



INQUIRIES, INVESTIGATIONS AND THE LAW
THE POSITIVE DUTIES ON THE STATE TO
INVESTIGATE TRAFFICKING AND PROTECT VICTIMS

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(1) The issues

1. There is no dispute that: there is no precise data on the number of victims of trafficking currently in the UK; that a proportion of victims come into contact with the State; that some victims are referred into the National Referral Mechanism for identification and support (NRM) and some are not; and some are recognised as victims of trafficking and some are not.¹
2. Absent an effective investigation or proper enquiry, if victims are not identified, they may face detention, removal, destitution, re-trafficking and other serious forms of harm.² It is imperative that all frontline staff are properly trained so that they are able to recognise and identify victims of trafficking, investigate their cases, and take necessary action to protect – such as making a referral into the NRM.³ The investigative and identificatory obligations fall squarely on the state: self-identification by victims is not to be relied upon.⁴
3. This presentation looks at the core duties to investigate, identify, and protect; the source of those duties; and their application in situations where the police and the Home Office are most likely to come into contact with victims - enforcement action, immigration crime raids, police stations, prisons, detention centres, screening, immigration procedures, and visa posts.

¹ HM Government 2015 Report of the Inter-Departmental Ministerial Group on Modern Slavery, October 2015 (4th Report); HM Government Modern Slavery Strategy, November 2014.

² Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by the United Kingdom (First Evaluation Report, September 2012) at [226] (GRETA Report).

³ Articles 9(3), 18(3) and recital 25 EU Trafficking Directive 2011/36; Art 10(1) Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT); GRETA Report; Home Office Victims of modern slavery – Competent Authority guidance (v.3.0, 21.3.2016) at pps 21, 67, 68 (CA Guidance); Home Office Victims of Modern Slavery – frontline staff guidance (v.3.0, 18.3.2016) pps 6, 47, 55 (Frontline Staff Guidance); Review of the National Referral Mechanism for victims of human trafficking (November 2014) at [4.2.1-2].

⁴ Frontline staff guidance pps 20-21; CA Guidance p.49.

4. For reasons of time and space, and by reference to the most developed areas of law, this presentation focuses on the duties incumbent on the Home Office and the police; though other frontline agencies and applicable guidance should not be forgotten.⁵ Provision is made under the Modern Slavery Act 2015 (s.49) (MSA) for centralised guidance on identification to be issued which has not yet occurred.

(2) The core duties

(a) Investigation, identification and protection under Article 4 ECHR

5. Article 4 ECHR provides that no one shall be held in slavery or servitude; and includes trafficking as defined by Art 4 Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT)⁶ and Art 3(a) UN Palermo Protocol: ***Rantsev v Cyprus and Russia*** (2010) 51 EHRR 1 at [282]:

“There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention”.

6. Art 4 is to be read, so far as possible, in harmony with other rules of international law (Vienna Convention on the Law of Treaties 1969), including ECAT (***Rantsev*** at [273-4, 285]). Public authorities for the purpose of the Human Rights Act 1998 must not do anything contrary to a person’s rights under the ECHR, including Art 4 ECHR. State actions are amenable to judicial review for breaches of Article 4 ECHR or the Guidance which is intended to incorporate ECAT: ***R (FM) v SSHD*** [2015] EWHC 844 (Admin) at [11].

7. Article 4 gives rise to positive obligations relating to the protection of victims of trafficking and preventing and combating the crime; and it is necessary to take a “*global approach*” to victim protection (***LE v Greece*** (71545/12), judgment 21

⁵ E.g. local authorities, the NHS, the Gangmasters Licensing Authority: The London Safeguarding Trafficked Children Guidance (February 2011); London Safeguarding Trafficked Children Toolkit (February 2011); Safeguarding children who may have been trafficked: Practice Guidance by the Department of Education and the Home Office (2011); Department of Education Care of Unaccompanied and trafficked children statutory guidance (2014); Guidance for Health Staff: Identify and support victims of human trafficking: April 2013; NHS e-learning for Healthcare Identifying and Supporting Victims of Modern Slavery (2015); Gangmasters Licensing Authority: Labour Exploitation: Spotting the signs (2015) etc.

⁶ Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw 16 May 2005) (CETS 197) (ECAT). The UK signed on 23 March 2007; ratified on 17 December 2008; and the Convention came into force in the UK on 1 April 2009.

