

## **DRUGS, SLAVERY, TRAFFICKING, EXPLOITATION AND LINKS TO COUNTY LINES. WHAT CAN AND IS BEING DONE BY THE LAW?**

Zakaria Mohammed pleaded guilty on 24<sup>th</sup> September 2018 to four counts of conspiracy to supply class A drugs and five counts of arranging or facilitating the travel of another person with a view to exploitation. Mohammed trafficked three children between 14 and 15 years of age in a county lines operation between Birmingham and Lincolnshire. On the 4<sup>th</sup> October 2018, he was sentenced at Birmingham Crown Court to 14 years in prison. Mohammed is thought to be one of the first drug dealers convicted in Britain for breaching the Modern Slavery Act by trafficking children<sup>1</sup>.

Newspaper columns are dedicated on a daily basis to the topics of gangs, knife crime, violence and the link between them and drugs. It is said that tackling the drugs problems and in particular the county lines networks would help in reducing the amount of criminal activity, in particular where young people are involved, both as perpetrators and victims. The number of cases like the one summarised above will only increase.

In this article, written by **Yasin Patel** and **Amy Hazlewood**, we look at the areas of drugs, and in particular 'county lines' and analyse the drugs problem, the legislation available to tackle the criminality, the Modern Slavery Act 2015 and the key aspects of the legislation. We look at the young victims who have been recruited along county lines and what rights, defences and protections, if any, are available to them.

### What is County Lines?

The Government's Serious Violence Strategy defines county lines as: "a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas [within the UK], using dedicated mobile phone lines or other form of "deal line"<sup>2</sup>.

Essentially, county lines is a term used to describe city-based drug networks who extend their drug dealing activity into new locations outside of the cities and into market and coastal towns. Vulnerable people, often children, are recruited to act as couriers and to sell drugs.

County lines are operated by gangs who introduce a telephone number (or more) in a new area to sell drugs directly at street level. Buyers call the number(s) and local runners, who are often children, are dispatched to make deliveries via a telephone 'relay or exchange' system. The 'runners' are often groomed with the promise of money and gifts. Runaway and missing children are also used by gangs to expand inner city drugs operations into county towns. Children as young as 11 years of age have been reported as being recruited by these highly organised networks.

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<sup>1</sup> <https://www.cps.gov.uk/west-midlands/news/county-lines-drug-dealer-jailed-under-modern-slavery-laws>

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

Gang members may also enter into relationships with young, often vulnerable women in order to secure a location for drugs to be stored in the new area. Violence is often used against drug users to coerce them to become runners, enforce debts, and use their accommodation as an operating base.<sup>3</sup>

The problem of county lines is escalating. In a report from the National Crime Agency (“NCA”), 88% of the 38 police forces that responded to a survey reported county lines activity. Further to this, the NCA assessed that there are more than 1,500 lines operating nationally, with evidence of increasing levels of violence.<sup>4</sup>

### **Legislation**

There is no shortage of legislation to deal with the issue of possession and supply of drugs, trafficking, violence, enforced labour etc. And all of it is available to the authorities when prosecuting cases and connections to county lines activity. There is also the relatively new Modern Slavery Act 2015, which provides further powers to the prosecuting agencies.

### **Gang injunctions**

The Policing and Crime Act 2009 introduced gang injunctions. The police and local authorities have the power to apply to the courts for the injunctions. The Courts can, under an injunction, impose requirements on 14-17-year olds involved in gang related violence. These conditions may include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities.<sup>5</sup>

Section 34 states that a court can grant a gang injunction if two 'conditions' are met:

- i) The court is satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged or assisted:
  - a) gang-related violence, or
  - b) gang-related drug-dealing activity.
- ii) The Court will grant an injunction if the court thinks it is necessary for either or both of the following purposes:

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<sup>3</sup> CPS County Lines Typology

<sup>4</sup> [www.nationalcrimeagency.gov.uk/news/1247-latest-threat-update-estimates-at-least-720-county-lines-drug-dealing-lines](http://www.nationalcrimeagency.gov.uk/news/1247-latest-threat-update-estimates-at-least-720-county-lines-drug-dealing-lines).

