

DEPARTMENT OF JUSTICE

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**Lord Morrow MLA
Northern Ireland Assembly
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**20 June 2016
AQW/531/16-21**

Lord Morrow (Fermanagh and South Tyrone) has asked:

To ask the Minister of Justice whether any individuals (i) serving prison sentences; or (ii) remanded in custody have been identified as potential victims of human trafficking or forced labour; and if such individuals have been identified, what process is then followed by her Department with regard to their individual cases.

ANSWER

If a prisoner is identified as a possible victim of a human trafficking or of forced labour offence, the Police Service of Northern Ireland (PSNI) will be informed for further investigation. Where PSNI has grounds to believe that the person is a potential victim such an offence, and if the individual consents, their case will be referred into the National Referral Mechanism (NRM) where it will be assessed and a conclusive determination made as to whether the individual is a victim of human trafficking or forced labour.

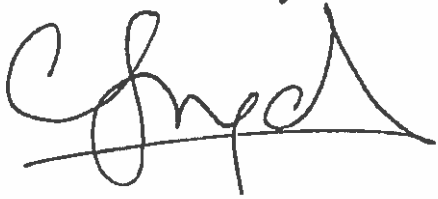
Any prisoners who are referred into the NRM will be eligible for appropriate assistance and support under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (“the Act”). The Department of Justice currently funds Migrant Help and Belfast and Lisburn Women’s Aid to provide assistance and support to adult potential victims of human trafficking and forced labour while their cases are being assessed in the NRM. Where the potential victim is in prison this will be provided within the prison environment according to assessed need.

Where there is a conclusive determination confirming that an individual who has been remanded in custody is a victim of human trafficking or forced labour the Public Prosecution Service for Northern Ireland (PPS) will consider the case to determine whether the statutory defence under section 22 of the Act applies, or if it does not apply, whether it is in the public interest to prosecute. Where PPS takes a decision not to prosecute the case will be referred back to the court in order to secure the release of the individual from custody.

Where a sentenced prisoner receives a conclusive determination confirming that they are a victim of human trafficking or modern slavery their case should be referred to the Criminal Cases Review Commission (CCRC) for consideration. Where appropriate the CCRC will refer the case to the Court of Appeal to have the conviction overturned.

PSNI has confirmed that since the establishment of its dedicated Human Trafficking Unit on 1 April 2015 three individuals who were on remand in prison have been identified by PSNI as potential victims of human trafficking. Two of these cases have been referred to the NRM and one

individual declined to be referred to the NRM. A conclusive determination has not yet been reached in either case.

A handwritten signature in black ink, appearing to read 'Claire Sugden', written in a cursive style with a horizontal line crossing through the middle of the letters.

CLAIRE SUGDEN MLA

Background

- Whenever a potential victim of slavery or human trafficking (“modern slavery”) is identified in prison the PSNI liaison officer in the prison is informed. The case is then referred to PSNI Human Trafficking Unit to investigate and decide whether there are grounds for a referral to the National Referral Mechanism (NRM), subject to the individual’s consent. The NRM is the framework for identifying potential victims of human trafficking and is managed by the UK Human Trafficking Centre, which is part of the National Crime Agency.

Assistance and support

- Potential victims of human trafficking referred into the NRM are entitled to a “recovery and reflection period” where they can receive assistance and support, under the EU Directive and under our domestic legislation, while their cases are being considered. This is on an assessed needs basis and can include includes accommodation; assistance with living expenses; access to legal advice, counselling and healthcare. DOJ has contracts with Migrant Help and Belfast and Lisburn Women’s Aid to provide this assistance and support to adult potential victims.
- Whilst in custody the individual’s needs are likely to be different (for example, they will not need access to accommodation or help with living expenses). Support to potential victims in prison would be managed by the Prison Service with, for example, visits by Migrant Help and Women’s Aid as appropriate.
- Where an individual is referred into the NRM and receives a positive conclusive determination that they are a victim of modern slavery this does not mean that they are automatically released from custody. The process is different depending on whether they are on remand or whether they have been convicted and are serving a prison sentence.

Remand prisoners

- In the case of remand prisoners the PPS will need to consider the case to determine whether the statutory defence under section 22 of the Human Trafficking and Exploitation (etc) Act 2015 applies.
- In the case of adults the statutory defence provides that a person is not guilty of certain offences where they have been compelled to commit them as a result of being a victim of a modern slavery offence and where a reasonable person in the same situation would have no realistic alternative but to commit that act. The defence applies to any offence that would ordinarily attract a maximum sentence of less than five years and to a number of other specified offences that are typically associated with trafficking.
- Where the statutory defence is not available PPS will still apply the prosecutorial test and may exercise discretion that a prosecution is not in the public interest.
- Where PPS takes a decision not to prosecute the case will need to be referred back to the court in order to secure the release of the individual from custody.

Sentenced prisoners

- Where an individual has already been convicted of an offence and is serving a prison sentence a different process applies. In such cases the individual's legal representative will refer the case to the Criminal Case Review Commission for consideration.
- Where appropriate the CCRC will refer the case to the Court of Appeal which ultimately will consider whether the original conviction was sound and, if not will overturn it.
- In order to ensure that prison staff are able to recognise the signs and indicators of a potential trafficking victim DOJ officials and PSNI have provided a series of human trafficking briefing sessions to NIPS staff, including senior officers at Maghaberry, new recruits and court custody officers.

— S40(2) + 38

Drafted by:

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Cleared by: Julie Wilson

13/06/2016

cc list:

Anthony Harbinson

Karen Pearson

— S40(2) + 38

POCD DSU

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