January 2016 at [64-65]). The content of positive obligations under Art 4 mirrors those under Arts 2 and 3 ECHR (**Rantsev** at [288]; **CN** at [69]; **LE** at [66]).

8. The key positive obligations under Article 4 are as follows:

- the duty to put in place a comprehensive legal and administrative framework via a combination of measures addressing the need to combat trafficking and to protect victims (**Rantsev** at [284-5]).
- the duty to take concrete operational measures to protect potential or actual victims, of trafficking:
 - where the “*authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the [definition in Art 4 ECAT]*” (**Rantsev** at [286]; **LE** at [66]);
 - should not be interpreted as imposing an impossible or disproportionate burden on the State (**LE** at [67]).
- The procedural obligation to investigate if a person is a potential or actual victim of the crime of trafficking where:
 - there “*sufficient indicators*” to raise a “*credible*” or “*reasonable suspicion*” that an individual is, or is in real imminent danger of being a victim of trafficking within the definition; or
 - their Article 4 rights have been violated.(**Rantsev** at [296] & [298, 300]; **CN v United Kingdom** (2013) 56 EHRR 24 at [69]; **O v The Commissioner of Police for the Metropolis** [2011] EWHC 1246 (QB) at [153, 163-4]).

9. The requirement to investigate, in briefest summary:

- “*does not depend on a complaint from the victim or next-of-kin: once the matter has come to the attention of the authorities they must act of their own motion*” (**Rantsev** at [288]);
- entails agencies *inter alia* asking appropriate questions, taking a statement, making enquiries (or further enquiries) into the facts/ background and/or parts of the trafficking chain: **Rantsev** at [297, 307];
- must be effective: “*...it must be independent from those implicated in the events. It must also be capable of leading to the individuals responsible. This is not an obligation of results, but of means. Reasonable speed and diligence*”

are implicitly required in all cases, but if it is possible to remove the individual concerned from a damaging situation, the investigation must be urgent. The victim or relative must be involved in the proceedings insofar as this is necessary to protect their legitimate interests. (See, *mutatis mutandis*, Paul and Audrey Edwards, *op. cit.*, §§ 70-73.)” (**LE** at [68]);

- must be prompt so as to avoid a negative impact on the victim’s personal situation (**LE** at [68] (*supra*) & [77]).

10. The duty to identify arises in **Rantsev** because the Cypriot police were found to have breached Article 4 ECHR by failing to identify the applicant by means of appropriate questioning when she attended a police station, beyond asking about her immigration status [297]. The Court recalled:

“the obligations undertaken by the Cypriot authorities in the context of the Palermo Protocol and, subsequently, the Anti-Trafficking Convention to ensure adequate training to those working in relevant fields to enable them to identify potential trafficking victims.” [296].

11. **Rantsev** encapsulates the global approach to the above duties. Multiple failures to investigate or make immediate enquiries into whether someone has been trafficked, and so identify them, breached the duty to protect under Art 4 ECHR [298]. After being in the police station, the applicant was released to her alleged trafficker and later died in suspicious circumstances.

(b) Common law duty of enquiry

12. The exercise of investigatory or identificatory functions by State agencies must be fair and rational. That includes the requirement in **Secretary of State for Education v Tameside MBC** [1977] AC 1014, per Lord Diplock at 1065 namely *“did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?”* (accepted in the trafficking case of **FM** at [48]).

(c) The duty to investigate whether a person is a victim of trafficking

13. Under the EU Trafficking Directive 2011/36/EU⁷:

- Article 9 entitled *“Investigation and prosecution”*.

⁷ Directive 2011/36 /EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Trafficking Directive 2011/36/EU). The UK announced that it would opt in to the Directive on 8 June 2011; deadline for transposition 6 April 2013.

- Art 9(1). The initiation of an investigation is not contingent on a complaint from a victim; and an investigation can continue even if the victim has withdrawn his/her statement. See also Recital 15.
- 9(3). Investigatory “*persons, units or services*” should be trained.
- 9(4). Deals with the content of the investigative duty including effective investigative tools.
- Recital 5. Coordinated investigations between relevant agencies are required.
- Recital 19. Deals with investigation of offences.
- Recital 20. Investigations are to be carried out in a way which is responsive to the particular needs of victims:
“Victims of trafficking who have already suffered the abuse and degrading treatment which trafficking commonly entails, such as sexual exploitation, sexual abuse, rape, slavery-like practices or the removal of organs, should be protected from secondary victimisation.”

