. The warning should be specific about the behaviour in question and why it is

not acceptable, the impact that this is having on the victim or community and the consequences of non-compliance. Where appropriate, local agencies should alert each other when a warning has been given so that it can be effectively monitored, and a record should be kept so that it can be used as evidence in any subsequent court proceedings.

[An example of a Warning Notice used by Blackpool Borough Council can be accessed here.](#)

(Applies to perpetrators of Child and Adult victims)

7.25 COMMUNITY PROTECTION NOTICE

Anti-Social Behaviour, Crime and Policing Act 2014.

Community Protection Notice can be applied for through the court by the police, council or housing department. When deciding whether to apply for a notice the police, council or housing officer should be satisfied that there is evidence that anti-social behaviour has occurred or is likely to occur. The application should be specific about the behaviour in question and why it is not acceptable, the impact that this is having on the victim or community. Breach of a Community Protection Notice can lead to a Criminal Behaviour Order being obtained.

[An example of a Community Protection Notice used by Blackpool Borough Council can be accessed here.](#)

(Applies to perpetrators of Child and Adult victims)

7.26 CRIMINAL BEHAVIOUR ORDER

Section 22 Anti-Social Behaviour, Crime and Policing Act 2014.

A Criminal Behaviour Order (CBO) can be suggested by a local authority or the police. A CBO is applied for by the Prosecution, upon conviction of an offender. A CBO prohibits the offender from doing anything

described in the order and can also include positive requirements e.g. mentoring, anger management, drug rehabilitation etc. Breach of a CBO is punishable by up to 5 years imprisonment and/or a fine.

(Applies to perpetrators of Child and Adult victims)

7.27 FORFEITURE OF DETAINED CASH

Section 298 Proceeds of Crime Act 2002

Police Financial Investigation Units can apply to Magistrates for Forfeiture of Detained Cash after police have seized over £1000 of cash under Proceeds of Crime Act, where they have reason to believe that the cash has been generated through criminal activity or is likely to be used to fund criminal activity.

(Applies to perpetrators of Child and Adult victims)

7.28 HER MAJESTIES REVENUE AND CUSTOMS (HMRC)

HMRC is responsible for investigating crime involving all the taxes and other regimes it deals with.

Three directorates in HMRC have staff authorised to use criminal investigation powers:

- Criminal Investigation including Internal Governance
- Specialist Investigations (Road Fuel Testing Unit)
- Risk and Intelligence Service, Intelligence Development & Integration

HMRC's criminal investigation powers

- apply for orders requiring information to be produced - production orders
- apply for search warrants
- make arrests
- search suspects and premises following arrest

Intrusive surveillance

For cases of serious crime, HMRC can apply to use the intrusive surveillance powers in the [Regulation of Investigatory Powers Act 2000 \(RIPA\)](#) and the Police Act 1997. The most significant powers are:

- the interception of post and telecommunications
- intrusive surveillance
- property interference

The use of these powers has to be approved at the highest levels in Criminal Investigation. Only certain members of the senior management team can approve applications for the use of any of these powers.

HMRC- Tax evasion example <https://www.expressandstar.com/news/crime/2016/02/23/carl-johnsons-home-repossessed-leaving-crooks-property-empire-in-ruins/>

(Applies to perpetrators of Child and Adult victims)

7.29 GOVERNMENT AGENCY INTELLIGENCE NETWORK (GAIN)

GAIN is a multi-agency collaboration of:

- Public sector enforcement agencies
- Relevant private sector organisations
- Trade bodies

Working together with GAIN Coordinators to:

- Lawfully share information & intelligence
- Conduct joint investigations

Reduce the threat, harm and risk associated with serious and organised crime

GAIN can provide information and operational action relating to:

- Mapped Organised Crime Groups
- High Risk Individuals
- Vulnerabilities such as Human Trafficking/CSE/Counter Terrorism/exploitation

GAIN Co-ordinators sit within each of the Regional Organised Crime Units.

GAIN has access to a range of organisations and data systems which can give an enhanced intelligence or evidential picture relating to offenders.

(Applies to perpetrators of Child and Adult victims)

7.30 HOME OFFICE IMMIGRATION ENFORCEMENT (HOIE)

Home Office Immigration Enforcement (HOIE) has a number of internal departments, including Criminal & Financial Investigation (CFI) which is a non-uniformed, investigatory unit within territorial police forces, responsible for investigating criminality surrounding immigration, such as the production of false documents, etc. HOIE also has its own Intelligence Department, which is responsible for gathering and disseminating information, as well as other functions.

HOIE works very closely with other government bodies including Police, National Crime Agency, Border Force, UK Visas and Immigration and will often work collaboratively with local councils and transport authorities in order to carry out targeted operations.

(Applies to perpetrators of Child and Adult victims)

Criminal and Financial Investigation

The primary role of the unit is to investigate and disrupt serious organised crime groups who are seeking to undermine the UK's immigration controls at the border and inland via various criminal means. These teams are regionally based and are made up of immigration officers and seconded police officers who work in joint investigation teams as part of the Home Office.

Criminal and Financial Investigations (CFI) teams focus on investigating 8 main categories of crime

- 1) Trafficking in human beings and Modern Slavery Act 2015 offences
- 2) Facilitation through:
 - lorry drops
 - marriage abuse (clandestine entrants)

- college abuse
 - rogue employers
 - producing or supplying counterfeit or forged documents
 - other means
- 3) Cash seizures of over £1,000 referred from Immigration Compliance and Enforcement (ICE) teams and others, under the [Proceeds of Crime Act 2002](#).

Powers;

Arrest officers are warranted and derive the majority of their powers from the [Immigration Act 1971](#), although some powers are acquired from the [Immigration and Asylum Act 1999](#) and the [UK Borders Act 2007](#),

In the majority of cases, Immigration Officers will use "administrative powers" under [Schedule 2 of the Immigration Act 1971](#). These powers include the execution of warrants and the power of arrest, as well as powers to search arrested persons and to search premises for evidence relating to a person's immigration status (passport, visa, plane tickets, etc.). These powers are used to start a process of "removing" a person administratively - this is often confused with "deportation," which is a different process entirely.

Other powers [section 28 Immigration Act 1971](#), which are similar to those in Schedule 2, but are criminal powers and not administrative.. These powers are more likely to be used in cases of "high harm" offenders (individuals involved in criminality) and other cases where a subject is likely to face prosecution (repeat offenders, use of forged documents, etc.

(Applies to perpetrators of Child and Adult victims)

7.31 HEALTH AND SAFETY EXECUTIVE (HSE)

HSE inspectors have the power to:

- enter premises;
- inspect and investigate;
- take measurements, samples and photographs;

- require an area or machine to be left undisturbed;
- seize, render harmless or destroy dangerous items; and.
- obtain information and take statements.

The health and safety inspectors may enter work premises at any time. (work premises can include the homes of homeworkers).

(Applies to perpetrators of Child and Adult victims)

7.32 UK BORDER FORCE

Border Force secures the border and facilitates the legitimate movement of individuals and goods, whilst preventing those that would cause harm from entering the UK. This is achieved through the immigration and customs checks carried out by staff at ports and airports.