<sup>5</sup> <https://www.gov.uk/guidance/injunctions-to-prevent-gang-related-violence>

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

The burden is on the applicant authority to demonstrate that these two conditions are met.

There is a plethora of legislation that deals with offending related to drugs, gangs, trafficking, prostitution and more and which the authorities can and do use when dealing with many offences related to 'county lines' arising criminality.

The Offence Against the Person Act 1861 covers a range of severity concerning violent offences. The Prevention of Crime Act 1953 may be appropriate when dealing with use of weapons to inflict serious assaults. The Firearms Act 1969 deals with a range of offences concerning shotguns and firearms.

It is known that violence is regularly inflicted upon females who enter into a gang associated with county lines activity. They find themselves subjected to control or coercion in order to help the gang carry out their criminality. Recent cases have shown how females have been sexually assaulted, used as 'honey traps' to lure rival gang members into confrontations, or coerced into prostitution for payments. The primary Act for such activity is the Sexual Offences Act 2003.

County lines activity is principally centred around the supply of drugs. The primary statute for such offences is the Misuse of Drugs Act 1971 which deals with possession, supply and production. It is under this legislation that a great many offenders have been prosecuted.

#### Modern Slavery Act 2015

The Modern Slavery Act 2015 (MSA) codified into statute the obligations the UK have under the international legislation towards victims of slavery. The legislation seeks to provide protection for victims of human trafficking, who commit crimes in England and Wales where there is a nexus between the crime committed and the trafficking.

Section 1 of the MSA makes it an offence to hold someone in slavery, servitude or forced or compulsory labour.

Under section 2 of the MSA, a person commits an offence if they arrange/facilitate the travel of another person (v) with a view to exploiting them, regardless of whether they have agreed to travel or not. It does not matter whether the person is a child or adult, and whether the exploitation was abroad or within the UK.

#### Modern Slavery Act 2015 - Exploitation

For the purposes of the MSA section 2, a person is “exploited” if they are subjected to force, threats or deception designed to induce them:

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

Accordingly, a person who uses a child for the purposes of county lines drug trafficking could be charged with a human trafficking offence as well as any relevant further offences (some of which were outlined earlier).

"Exploitation" also includes using a person having chosen them because of their age or defined vulnerability.

The maximum sentences available to the courts for anyone found guilty of an offence under section 2 is life imprisonment.

### **MSA Defence to County Lines Charges**

Pursuant to the MSA, section 45 there is a defence for victims of slavery and exploitation if they can establish that:

- they were compelled to commit the offence and the compulsion was attributable to the slavery or relevant exploitation (for people over 18); or
- they committed the offence as a direct consequence of being, or having been, a victim of slavery or relevant exploitation (for people under 18).

This defence is established if a reasonable person would (for a defendant over 18) have no realistic alternative to committing the offence or (for a defendant under 18) would have committed the offence.

This defence does apply to drug trafficking and money laundering offences although it is not available for serious violent and sexual offences (pursuant to section 4).

Section 45 places an evidential burden upon defendants to adduce sufficient evidence to ‘pass the judge’ and allow the defence to be considered by the jury. If a defendant is successful in discharging the evidential burden, then the legal burden falls upon the prosecution to disprove the defence.

The safeguard against ‘unscrupulous’ use of the defence lies within the application of the objective tests set out in Section 45(1)(d) (for persons over 18) and section 45(4)(c) (for persons under 18) (*MK v R* [2018] EWCA Crim 667).

All of the measures outlined so far are reactionary. Once an offence concerning county lines has been committed, the authorities and the courts have recourse to the Offence Against the Person Act, the Modern Slavery Act, the Firearms Act etc.

#### Why a problem of exploitation?

So why are we left in a position where we are unable to identify and protect victims of exploitation? It is argued that more resources need to be placed into preventing children from being exploited in the first place. This is where early identification and the National Referral Mechanism have roles to play.

#### National Referral Mechanism

The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. It was introduced in 2009 to meet the UK's obligations under the Council of European Convention on Action against Trafficking in Human Beings<sup>6</sup>.