14. Under ECAT and related parts of the Explanatory Report to ECAT (ECATER):

- Article 1(b). Effective investigations and prosecutions in order to protect victims are a key purpose of ECAT.
- Chapter V – Investigation, prosecution and procedural law including Article 27 – *Ex parte* and *ex officio* applications. Art 27(1) investigations are not dependent on a victim’s report; Art 27(2) & (3) concern procedural issues and support.
- Art 28 - Protection of victims, witnesses and collaborators with the judicial authorities requires States to:
“adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrator...”

15. Similarly, Article 4 of the UN Trafficking (Palermo) Protocol requires the “*prevention, investigation and prosecution*” of offences of trafficking. Principle 2 of the UN Trafficking Principles requires States to “*act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.*”

(d) The duty of investigation – the system

16. There must be a system of prompt and early identification Article 11(4) Trafficking Directive. Article 10 ECAT provides:

“1 Each Party shall provide its competent authorities with persons who are

trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.”

17. The NRM entered into force on 1 April 2009 and is intended to implement ECAT through a series of published policies.⁸ The “*first aim*” of the NRM is the identification of victims of trafficking: ***R. (Atamewan) v Secretary of State for the Home Department*** [2013] EWHC 2727 (Admin) at [37].

18. In briefest summary, with a victim’s consent in adult cases, a referral must be made to the NRM by a designated first responder (Guidance to Frontline Staff p.46). Competent Authorities are responsible for identification: the National Crime Agency (NCA) identifies British, Irish and EEA victims; and UK Visas and Immigration (UKVI) identifies third country nationals. Within UKVI there are several competent authorities depending on the case e.g. asylum, third country, criminal casework, ‘late claims’, ‘pending removal’ and detained cases.

19. A two-stage identification procession is conducted:

- First an initial filter decision where there are reasonable grounds to believe a person has been trafficked. At this stage, the person benefits from a reflection and recovery period, temporary admission, and cessation of removal action. The Home Office is under a duty to initiate an effective police investigation – by referring the case to the police - irrespective of whether person has lodged a complaint - ***Atamewan*** at [90&91]; Guidance to Frontline Staff p.53.⁹

⁸ This is a description of the NRM as it continues to operate in general; not the pilot NRM operating in some select areas following the NRM review.

⁹ Since 1 November 2015, s.52 MSA imposes a duty on all State bodies to notify the Secretary of State if a person may be victim of slavery or human trafficking; though this is more concerned with data capture than protection (Guidance to Frontline Staff p.51).

- Second a conclusive grounds decision is made on the balance of probabilities from which important rights flow (**Atamewan** at [22-43]; Guidance to CA pps 16-25, 50 – 71; **SF v SSHD** [2015] EWHC 2705 (Admin) per Silber J at [2]).

(e) The duty of identification – how to recognise trafficking indicators

20. Formal identification of a victim is based on whether a person meets the definition of trafficking:

- Article 2(1) Trafficking Directive 2011/36 defines the offence of trafficking:
“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”
- Art 4 ECAT is similar to Art 2 Directive. See CA Guidance p.30.
- Art 2(3) Trafficking Directive: exploitation need not occur for definition to be met. See ECATER at [87].
- Art 2(4) Trafficking Directive: consent is irrelevant where any means are used. Similarly Art 4(b) ECAT; ECATER [91].
- ECATER at [75&224]: trafficking is a combination of the constituent elements - action, means, and purpose - and not the elements taken in isolation.
- Art 10(2) and Art 11(7): account must be taken of a victim’s special or individual situation.

21. Spotting and recognising indicators of trafficking is crucial to identification. Indicators are “*signs*” that frontline staff need to know and understand in order to identify victims and make referrals to the NRM for support or to take other necessary action to protect victims. The indicators found on the NRM referral reflect standardised indicators. Further:

- The CA Guidance p.48 and the Guidance to Frontline Staff at pps. 17-19 set out different types of indicator. To give an example of how these may be exhibited in a particular case: a victim is encountered who finds it difficult to come forward and make disclosure, says they have headaches or are dizzy (physical indicators); has gynaecological symptoms such as irregular bleeding (sexual health indicators); expresses fear or anxiety, drug or alcohol use, shame (psychological indicators); distrusts the authorities, has a lack of knowledge about the area where they live, does not have travel documents

(situational and environmental indicators); may have had documents or payment or information about worker rights withheld (forced labour and domestic servitude indicators).