Responsibilities

- checking the immigration status of people arriving in and departing the UK
- searching baggage, vehicles and cargo for illicit goods or illegal immigrants
- patrolling the UK coastline and searching vessels
- gathering intelligence
- alerting the police and security services to people of interest
- Identification of safeguarding concerns in relation to vulnerable people
- Provide information regarding border entry and exit, in relation to people are at risk of exploitation or suspected perpetrators of exploitation
- Border flagging in relation to people are at risk of exploitation or suspected perpetrators of exploitation, where requisite thresholds are met.

Section 55 Borders, Citizenship and Immigration Act 2009

- Places a duty on the Border Force to make arrangements for ensuring that immigration, asylum, nationality, and customs functions, are discharged having regard to the need

to safeguard and promote the welfare of children in the UK.

Section 54 of the Borders, Citizenship and Immigration Act 2009

- Places a duty on the Border Force to make arrangements for ensuring that immigration, asylum, nationality, and customs functions, are discharged having regard to “the trafficking of persons”

The Immigration (European Economic Area) Regulations 2016 - Regulation 27, Schedule 1, Paragraph 7

- The Fundamental Interests of Society, allows for the refusal of admission to the UK, specifically sub paragraph (k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child).

Data Protection Act 2018 (Chapter 12), Schedule 8, Paragraph 4

- Allows for the processing of information for the purposes protecting an individual from neglect, or physical, mental, or emotional harm or wellbeing of an individual, if the individual is aged under 18, or age 18 or over and at risk.

(Applies to perpetrators of Child and Adult victims)

7.33 DEPARTMENT FOR WORK AND PENSIONS (DWP)

The benefit/welfare system can be used by criminals to raise money through the exploitation of children and vulnerable adults. DWP has links into Police, HMRC, Local Authority Housing and Border Force and through the National Disclosure Facility within DWP. DWP have powers to stop and prevent payment of benefits where they have reason to believe fraudulent claims have been made.

To access DWP in relation to information sharing, utilise your local GAIN team within the Regional Organised Crime Unit.

(Applies to perpetrators of Child and Adult victims)

7.34 RENTAL CAR PROVIDERS

Where perpetrators are using rental cars, it is advisable to make contact with the rental company to ensure the terms of the rental agreement are being adhered to in relation to rental payment, insurance and vehicle return.

Where breaches exist, the hire company can be informed of the vehicle location and they may have the power to seize the vehicle, dependent upon the breach.

It has been agreed with the hire companies listed below, that named security managers will deal with investigations that involve exploitation within their networks and they will respond and support the investigation. They have received training around Exploitation, County Lines and investigation tactics.

The below named individuals can be contacted through the individual hire car companies they represent.

The named contact should be used, once an investigation is underway and a crime report has been created.

THRIFTY - Mike Tuck
HERTZ - Paul Vinall
ENTERPRISE - Ronda Fulford
AVIS - Sue Smith
EUROPCAR - Sharyn Morley or Sharron Dawson
SIXT - Amy Bond

(Applies to perpetrators of Child and Adult victims)

7.35 DISRUPTION IN RELATION TO VEHICLE USAGE TO COMMIT EXPLOITATION OFFENCES;

- Driving Licence offences;
 - No driving licence
 - Provisional Licence Holder driving unaccompanied
 - Disqualified driving
 - Driving with a licence not authorised for the class of Vehicle being used
- Insurance offences;
 - No insurance
 - Driving a vehicle with modifications not declared
- MOT;
 - No MOT
- Excise Licence;
 - No Excise Licence
 - Fraudulent Excise Licence
- Tinted Windows - the front two side windows and the windscreen
- Lights
 - Defective Bulb
 - Dazzling headlight
 - Blue Strobe lights displayed
- Exhaust
 - Defective Exhaust
- Tyres
 - Less than 1.6mm tread
 - Bald Tyres
 - Bulges on the tyre rim
 - Tyre chords exposed
 - Oversized wheel arches
 - Cuts in the tyre more than 1.5cm
- Drinking and Driving
- Taking drugs and driving
- Breaking the speed limit
- Using a mobile phone to;
 - Make phone calls
 - Text message
 - Hand held sat nav
- Vehicle ownership
- Vehicle condition
- No seat belt
- Insufficient mirrors
- Registration Plate;
 - Incorrect size
 - Incorrect colour

- Reflective registration plate to avoid speed cameras
- or ANPR
- Outstanding parking fines

The DVLA can be accessed through your local GAIN co-ordinator within the ROCU

(Applies to perpetrators of Child and Adult victims)

7.36 AUTOMATIC NUMBER PLATE RECOGNITION (ANPR)

Vehicles are a common feature of Modern Slavery and exploitation investigations, for example:

- To collect and transport victims
- To act as the location for sexual abuse
- Used by perpetrators for targeting and grooming potential victims

Police can use ANPR entries and PNC flags to ensure that vehicles believed to be being used for these purposes are stopped and checked regarding the presence of potential victims or evidence of exploitation.

The primary objective is to safeguard any vulnerable person in the vehicle, conducting full intelligence checks and considering police protection in relation to children.

Police should also obtain full details of all other occupants, taking positive action to arrest where appropriate or submitting details for intelligence purposes. It may be necessary for the vehicle to be preserved for forensic examination.

(Applies to perpetrators of Child and Adult victims)

7.37 VEHICLE TELEMETRY

Where there are concerns that a vehicle is involved in exploitation then there are a number of tactical options that could be considered:

- NAVCIS (National Vehicle Crime Intelligence Service) – have a dedicated member of staff who can contact any company asking whether a vehicle has been fitted with a tracker

- Onstar – all Vauxhall Motor vehicles, manufactured from August '15 have trackers fitted as mandatory (other than very small basic models)
- Most tracker companies will speak with law enforcement via a signed data protection form
- Most young drivers (under 25's) will have a vehicle telematics box fitted as a condition of their insurance
- www.dcgfutures-academy.com – any member of law enforcement can register through DCG Futures. Within there is an OEM guide on what telematics are fitted to what vehicle, what data do they retain etc.
- Additional material is held on CDA – for police officers if you are a Digital Media Investigator (DMI) and have not got access to CDA – email KETadmin@college.pnn.police.uk and explain you are a DMI and require access
- Category 5 vehicles all should have a tracker installed (vehicles £45,000 plus)
- Most tracking companies will also accept requests for investigations involving murder, manslaughter, rape, kidnap, and vulnerable / high risk missing people– on most occasions this service should be free
- A HPI check (through a financial investigator) will indicate whether a vehicle is fitted with tracker

(Applies to perpetrators of Child and Adult victims)

7.38 TAXI AND PRIVATE HIRE VEHICLES IN RELATION TO EXPLOITATION

In addition to considering other disruption options, if a taxi or private hire vehicle or business is causing concern in relation to exploitation incidents, you should consider:

- Liaising with Local Authority Taxi Licensing Team regarding compliance with legislation and conditions of license. Also consider whether individuals have completed CSE/ exploitation Awareness training as part of license conditions.
- Inform local police of concerns
- Submitting vehicle details for ANPR systems and flagging on PNC to ensure that vehicles

believed to be being used for these purposes are stopped and checked regarding the presence of potential victims.