Individuals who have been identified as a potential victim of trafficking are referred to the NRM. The NRM is then responsible for deciding whether or not the individual is a genuine victim of trafficking. Whilst in theory, the purpose of the NRM is welcome, in practice, it is not proving to be efficient.

There is an enormous backlog at the NRM. A recent investigation established that 2,200 people have been waiting more than a year for a decision on their status in the UK. As at November 2018, more than 1,000 people had been awaiting a decision for over 18 months, while 100 had been waiting about three years.<sup>7</sup>

In addition to the backlog at the NRM, a further issue is that not enough is being done at an earlier stage to identify people who should be referred to the NRM.

#### Determining the Issue Before Arrest

It should be possible at an early stage to identify and determine who may be a victim of trafficking and/or who has or may have a defence under the MSA section 45 to the charges they may face.

It is preferable to decide before charge, whether a person is a victim of trafficking (via the NRM) or whether they have a defence under MSA to the charges they could face, and indeed this approach should be a priority.

Determining that a person is a victim of trafficking does not in and of itself prevent prosecution: but it may do. As stated earlier, there must be a nexus between the trafficking and the offending,

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<sup>6</sup> <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

<sup>7</sup> <https://www.bbc.co.uk/news/uk-46945352>

coupled with a public interest consideration as to whether the MSA section 45 defence is made out or not. When weighing this up, one must also consider the possibility of the victim of trafficking being a potential witness to an MSA charge as the victim of trafficking may be less likely to cooperate with MSA investigations if they themselves are facing prosecution.

So how can this early determination be facilitated within the context of county lines?

There has to be a collaborative approach between the police, probation services, education, housing and children's and adults social care. Such services are traditionally regionally based. County lines activity is, by definition, across regions. Accordingly, multi-agency collaboration and communication to break down traditional geographic ways of working is vital. In addition to this, more can and must be done to compel authorities to identify victims of child trafficking at an early stage.

### Identifying Victims of Trafficking

Article 4 of the European Convention on Human Rights prohibits slavery and forced labour. Accordingly, a failure to correctly identify a victim of county lines will result in a denial of this right. To this end, there is a proactive obligation, under Article 4 to investigate situations of potential trafficking.<sup>8</sup>

Perhaps more pertinently, failing to recognise victims of county lines can result in a victim being treated as a criminal. Their subsequent needs with regards to support and assistance go unnoticed as they are pushed deeper and deeper into the criminal system.

Effective identification requires the indicators that victims of county lines activity present with to be recognised and understood by those who may come into contact them. Drawing from some of the indicators drafted by the UN, certain indicators could be codified and utilised by those who come into contact with potential victims of county lines trafficking<sup>9</sup>. These include:

- Having no access to their parents or guardians.
- Look intimidated and behave in a way that does not correspond with behaviour typical of children their age.
- Have no access to education.
- Have no time for playing.
- Live apart from other children and in substandard accommodations.
- Eat apart from other members of the 'family'.
- Travel unaccompanied by adults.
- Travel in groups with persons who are not close relatives.

If the identification of potential victims of trafficking for county lines activities can be utilised to full effect, the inevitable result will be to free up resources. In essence, early identification will break the cycle of criminality. This in turn will allow authorities to go after the exploiters,

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<sup>8</sup> Rantev v Cyprus & Russia (2010) 51 EHRR 1 at 296,288.

<sup>9</sup> [https://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf) c

and not the exploited. Get it wrong and exploited youngster turn to deeper criminality. Get it right, and the perpetrators are taken off of the streets.

### **Conclusion**

There is little doubt that society is concerned about the increasing loss of young blood on the streets of our country and the links with gangs, drugs and criminality. However, there are many young people who are being forced into offending or acts due to trafficking, exploitation, duress, violence and pressure. They may be arrested for criminality but actually be victims as per the MSA 2015. It is our job to ensure that each case is looked at separately, that each set of circumstances and facts are looked at specifically so that young people who have been victims of crime do not become victims of the criminal justice system as well.