- See further ILO Operational indicators of trafficking.

22. In identifying victims frontline staff must understand that:

- Some people are particularly vulnerable to risk: including unaccompanied or internally displaced children, children accompanied by an adult who is not their relative or legal guardian, young girls or women, former victims of trafficking. Particularly vulnerable adults likely to be targeted by traffickers include those people with substance misuse issues, debt bonds, mental health problems, learning disabilities (Guidance to Frontline Staff p. 44).
- Myth must be separated from reality. E.g. myth - person did not take an opportunity to escape; reality – person remains in exploitative situation out of fear, grooming, lack of knowledge of environment etc (CA Guidance p.28).

(f) The duty to protect

23. Identification is critical to protection. It is only possible through proper investigation:

- The investigative obligations under Art 11(4) Trafficking Directive and Art 10(2) ECAT recognise that support must be provided for actual and potential victims.
- The duty to identify is centred on the need to “*protect and assist victims*” – ECATER at [124-125].
- “*To protect and assist trafficking victims it is of paramount importance to identify them correctly... so that victims can be given the benefit*” of measures to protect and support them - ECATER [127].
- **SF** per Silber J at [2]:

“The decision of the CA is of critical importance as it not only affects the position of the victim of trafficking, but it also affects the ability of the State to mount effective prosecutions against traffickers. A person held to have been trafficked will thereby become entitled to a series of rights under CAT and these include the right to assistance to aid recovery (Article 12); to a residence permit in the circumstances laid down in Article 14; to information about and access to compensation procedures (Article 15); for any return to her country to be carried out with “due regard for the rights, safety and dignity of that person” (Article 16); and of particular importance in the present case¹, a right not to be prosecuted for offences directly connected with her experience of being trafficked (Article 28).”

- See also Art 4 ECHR and *Rantsev* at [298] (above).

24. The EU Victims of Crime Directive 2012/29¹⁰ is part of the EU ‘Victims Package’ and applies to victims of trafficking as victims of crime. Its purpose (Art 1(1)) “*is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.*”

(3) Application of the duties in situations where the police and Home Office come into contact with victims

(a) The police

25. The police have a duty to investigate potential crimes of trafficking. The offence of trafficking is defined in Art 2 Directive (above). The Modern Slavery Act 2015 includes two substantive offences for England and Wales: slavery, servitude and forced or compulsory labour (s.1); and human trafficking (s.2). Section 3 defines ‘exploitation’; whilst s.4 concerns the commission of an offence with intent to commit a trafficking offence. (See CPS Guidance Human Trafficking Smuggling and Slavery; and National Crime Agency Relevant Legislation).

26. The College of Policing Guidance *Authorised Professional Practice Modern slavery* (2015) (APP Guidance) recognises the link between investigation, identification and protection:

- “*Investigations into modern slavery offences must be victim-focused but must also maximise the opportunities to identify and successfully prosecute, or otherwise disrupt, those responsible. The primary objective is to safeguard and support victims.*”
- “*Where a person is reporting an offence of modern slavery, or the person making first contact suspects that an adult or child may be a victim or witness to such an offence, the key responsibilities below should be fulfilled. These are intended to make sure that the potential victim receives the appropriate level of service and support by setting out the priority areas of focus for each person involved in an investigation.*”

27. The content of the procedural duty on the police to investigate is set out in the APP Guidance and includes the following:

¹⁰ Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice. Deadline for transposition was 16.11.2015 so it has entered into force. The UK opted into it and is bound by it.