- Seizing vehicle journey logs and passenger information from taxi operator
- Prosecution if evidence is available of offences including child abduction, s14 sexual offences or trafficking.

(Applies to perpetrators of Child and Adult victims)

7.39 TECHNOLOGY

Police should always conduct [Section 18 Police and Criminal Evidence Act 1984 \(PACE\)](#) searches of the perpetrator's premises and vehicles when investigating exploitation to preserve and secure relevant evidence.

(Applies to perpetrators of Child and Adult victims)

7.40 MOBILE PHONES

Police are able to check mobile phone numbers using intelligence and missing persons systems, in an attempt to identify potential perpetrators or other potential victims. In some circumstances, further subscriber checks and reverse billing enquiries can be utilised to widen this network and obtain valuable intelligence.

Patterns of phone calls may also disclose evidential material of value, e.g. if a victim's missing episodes coincide with the receipt of calls from particular numbers.

Where possible, phones belonging to victims and potential perpetrators should be forensically examined as they may contain evidential material in the form of text messages, call logs, social media conversations and indecent images taken with it or sent to it.

If the victim's mobile phone number is known but the victim is unwilling to hand the phone to police, a Cycoms application can still be made by police to obtain details of all incoming and outgoing telephone calls. This information request is limited to a specified time frame, but would be an option to consider on return from a missing episode.

If police are able to gain possession of the relevant mobile phone either directly from the victim or via the parent/carer, it is possible to extract all relevant data from the phone, including text message content, photos etc. This procedure will be carried out by a phone examiner. In cases of high risk, it is possible for this data to be downloaded in a surprisingly short time, therefore any unexpected possession of a victim's phone, no matter how short, may be an opportunity for data to be extracted. In order for e-forensics to be able to complete an examination under normal circumstances, it would be preferable for them to have the phone for at least 12 - 24 hours.

Billing and historic cell site enquiries can also be completed on the victim's mobile phone under the authority of [Regulation of Investigatory Powers Act 2000 \(RIPA\)](#). There would be a cost implication for the police, but the phone would not need to leave the child's possession for this to occur.

Covert download of phone content (text/digital media/email) would require the phone to be taken into police possession for several hours. This would be beneficial following a missing episode. RIPA authority would be required to examine the content of the phone.

N.B. Consideration should be given to the returning of victim's mobile phones, as quite often perpetrators use the mobile phone to track the victim and issue instructions. Therefore each situation should be evaluated on the facts, which are presented to professionals.

(Applies to perpetrators of Child and Adult victims)

[The Drug Dealing Telecommunications Restriction Orders Regulations 2017 \(DDTROs\)](#)

The Drug Dealing Telecommunications Restriction Orders Regulations 2017 provide the civil courts with the power to make a drug dealing telecommunications restriction order (DDTRO) and sets out the process and procedure for doing so.

DDTROs require a communications provider to close down particular phone lines (or take whatever action the order specifies) to prevent or restrict the use of communication devices in

connection with drug dealing offences.

The DDTRO responds to an operational requirement of the applicant authority: the Police and National Crime Agency (NCA) to support them in tackling the issue of county lines drug dealing and its related violence and criminal exploitation.

'County lines' is a term used to describe the approach taken by gangs, who travel to locations elsewhere, to establish new or take over existing drug markets and sell predominately Class A drugs. The county lines threat is widespread and growing and children and vulnerable adults are targeted and criminally exploited by county lines gangs to support their drugs market operating model

County lines gangs actively seek out, recruit and criminally exploit children, vulnerable young people and adults through deception, intimidation, violence, debt bondage and/or grooming. Criminally exploited individuals are used to move drugs and cash to and from the urban area and to carry out street level drug deals in the receiving area.

Mobile phone lines are central to the county lines drug dealing model. County lines gangs use mobile phones to promote and orchestrate the sale of drugs 24 hours a day. These "deal lines" are known to facilitate hundreds of deals a day. The deal line handset is typically held well away from local street level drug dealing activity, it will normally be a line with limited personal data associated with it. All these factors make it hard for the police to gain possession of the deal line handset and achieve criminal prosecutions against an individual for the activity on the line.

Where it is possible to link an individual to a county lines deal line, and there is sufficient evidence, the police are likely to pursue the criminal prosecution option. However, there are a significant number of anonymous phone lines, known to be used for dealing drugs and the police have no powers available to close these down.

The Regulations allow the Police or the NCA to apply directly to the civil courts for an order. Once an order is granted by the court, the relevant communications provider will be served with a DDTRO which will require a communications provider to close down

particular phone lines (or take whatever action the order specifies) to prevent or restrict the use of communication devices in connection with drug dealing offences. An order may relate to multiple phone lines and it will specify the action to be taken against each.

A mobile phone which has been disconnected by communication providers as a result of a DDTRO cannot be used to make or receive calls and it is effectively put beyond normal use. However the device retains the technical ability to connect to the emergency services, should that need arise, this is an important safeguard.

(Applies to perpetrators of Child and Adult victims)

7.41 FACEBOOK AND OTHER SOCIAL MEDIA

The police can access open Facebook/ Twitter pages without the owner being aware that the page is being viewed. Although exploitation victims typically only allow access to identified 'friends' this may still disclose some information. Police should consider gaining the appropriate authority and Investigatory Powers Act 2016 (IPA) legislation to gain further access, or where it is being used to inform covert tactics.

Facial recognition software could support with the identification of offenders from social media activity.

(Applies to perpetrators of Child and Adult victims)

7.42 LAPTOPS, COMPUTERS AND TABLETS

If a victim is using a laptop, computer or tablet, the police may under certain circumstances be able to monitor the activity on it. The police should consider seizing all computers, phones and storage devices for evidential examination, however there is a requirement for the 'consent of victims' when using their digital media for investigation purposes.

A consent form was introduced nationally after it was identified that there was no national standard in relation to victim's and witnesses'

media devices and a whole range of practices and use of legislation when it comes to seizing devices. Some police forces used s19 PACE, some used no power at all and just took the devices.

This is how the form should be used:

The police officer should have a discussion with the victim or witness and talk through;

- What the data on the device is needed for
- What the police will do with the data
- What could happen to the investigation if the police were not allowed access to the data.

The victim or witness should be able to decide about consent, understanding all of the facts.

The victim or witness is asked if they consent to the device being taken and the types of data specified in the form being taken and used.

If the person declines to give consent, then the police should not take the device.

If there is an over-riding reason for the police to utilise the data on the device, i.e. the suspect was a serial rapist or a child was in danger of exploitation, then powers under PACE could be used to seize the device and the police should then consider applying for a warrant under Section 8 PACE, to allow a Judge to decide whether to overturn the persons refusal to consent.