- *“It is the duty of a local police force (the primary investigative agency) to begin an investigation as soon as they believe a modern slavery crime may have been committed, regardless of whether a victim makes an allegation, whether a report is made, or whether consent to be entered into the national referral mechanism is provided or refused.
A modern slavery crime must not be approached as an employment or immigration issue at this stage.”*
- Reports must be made through various channels from the point of disclosure or suspicion in accordance with standard investigative practice.
- Investigating promptly and sensitively.
- Preserving and recording evidence (so it does not get lost).
- Undertaking cross-border investigations in cases with an international dimension.
- Trafficking requires additional strategies given its ‘*global nature*’ and ‘links with financial crime’: identifying suspects may require strategies that are additional to those used in a standard major investigation. These include:
 - *“considering that the suspect could also be a victim and be subject to threats or coercion*
 - *conducting research into the background of the suspect including religion, ethnicity, culture and regional identity, if relevant;*
 - *contacting other police forces or researching databases for potential intelligence*
 - *identifying a full financial asset history including seizing any documents, vehicle details (eg, number plates), bank cards, diaries, work sheets, rotas and payslips in the suspect’s possession, and any documents evidencing land ownership*
 - *checking whether the suspect owns other businesses and undertaking relevant research to identify potential links to other premises where there may be additional victims or evidence of criminality, for example, money laundering*
 - *taking wet fingerprints to enhance forensic opportunities in addition to LiveScan fingerprints*
 - *considering placing the suspect on the Home Office’s Warnings Index database*
 - *being aware when considering granting bail that the suspect may have alternative premises or businesses*
 - *assessing the risk to the victim(s) and implementing suitable control measures if a suspect is released on bail, eg, bail conditions, use of civil orders.*

All appropriate steps should be considered to safeguard victims prior to any suspect being released from custody. This includes complying with the Notifiable Occupations Scheme, whereby police officers can disclose information on a suspect’s recordable convictions, cautions, reprimands and final warnings to third parties, if this information relates to the protection of the vulnerable (including children), national security, or probity in the administration of justice.

See intelligence opportunities for information on sources that can help an investigation. These should be pursued.”

28. The duty on the police to investigate (see [8&9] above) is triggered, e.g. where:

- There are credible allegations of trafficking which could come to light at any stage in a police officer's duties. In **OOO & Ors v The Commissioner of Police for the Metropolis** [2011] EWHC 1246 (QB) (20 May 2011) three young women were brought to the UK and subjected to years of exploitation in London households. The police failed to investigate allegations over a period of 2 ½ years. Wyn Williams J rejected the Defendant's complaint that they were unable to commence an investigation due to a lack of cooperation on the Claimants' part, because they had provided statements to their solicitors and concerns had been raised at a meeting. The Court held:
 - *"the police would be under a duty to carry out an effective investigation of an allegation of a breach of Article 4 once a credible account of an alleged infringement had been brought to its attention. The trigger for the duty would not depend upon an actual complaint from a victim or near relative of a victim. The investigation, once triggered, would have to be undertaken promptly."* [154]
 - The police *'did nothing to commence an effective investigation'* [171].
- An investigation has proceeded to a prosecution (involving an officer in the case), including where a victim is the defendant and prosecuted in violation of non-prosecution provisions (Art 8 Directive and Art 26 ECAT) and/or a statutory defence (MSA s.45). E.g. **R v L/THN** [2013] EWCA Crim 991; **R v O** [2008] EWCA Crim 2835. In **O** despite being presented with evidence that O was a credible victim of human trafficking, neither the defence nor the prosecution had investigated her history or considered whether she had a defence of duress.

(b) UK Visas and Immigration

29. The specific situations in which victims might be encountered, triggering the duty to investigate, identify and protect are outlined in the Guidance to Frontline Staff at p.55:

"Frontline staff in the Home Office need to know where they are most likely to encounter potential victims of modern slavery.

This includes identifying a potential victim of human trafficking in any part of the UK (or slavery, servitude, or forced or compulsory labour where identified in England or Wales).

Frontline staff may identify modern slavery victims at any stage in the border and immigration process and they may not have a related protection claim. Any frontline member of staff may identify a potential victim of modern slavery.

However, frontline officers in the following areas must be particularly alert to the signs of modern slavery:

- *Border Force*

- *criminal casework*
- *entry clearance staff*
- *enforcement teams*
- *immigration crime teams*
- *local immigration teams*
- *Asylum Intake Unit*
- *asylum casework teams*
- *premium service centre staff*
- *detention centres*

30. The obligation to spot and investigate indicators of trafficking arises in the select examples which follow.

31. Border or ports of entry: indicators include obvious signs of distress, the failure by a victim to see themselves as at risk from a trafficker, a coached story – Guidance to Frontline Staff p.52.