Every case must be considered individually, and devices should not be seized in every case where consent is refused. Many children and individuals are capable of making informed decisions about their lives and only when it is clear that the child or individual does not understand the consequences of doing or not doing something should consent be over-riden. A decision and its rationale must be recorded if consent is going to be disregarded.

(Applies to perpetrators of Child and Adult victims)

7.43 ASYLUM AND IMMIGRATION

If you suspect that a perpetrator may be a recent arrival in the UK, or may be in the country illegally, you should make enquiries with UK Visa & Immigration Service to establish their immigration status.

(Applies to perpetrators of Child and Adult victims)

8.0 LOCATIONS

8.1 PUBLIC SPACES PROTECTION ORDER (PSPO)

Ch2 Anti-Social Behaviour, Crime and Policing act 2014

A public spaces protection order (PSPO) is made by a Local Authority if satisfied on reasonable grounds that two conditions are met. Firstly, that

- (i) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality; and
- (ii) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable, and therefore justifies the restrictions imposed by the notice.

A public spaces protection order is an order that identifies the public place and prohibits specified things being done in the restricted area and/or requires specified things to be done by persons carrying on specified activities in that area. The order may not have effect for more than 3 years and the Local Authority must consult with the chief officer of the police and the local policing body before issuing the order.

Failure to comply with a public spaces protection order is an offence.

The Public Spaces Protection Order can be used for example to stop a group from using a public square as a skateboard park and at the same time discourage drunken anti-social behaviour in the same place by making it an offence not to hand over containers of alcohol when asked to do so. It can also be used to prevent dogs fouling a public park or being taken into a children's play area within that park.

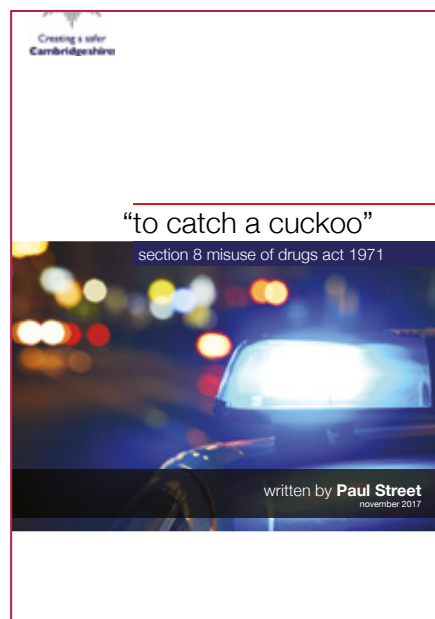
Coventry example

Coventry obtained a PSPO that has been in force since April 2016 and has prevented groups of males congregating in the park – the neighbourhood stated that 'they have their park back' and it has been notable that the park is now being used by members of the community

8.2 SECTION 8 OF THE MISUSE OF DRUGS ACT 1971

Under Section 8 of the Misuse of Drugs Act 'a person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is to say— (a) producing or attempting to produce a controlled drug in contravention of section 4(1) of this Act; (b) supplying or attempting to supply a controlled drug to another in contravention of section 4(1) of this Act, or offering to supply a controlled drug to another in contravention of section 4(1); (c) preparing opium for smoking; (d) smoking cannabis, cannabis resin or prepared opium.'

An example of the effective use of Section 8 of the Misuse of Drugs Act 1971 is outlined in the below document "to catch a cuckoo" developed by Cambridgeshire Constabulary.



Cuckooing

An example of tackling cuckooing and criminal exploitation including County Lines has been provided by Jo Grimshaw, Anti Social Behaviour Manager - Surrey Police.

Surrey Police and 3rd sector organisation (Catalyst) Specialist assertive outreach service - cuckooing

The project is a new initiative to explore how specialist assertive outreach workers can work alongside Surrey Police to support; victims of cuckooing, other drug users accessing the premises, and where appropriate the perpetrators. The aim is to support the Police reduce their time spent with victims, divert people away from the criminal justice system, and support victims to access a broad range of services to meet their needs.

Individuals are referred to the outreach team by the Police, CHaRMMS (District/Boroughs) when there is a possibility of a partial or full closure on a property. The referral highlights both needs and risks. Outreach workers then engage with victims at their accommodation or in the community, and work with them to meet their immediate needs and engage with key services. The outcomes of the pilot are broader than criminal justice, but are all inter-related, they include:

- A reduction in;
 - a) crime, harms and antisocial behaviour to both individuals and local communities
 - b) 'cuckooing'
 - c) police time in supporting victims
 - d) homelessness
- An increase in:
 - a) victims and associates accessing treatment and support,
 - b) community reassurance
- An improvement in
 - a) the health and wellbeing of the victim and other drug users;
 - b) police knowledge and intelligence to benefit and protect the community.

Once the team have engaged with the victim, each person receives an individually tailored package of support. Consent needs to be informed and freely given, and the person is at the centre of all decision making about their support, and referral to other services. The role of the team is to engage the person re: their needs and risks, provide brief interventions, and engage them with other services e.g. prescribing service, mental health services, GP etc. that meet those needs. However, some clients have been in on-going high risk situations and the team have kept in regular contact over many months. Support is varied and can include:

- Practical help and support; providing pay-as-you-go phones, food, debt, housing, transport to places of safety, support attending appointments, holding multi-agency meetings etc.
- Facilitating access or re-engagement to drug and/or alcohol treatment and recovery support
- Support the victim to comply with the criminal justice process re: partial or full closures.

The service has a client feedback form, which rates the service, gives opportunity for how things could be done differently and opportunity for feedback, e.g. "Nick was nothing short of magnificent in everything he did to counsel and support me, to combat my drug problems and to ensure I didn't lose my flat. I honestly cannot speak highly enough of how Nick helped me and I am immensely grateful."

This pilot project started in November 2018, and as of 29th July 2019 has supported 45 people. The project impacts on offending and re-offending for cuckooed victims, other acquaintances, and disrupts local and county lines gangs.

The team have set up two databases; one is a 'profile' system to gather information to identify if there are any key indicators to being a victim i.e. gender, age, location, type of housing, history of homelessness, mental health, debt, relationship with dealers/county lines etc. The other database monitors client contact and outcomes based on their needs.

In partnership with the Police the team also has criminal justice data on pre and post engagement for each client re: arrests, SCARF

reports, missing person reports, vulnerable adult incidents, crimes related to the property and call outs to the road. The initial data has highlighted the need for analyses over time, as the process of partial and full closures can increase crimes related to property and calls to road. The learning from this is to engage with victim earlier in the process not just reacting when a closure is about to be made.

In May 2019, an initial pilot report was completed for 23 clients. Between November and May; the 10 victims re-engaged with services, 16 (70%) tenancies were saved, 11 victims managed their debts, 15 victims were referred to support services, and 6 victims were engaged with a GP.

Download [Catalyst Alpha - Cuckooing proposal](#).

8.3 WATER, GAS AND ELECTRICITY SUPPLIERS

All of the above suppliers have the power to enter premises where there is deemed to be an immediate risk of serious incident involving the utility they provide.

8.4 ENVIRONMENTAL HEALTH

Environmental Health Officers (also known as Public Health Inspectors or Environmental Health Practitioners) are responsible for carrying out measures for protecting public health, including administering and enforcing legislation related to [environmental health](#) and providing support to minimize health and safety hazards.

Inspectors have the power to:

- take samples and photographs, and inspect records
- write informally asking the proprietor to put right any problems they find – where breaches of the law are identified, which must be put right, they may serve an Improvement Notice
- detain or seize food

In serious cases they may decide to recommend a prosecution (if the prosecution is successful, the Court may impose prohibitions on processes and the use of premises and equipment, impose fines, prohibit someone from running a food business and possibly imprisonment for serious offences)

If there is an imminent health risk to consumers, inspectors can serve an Emergency Prohibition Notice that forbids the use of the premises or equipment – the Courts must confirm such a notice

Inspectors can also formally exclude someone from working in a food business if they are found to be suffering with a food-borne illness or infectious disease

It is a criminal offence to obstruct an authorised officer in the course of his/her duty.

Local authority powers to curb noise

Environmental health officers investigate complaints to local councils about noise. They assess the noise level from the premises that the complaint is about and decide whether it is “prejudicial to health or a nuisance”, in which case it is a “statutory nuisance” under the [Environmental Protection Act 1990](#). Even if the noise does not affect your health (for example, by disturbing your sleep), it can be regarded as a nuisance if the level of noise is unreasonable for your neighbourhood. The council can serve an “[abatement notice](#)” on the person making the noise. This could require the noisy activity to stop, demand steps to reduce the noise (such as insulation or volume control) or restrict the times of day that the noisy activity can take place.

The notice can be served on the landlord or owner of the premises if the problem relates to the condition of the premises. The person named on the notice has 21 days to challenge it in a magistrates’ court (or in Scotland, the sheriff court), after which they can be fined for each day that the noise continues. Usually, there is no need for you to go to court. Local authorities are allowed to do “whatever is necessary” to enforce the notice. This includes confiscating any equipment that is causing the noise, so once the council has taken action the noise should stop.

Local authorities also have separate powers to tackle anti-social noise from council tenants and local residents under [Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014](#).

Environmental health have powers to close businesses who are not complying with legislation relating to waste and pollution, e.g hand car washes and Recycling plants.

8.5 HOUSING;

[Housing Act 2004](#)

Enforcement notices

The Local Authority's Private Sector Housing (PSH) team has a statutory duty to enforce a wide range of legislation. The primary aim of this legislation is to protect the health, safety and welfare of tenants, home owners and the general public, as well as improving the quality of the private rented sector's housing stock.

To achieve compliance with statutory requirements the team, where possible, work informally with owners, landlords and managing agents. Where an informal approach is not effective or in high risk situations, the team will consider the use of all relevant legislation to remove or reduce risks posed to the health and safety of occupants or other members of the public.

Once a formal inspection has been completed, the inspecting officer will carry out a full assessment of the property under the Housing Health and Safety Rating System (HHSRS) and will determine the most appropriate course of action.

There are 29 hazards incorporated within HHSRS. Scores are grouped into 10 bands from A to J with Band A representing the most severe hazards down to Band J representing those with minor health impacts. Hazard bands A to C are deemed "category one hazards". The remaining bands are deemed "category two hazards". The council has a duty to take enforcement action where category one hazards are present and has the power to take enforcement action if category two hazards are present.

The local authority will be guided by three main points when making an enforcement decision:

- the HHSRS hazard rating
- whether the local authority has a duty or power under the act to take action
- the most appropriate way of dealing with a hazard having regard to the HHSRS Enforcement Guidance

The local authority will seek to deter landlords from retaliatory eviction (evicting a tenant when they have made a complaint) and does not consider that the removal of a tenant achieves compliance with any notice served. Tenants are protected from retaliatory eviction under the Deregulation Act 2015.

Certain notices served on a property will be registered as a Land Charge against the property until such time as they are complied with. Copies of any notices served will be sent to anyone with an interest in the relevant property, including tenants, mortgage providers and freeholders.

Enforcement under the Housing Act 2004:

Where a landlord has not carried out repairs on an informal basis or where the hazards and/or circumstances require more appropriate action, enforcement action will be taken. The following list is not exhaustive and should act as a guide.

Improvement Notice - This notice sets out strict timescales for the works specified to be completed. Failure to comply with the notice is an offence for which the council can pursue a prosecution or a civil penalty (see below). Failure to comply with an Improvement Notice can also result in the council carrying out the works in default and charging the owner or landlord for ALL costs associated with this.

Hazard Awareness Notice - This notice is advisory, meaning it is not enforceable by the council so there are no set timescales for the works to begin or be completed, and with no follow up inspection. Its purpose is to advise the relevant parties of hazards present. It is often used for owner occupied properties or where the hazards are less serious. The service of a Hazard Awareness Notice does not prevent further enforcement action being taken in the future.

Prohibition Order - This can be used where there are serious threats to the health and safety of occupants of a property, or visitors to it. It can be used to prohibit all or part of a property depending on the hazards identified. It can also be used to limit the number of occupants. Failure to comply is an offence, for which the council could pursue a prosecution or a civil penalty (see below).

Emergency Action - This is used where it is considered that there is an imminent risk to health and/or safety. It can be used for category 1 hazards only. It allows the council to either carry out immediate remedial action works to a property or serve an Emergency Prohibition Order which comes into force immediately.

Demolition Orders and Clearance - These options are used very rarely where category 1 hazards are present with an imminent risk to health and/or safety. Demolition Orders can be used where a property is considered beyond repair at a reasonable cost, and Clearance is used where a number of properties in an area pose immediate and/or significant risk.

The Housing Act 2004 also gave local authorities powers to mitigate the impact of poor quality private rented sector properties and irresponsible landlords. Licensing schemes fall into three categories:

1. Mandatory Houses in Multiple Occupation (HMO) Licensing

Part 2 of the Housing Act 2004 requires local housing authorities to mandatory licence HMOs if they accommodate more than five people who form two or more households.

2. Additional HMO Licensing

The Act under Part 2 also gives authorities the power to introduce an additional licensing scheme for other smaller HMOs. This power can be considered if the authority believes they are not being managed sufficiently which gives rise or are likely to give rise to particular problems for the occupants or residents of a particular area.

All HMOs, including those that do not require a licence must comply with the Management Regulations;

The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 372)

The Licensing and management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 1903)

A breach of the Management Regulations is an offence under Section 234 of the Housing Act 2004. The penalty for non-compliance is either prosecution or a Civil Penalty of up to £30,000.

3. Selective licensing

Part 3 of the Housing Act 2004 sets out the scheme for licensing private rented properties in a local housing authority. Under section 80 of the Act, the Council can designate the whole or any part or parts of its area as subject to selective/Additional Licensing. The scheme does not apply to owner occupied or social housing properties.