32. Enforcement action/immigration crime raids: often carried out with police.

- Guidance to Frontline Staff p.57.
- ***Detention Action v Secretary of State for the Home Department*** [2014] EWHC 2245 (Admin) (09 July 2014). The evidence showed that:
“many trafficked women will first come into contact with immigration officers as a result of police or other enforcement action, because escape is not easy and regularisation of their immigration status is usually not possible while under the control of the trafficker.” [139].
 Ouseley J accepted that victims may be prevented from identifying themselves as trafficked due to fear [143]

33. Asylum intake unit – screening interviews: Guidance to Frontline Staff p.57-8 - victims may not identify themselves due to fears or their situation. Appropriate questions need to be asked at screening to investigate individual circumstances and indicators of vulnerability – see ***Detention Action*** at [100]; ***JB (Jamaica), R (on the application of) v Secretary of State for the Home Department*** [2013] EWCA Civ 666 at [28].

34. Substantive interviews: Guidance to Frontline Staff p.58. Open questions must be asked to establish what happened in a person’s trafficking situation, bearing in mind that disclosure may be hindered by cultural factors, trauma or humiliation, or potentially illegal actions in which they were involved.

35. Trafficking decision-making: Includes an express evidence gathering duty before reaching a reasonable grounds (Guidance to CA pps.51-54); or a conclusive grounds decision (Guidance to Competent Authorities p.65-68). Before a conclusive grounds decision is made “*The Competent Authority must make every effort to secure all available information that could prove useful in establishing if there are conclusive grounds.*” This should also include making enquiries with the first responder, local authority, police or support provider, or interviewing the person should it be appropriate and non-traumatising.

36. Detention:¹¹ in the detention or prison estate or police cells, where indicators are displayed at any stage, e.g. on intake, at screening, at an asylum or travel document interview, a Rule 35 process, if reporting to healthcare, if reviewing detention etc. The failure to investigate indicators may lead to detention being unlawful from the point at which they first arose. This was the result in **Y & Ors** (CO/747/2015) concerning the detention of victims of trafficking in the detained fast track asylum procedure (DFT):

- On 20 July 2015, Mr Justice Blake approved an agreed order and statement of reasons making eight declarations that three potential victims of trafficking had been unlawfully detained in DFT. The declarations were read into the judgment.
- The lead Claimants had raised indicators of trafficking and torture or claims of sexual orientation from the outset – that is when they approached the asylum screening unit and when a screening interview was conducted; or in one case at the stage of a Rule 35 report.
- Those indicators should have led the Home Office to recognise that their claims required further investigation and were unsuitable for quick determination in the DFT and so to their release.
- The Home Office failed to:
 - Identify the Claimants as potential victims of trafficking;
 - Investigate their claims;
 - Make a referral into the NRM or a referral to the police for further investigation;
 - Inform the individuals of the NRM process and of their rights;

¹¹ The question of the legality of detention of victims of trafficking is not dealt with here in detail for reasons of space – as it demands a paper in of itself. The only point to note is that a failure to investigate indicators of trafficking may lead to a finding that detention was unlawful from the outset – as in the DFT cases.

- Release them from detention and the DFT.
- The Secretary of State accepted that it had breached its obligations towards these potential victims under Arts 4 & 5 ECHR as well as its published policies on trafficking, detention and on the DFT, and the common law.
- The positive duties under Art 4 ECHR are owed to potential victims of trafficking not only those who have been formally identified as such. That test is met from the moment of contact with the authorities if there are sufficient indicators that the person is or may have been trafficked: **Rantsev** at [296 & 298].
- The Secretary of State further accepted that it had been unlawful to:
 - Detain Y as the claim based on sexual orientation required further investigation and was unsuitable for quick determination.
 - Detain Y and PU as rule 35 reports raised potential claims of torture and required further investigation;
 - Operate the DFT without complying with s. 149 of the Equality Act 2010 - and that certain vulnerable groups were at unacceptable risk of unfairness.
- The declarations are likely to have an impact on potential future challenges regarding failures at screening, interview, and in detention.

37. Entry clearance: indicators of recruitment, coercion (debt bonds), intended exploitation may be present at the visa post which need to be investigated, including by way of an interview, or once the person is in the UK and such indicators become apparent (Guidance to Frontline Staff pps. 55-56; **EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania** [2013] UKUT 313 (IAC) at [22-24, 39-41].

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