Subject to certain exemptions specified in the Selective Licensing of Houses (Specified Exemptions) (England) Order 2006, all properties in the private rented sector which are let or occupied under an assured short hold tenancy or licence are required to be licensed by the Council if that area has been designated for Selective/Additional.

These powers to introduce Selective/ Additional licensing of private rented homes and additional licensing of Houses of Multiple Occupancy are put in place by Councils in order to tackle problems in their areas, or any parts of them, caused by;

- Low housing demand; or
- Significant anti- social behaviour; or
- Poor property conditions; or
- An influx of migration; or
- A high level of deprivation; or
- High levels of crime

Failure to apply for a licence for a property that requires one, or failure to submit a valid application, or failure to submit a valid relicence application on expiry is a criminal offence. This could result in a prosecution with an unlimited fine, a civil penalty of up to £30,000 and/or a rent repayment order. This offence could also affect the fit and proper person status of the manager or licence holder.

A breach of the licensing conditions which are enclosed on the licence is also a criminal offence which could result in a prosecution with an unlimited fine, a civil penalty of up to £30,000 and/or a rent repayment order. This offence could also affect the fit and proper person status of the manager or licence holder.

Prosecution and Civil Penalties;

Failure to comply with enforcement notices can result in the council deciding to take further action. This is traditionally in the form of a prosecution, however, the Housing and Planning Act 2016 introduced new powers to issue Civil Penalty Notices for Housing Act 2004 offences.

As an alternative to prosecution the council can serve a civil penalty of up to £30,000 for the following offences under the Housing Act 2004;

Section 21 - breach of a banning order

Section 30 - failure to comply with an improvement notice

Section 72 - mandatory licensing of HMO

Section 95 - licensing under Part 3 of the Housing Act 2004

Section 139 - failure to comply with an overcrowding notice

Section 234 - breach of management regulations in respect of HMO

Other Legislation:

Other legislation that can be used by the PSH team includes:

Protection from Eviction Act 1977 - This legislation provides an offence for illegally evicting or harassing a tenant. If it is believed an offence has been committed, the council can decide to prosecute, and if found guilty, can lead to a maximum penalty of a term of imprisonment of up to two years or an unlimited fine or both.

Gas Safety Regulations (Installation and Use) – (Amendment) 2018 (The Regulations).

The PSH team work in conjunction with the Health and Safety Executive (HSE) who enforce gas safety legislation which requires the landlord of a property to organise gas safety checks “within 12 months” of the installation or the last check for the premises by a registered gas safe engineer.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - Failure to comply with this legislation, having smoke alarms and carbon monoxide detectors where required may result in a fixed penalty charge of up to £5,000.

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 - Failure for someone to become a member of a Government approved redress scheme (who is required to become of a member) may result in a fixed penalty charge of up to £5,000.

Environmental Protection Act 1990, Section 80 - A notice can be served under this section if an officer is of the opinion that there is a statutory nuisance at the premises or the premises are prejudicial to health.

Building Act 1984, Section 76 - Used where the property is so defective as to be prejudicial to health. This notifies the person responsible of the council’s intention to remedy the problem (works in default).

Public Health Act 1936, Section 45 - Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance.

Local Government (Miscellaneous Provisions) Act 1976, Section 16 - Provides the power for the council to request certain information about a property.

Local Government (Miscellaneous Provisions) Act 1982, Section 29 - Used to prevent unauthorised access to a building by getting the owner to board up any broken windows, doors etc, or by the council carrying out the works in default.

Prevention of Damage by Pests Act 1949, Section 4 - Used where there is evidence of or harbourage of rats or mice at a property.

Tenancy Deposit Protection Scheme

From 2007, it's been a legal requirement for UK landlords to protect their tenants' deposits in a government-authorised tenancy deposit protection scheme. This applies to assured shorthold tenancies. It's not compulsory to take a deposit but if one is taken it is required to be put in the scheme within 30 days and a copy of the deposit protection certificate is supplied to the tenant.

The scheme ensures the tenants can retrieve their deposit back if they:

- meet the terms of the tenancy agreement
- don't damage the property
- pay the rent and bills

If the landlord fails to protect the tenant's deposit, they can take the landlord to court to get compensation. The court can demand that the landlord pays compensation of up to three times the value of the deposit, and they may also order the landlord to protect the deposit or to return it to the tenant. Eviction rights will also be restricted if the deposit has not been protected.

Right to Rent

The Immigration Act 2014 introduced the concept of 'right to rent' to the private rented sector. Landlords who let private property in England or take in lodgers could be liable for a civil penalty if they enter into a tenancy agreement involving an illegal migrant. If a landlord makes the checks and retains copies as required, they will have a statutory excuse against such a penalty.

Landlords and agents should apply the right to rent checks in a fair, justifiable and consistent manner, regardless as to whether they believe the prospective tenant to be British, settled or a person with limited permission to be in the UK. Landlords or agents in England could be charged with a criminal offence if they know, or have reasonable cause to believe, that they are letting to an illegal migrant.

8.6 SECURITY INDUSTRY AUTHORITY- SIA

The Security Industry Authority (SIA) is an independent body reporting to the Home Secretary, under the terms of the [Private Security Industry Act 2001](#). It is the organisation responsible for regulating the private security industry in the UK.

The SIA has two main duties;

- Compulsory licensing of individuals undertaking designated activities within the private security industry
- Manage the voluntary Approved Contractor Scheme, which measures private security suppliers against independently assessed criteria

SIA licensing covers resources guarding, including:

- door supervision
- security guarding
- close protection
- cash and valuables in transit
- public space surveillance using CCTV
- key holding
- vehicle immobilising in Northern Ireland

Criminal offences created by [Private Security Industry Act 2001](#)

- **Engaging in licensable conduct without a licence**
 - maximum of 6 months imprisonment and/ or unlimited fine
- **Providing unlicensed persons in licensable conduct**
 - maximum of 5 years imprisonment and/ or unlimited fine
- **Contravening licence conditions**
 - maximum of 6 months imprisonment and/ or unlimited fine

Licence Suspension

- Clear threat to public safety could exist if the SIA did not suspend the licence
- Licence suspensions have immediate effect

- The SIA will suspend a licence in other circumstances if it is in the public interest to do so

Licence Revocation

A licence will be revoked if:

- The licence holder receives a conviction, caution, warning, absolute/conditional discharge or admonishment for a relevant offence
- The licence holder is not the person to whom the named licence should have been issued
- The licence holder has been working with an SIA licence without the right to work in the United Kingdom

SIA powers of entry and information gathering

Section 19 (1) of the PSIA 2001

SIA Investigations Officers and those with written authority may enter any premises owned or occupied by a person appearing to be a regulated person under section 19 (8) of the PSIA 2001- other than premises exclusively used for residential purposes.

Section 19 (2) of the PSIA 2001

SIA Investigations Officers and those with written authority, may require anyone appearing to be a regulated person under PSIA 2001 to produce their documents.

It is a statutory duty to comply with any of these requests for documentation or information.

Failure to provide information to the SIA – section 19 (5) (b)

Making false statements to the SIA – section 22(1)

- Upon summary conviction at a Magistrate's Court, Sheriff Court or District Court, a maximum penalty of six months imprisonment and/or an unlimited fine

Partner Intelligence Sharing;

- SIA databases hold information on individuals who have requested and/or applied for a licence and about private security companies
- Willingly share intelligence with partner agencies to further their investigations

- Disclosure of Information and Request for Information in accordance with Data Protection Act 2018

Information which can be shared;

- Photographs
- Addresses
- Application forms
- Copies of original documentation used to support an application
- Intelligence - links to other companies/ individuals, etc, alleged offending
- Corporate structure, lists of employees, contracts, site lists, etc.

8.7 TRADING STANDARDS

Those who work for trading standards services are Local Authority employees and are authorised to carry out their functions to enforce trading standards laws. Employees are referred to as trading standards officers, or TSOs.

Trading standards services enforce the law across a range of subject areas, including:

- age restricted products
- agriculture
- animal health and welfare
- fair trading, which includes:
 - pricing
 - descriptions of goods, digital content and services
 - terms and conditions
- food standards and safety (some types of trading standards services, including London boroughs, do not enforce food law)
- petrol and fireworks storage
- intellectual property (for example, counterfeiting)
- product safety
- weights and measures

Trading standards services visit business premises for a number of reasons, but the underlying purpose of a visit is generally to check and ensure that the business is complying with the law as well as to address or investigate any

non-compliance. Trading standards services follow an intelligence-led approach, where the decisions about enforcement activities are informed by the analysis of information from many sources, including complaints and a business's previous history. Trading standards officers can also carry out inspections of premises on a routine basis.

In most cases, TSOs have powers under [Schedule 5 of the Consumer Rights Act 2015](#). Depending on the legislation they are enforcing, they may have additional powers or powers that are slightly different. A TSO's main powers include the power to enter premises, powers of inspection and powers to secure or seize material that might be required in evidence:

- a TSO can at any reasonable time enter premises to observe the carrying on of a business, to inspect goods or documents, to test weighing or measuring equipment, or to make a test purchase. Refusal of entry could be viewed as obstructing an officer, which is a criminal offence
- a TSO can enter your home, or any other premises used solely or mainly as a dwelling, but only with a warrant issued by a court. A TSO can also obtain a warrant to enter any premises by force if necessary, and this might be done, for example, where it is expected that entry will be refused or obstructed
- if the entry is for a routine inspection then the TSO must give you two days' written notice of the inspection before entering premises. However, notice is not needed if:
 - an individual has waived the need for a notice to be given
 - the TSO has reasonable suspicion that the law has been broken
 - giving notice would defeat the purpose of the visit
 - it is not practicable to give notice (for example, there is an imminent risk to public health or safety)
 - the entry is for the purposes of market surveillance activities under certain European safety legislation
- where a breach of trading standards law is suspected, a TSO can seize goods and documents

Trading standards services have no direct powers to stop a business trading. However, they can apply to the courts for orders, which may restrict activities.

Trading standards services do have formal enforcement options available to them. The decision to take formal action lies with the local authority, but it is likely that formal action will be taken in cases where there is a serious breach (in terms of the detriment to customers or to other businesses through unfair competitive advantage) or where the business has failed to respond to or engage with informal attempts to secure compliance.

The main formal enforcement options include:

Prosecution

Many breaches of trading standards law are criminal offences and can be prosecuted in the Magistrates' Court or Crown Court. A successful prosecution may have a range of consequences, including the following:

- the trader will have a criminal record
- a punishment or sentence. Trading standards offences can usually be punished with a fine, and in many cases the amount is unlimited. For the most serious cases, imprisonment is an option, with maximum periods of up to two years for some trading standards offences. Where a business is prosecuted for fraud, theft or money laundering in addition to or instead of trading standards offences, or for offences under intellectual property law (trademarks or copyright), maximum penalties can be very high indeed (up to 14 years' imprisonment)
- an order to pay compensation to victims
- an order to pay the costs of the investigation and prosecution
- a 'criminal behaviour order' restricting future conduct (for example, a ban on making contracts in consumers' homes)
- disqualification as a company director (where the offence was connected with a company) or from driving (where there is a good reason - for example, where the offence included bad driving or was facilitated by the use of a vehicle)

- confiscation of assets and money under proceeds-of-crime legislation
- forfeiture of any illegal or infringing goods and any equipment used in committing the offence

Simple caution

This is a formal warning, which may be offered as an alternative to prosecution, where it is in the public interest to do so.

There is no obligation on trading standards services to offer a caution, but it might be offered for relatively minor first-time offending.

Enforcement orders

For a range of breaches, trading standards services can apply to the County Court or High Court for an enforcement order requiring the business to comply with the law. This may include the following consequences:

- the order itself. A breach of the order is contempt of court, which carries a maximum penalty of a fine and two years' imprisonment
- an order to take 'enhanced consumer measures', including changes to business processes and paying compensation to victims
- an order to pay the costs of the investigation and the court proceedings
- a requirement to publicise the order

Undertaking

This is a formal promise by the business to comply with the law and, where appropriate, to take enhanced consumer measures.

There is no obligation on trading standards services to accept an undertaking, but it may be accepted if the business genuinely appears to be committed to making amends.

Compliance notices

In some cases, trading standards services can issue a notice requiring the business to take action or to stop doing something, without the need to apply to court for an order. These notices have different names and different

conditions depending on the law they are made under.

In general there will be a deadline to comply with the notice. If a business fails to comply with a notice, this can lead to court action; if the business disagrees with the use of the notice, it usually has the opportunity to apply to the court or a tribunal to appeal against it.

Compliance notices are available under a range of laws, including food standards, animal health, product safety, weights and measures, and fair trading.

Administrative penalties

In some cases, trading standards services can issue a penalty notice, in effect imposing a fine directly on a business without the need for court proceedings.

Such notices are available under a range of legislation, including laws relating to letting agents, secondary ticketing, single-use carrier bags and (in some areas) underage sales of alcohol.

The business can usually appeal to the court or a tribunal against the use of such a notice or against the level of penalty imposed.

8.8 FOOD SAFETY

The Food Safety Act 1990 and **The Food Standards Act 1999** and general food law incorporating the main European Commission (EC) and domestic legislation provide governance covering the following areas;

- food imports and exports
- safety
- traceability
- labelling and product withdrawals and recalls

In terms of opportunities for disruption, an approach taken by one area has been to use Health & Safety, Trading Standards and Food Safety Teams working out of one service; using their respective powers to enter businesses.

This has been used for example, with food premises, to allow officers to inspect upstairs accommodation if they have linked gas supplies, as part of their general inspection routine.

Another example is where the Health and Safety team went into a Vietnamese nail bars where market surveillance was carried out relating to safety of working conditions for staff and the public and in doing so uncovered trafficking and modern slavery offences. This operation was undertaken jointly with police, by consent, and led to regular on-going Health & Safety interventions.

8.9 DISPERSAL POWERS

[Section 35 Anti-Social Behaviour, Crime and Policing Act 2014](#)

A senior police officer, is able to authorise the use of dispersal powers in a specified area for up to 48 hours, in order to reduce the likelihood of members of the public being harassed, alarmed or distressed, or to reduce the likelihood of crime and disorder in the locality.

The officers can require a person committing, or likely to commit, anti-social behaviour, crime or disorder to leave an area for up to 48 hours.

Under S37 of this act, officers may also require persons to surrender any property which is believed to have been used or is likely to be used as part of behaviour which causes harassment, alarm or distress or to commit a criminal offence.

Failure to comply with the dispersal direction could lead to a fine and/or up to three months imprisonment.

8.10 CLOSURE NOTICES

[Section 76 Anti-Social Behaviour, Crime and Policing Act 2014](#)

The police and local authority have powers under this act to issue closure notices

A police officer of at least the rank of inspector, or the local authority, may issue a closure notice if satisfied on reasonable grounds—

- (a) that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public, or
- (b) that there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of

those premises,

and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

The maximum period for the duration of a closure notice is 48 hours

The police or local authority can issue a closure notice in respect of premises, which they have reasonable grounds for believing have been, or are likely to be, used for activities related to specified child sex offences. The changes mean that closure powers will now capture a wider range of offences relating to child sexual exploitation and the police will be able to take proactive action if they believe the premise is going to be used for child sex offences.

A closure notice can be served to immediately close down the premises for a period of 48 hours. Once this has been issued, an application to the court would need to be made for a full closure order which can close the premises to anyone including the owner for up to 3 months.

8.11 CLOSURE ORDER

[Section 80 Anti-social Behaviour, Crime and Policing Act 2014](#)

Power of court to make closure orders

Whenever a closure notice is issued an application must be made to a magistrates' court for a closure order (unless the notice has been cancelled under section 78.

An application for a closure order must be made—

- by a constable, if the closure notice was issued by a police officer;
- by the authority that issued the closure notice, if the notice was issued by a local authority.

The application must be heard by the magistrates' court not later than 48 hours after service of the closure notice.

A full closure order can close the premises to anyone including the owner for up to 3 months.

Breach of a closure order is a criminal offence which could result in imprisonment.

A closure order is an order prohibiting access to the premises for a period specified in the order.

The period may not exceed 3 months.

An example of the successful use of a closure order by Avon and Somerset Police can be found [here](#)

8.12 CLOSURE ORDER UNDER THE SEXUAL OFFENCES ACT 2003

Section 136BA Sexual Offences Act 2003

136BA- Gives the power to authorise issue of closure notice: child sex offences in England and Wales

A member of a police force not below the rank of superintendent (“the authorising officer”) may authorise the issue of a closure notice in respect of any premises in England and Wales if three conditions are met.

The first condition is that the officer has reasonable grounds for believing that—

- (a) during the relevant period, the premises were used for activities related to one or more specified child sex offences, or
- (b) the premises are likely to be used (unless a closure order is made) for activities related to one or more specified child sex offences.

“the relevant period” means the period of 3 months ending with the day on which the officer is considering whether to authorise the issue of the notice.

The second condition is that the officer has reasonable grounds for believing that the making of a closure order under section 136D is necessary to prevent the premises being used for activities related to one or more specified child sex offences.

For the purposes of the second condition, it does not matter whether the officer believes that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).

The third condition is that the officer is satisfied that reasonable efforts have been made—

- (a) to consult the local authority for the area in which the premises are situated, and
- (b) to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.

If the local authority has not been consulted when the notice is issued, it must be consulted as soon as possible afterwards.

An authorisation under subsection (1) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.

The issue of a closure notice may be authorised whether or not a person has been convicted of any specified child sex offence that the authorising officer believes has been committed.

8.13 HOTELS

Section 116 Anti-Social Behaviour, Crime and Policing Act 2014

Child sexual exploitation at a hotel – requirement to disclose information or comply with notice served by police: A police officer can serve a notice on a hotel requiring them to disclose the names and addresses of guests where there is reason to believe there is child sexual exploitation. Failure to comply is a criminal offence.

A police officer of at least the rank of inspector may issue a notice under this section to the owner, operator or manager of a hotel that the officer reasonably believes has been or will be used for the purposes of—

- (a) child sexual exploitation, or
- (b) conduct that is preparatory to, or otherwise connected with, child sexual exploitation.

A constable may require a person issued with a notice under this section to provide the constable with information about guests at the hotel.

8.14 ABSOLUTE GROUND FOR POSSESSION

[Section 94 Anti-Social Behaviour, Crime and Policing 2014](#)

This can be obtained by private sector landlords and social landlords, including local authorities and housing associations.

If the tenant, household member or visitor is convicted of a serious offence or one of the specified orders in the Act, the landlord can expedite their eviction through the court process to speed up the eviction process for the benefit of the victim, and have mandatory grounds for possession of the property.

8.15 REVIEWS OF LICENSED PREMISES

[Licensing Act 2003](#)

Partners can request a license review for a licensed premise where there are concerns that they are acting otherwise than in accordance with licensing conditions and the Licensing Act 2003.

Licensed premises have a duty to protect children on their premises from harm, including CSE / exploitation (revised guidance added to the Act in 2015).

Following the review, licensing departments may offer advice and education to the premises about adhering to their license conditions; to bring compliance, or they may prosecute them for breach of their license.

Where licensed premises are a location of concern relating to CSE / exploitation, licensing teams should always be informed and consulted regarding possible action which could be taken.

8.16 THE FIRE SERVICE

[Fire & Rescue Services Act 2004](#)

Fire officers may be eligible to enter premises causing concern relating to exploitation on fire safety, or health and safety grounds. This may enable officers to ascertain whether there are any signs of exploitation related activity at the premises, and may prove especially useful where there are concerns about the use of premises, but not enough evidence for a police warrant to be issued.

8.17 WARRANTS

When police are investigating offences of rape and other serious indictable offences they can use:

- PACE warrants to search premises for material that is likely to be relevant evidence
- [Protection of Children Act 1978 \(Chapter 37\)](#) allows entry and search where there are reasonable grounds for suspecting the presence of indecent photographs or pseudo photographs of children on the premises
- [S50 Children Act 1989](#) authorises you to enter and search premises for a child where there is reason to believe that a child who is subject of a care order, emergency protection order or police protection order is being held in circumstances amounting to an offence under s49 of this act (keeping away a child without lawful authority)
- [Misuse of Drugs Act](#) – If there is a strong link between drug dealing and suspected CSE perpetrators and you are finding it difficult to obtain evidence of CSE offences, you may wish to consider progressing possession/ supply offences using warrants under this act.

We hope this toolkit assists you in disrupting perpetrators of exploitation, if you have any case studies or observations please email the authors of this document; Kay Wallace at the NWG Exploitation Response Unit – Kay@nwgnetwork.org or Rachel Hopper at Barnardo's National Counter Trafficking Service- rachel.hopper@barnardos.org.uk

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