


National County Lines Coordination Centre

NCA National Crime Agency

NPCC National Police Chiefs' Council

ROCU Regional Organised Crime Unit

GUIDANCE ON THE USE OF SLAVERY AND TRAFFICKING RISK ORDERS AND SLAVERY AND TRAFFICKING PREVENTION ORDERS IN COUNTY LINES OPERATIONS








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Consultees

A draft version of the Guidance was subject to a process of consultation and the views of consultees taken into account in completing the final version. The Guidance does not however necessarily reflect the views of consultees, and all non-NCLCC consultees are and remain wholly independent. The final Guidance is the responsibility of the authors and NCLCC.

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Foreword

The criminal exploitation of children and vulnerable people through 'county lines' criminal activity is a significant and evolving phenomenon in the United Kingdom. How county lines operate – including the different forms of exploitation – must be understood by each police force. Whilst certain characteristics remain consistent those responsible adapt their methods over time to avoid police intervention.

One consistent fact is that those exploited are likely to suffer serious harm and may be drawn into serious organised crime through coercion and manipulation. Those recruiting or directing the actions of children and vulnerable people can also be children. Within the criminal hierarchy the same person may be both a victim of exploitation and a perpetrator of it: the response is complex but must concurrently address each of these realities. A person who exploits others commits offences under the Modern Slavery Act 2015, and it is no defence under section 45 for these exploitation offences to establish that the offender was themselves exploited. The life chances of children imprisoned for committing such exploitation offences are seriously if not irremediably compromised. In depth consideration is needed to determine the appropriate remedial action.

Policing this type of offending requires a pro-active integrated national response. As the name suggests, the National County Lines Co-ordination Centre ('NCLCC') has at its core the purpose of promoting a consistent and effective national response between forces for criminal activity which by definition routinely crosses force borders. The NCLCC should be seen and used and an accessible national resource by individual forces, and each force has or will have a designated single point of contact to promote liaison and distribution of training and other specialist guidance.

An important component of that policing response is the use of slavery and trafficking risk and prevention orders ('STROs' and 'STPOs'), including interim orders. Risk (and interim risk) orders do not require any criminal conviction. As civil orders, these types of order are approached by the court in a different way in terms of the admissibility of evidence than in criminal proceedings. Rather than prosecution and conviction, they are designed to prevent the harm caused by criminal exploitation of others.

Used as intended – and the evidence to date suggests forces have not been using these orders at anything like the level intended or required – each type of order can prevent the serious harm that comes with not interrupting a county line, giving police the opportunity to proactively safeguard victims of exploitation alongside key partners. A secondary benefit, when the subject of the order is a child or vulnerable adult, is that their own criminality in exploiting others may be interrupted in their own interests, most especially when supported by a wider multi-agency intervention. This is especially the case when children or vulnerable adults are themselves exploited, but pose risk to others, although it would be encouraged to consider a wide range of multi-agency interventions and other remedial interventions in the context of a child being the subject of an order.

This Guidance is directed at promoting the use of slavery and trafficking prevention and risk orders by individual forces. It has been written pro bono by national specialists in this area, namely the barristers Hugh Davies OBE QC and Ryan Dowding (3 Raymond Buildings, London); DCI Brittany Clarke, NCLCC Head of Safeguarding; and DI Emma Sharp, Orders Team NCLCC. As listed below, we have consulted with a range of experts in drafting the document in order to ensure our perspective is fully informed and balances sometimes competing considerations. The Guidance is intended to be practical and will be updated as practice and the law evolve. As set out below, it should be read in conjunction with the statutory guidance arising under the Modern Slavery Act 2015[1], and the more general guidance produced by the NPCC Modern Slavery and Organised Immigration Crime Unit entitled Police guidance for obtaining and managing slavery and trafficking prevention and risk orders.[2]

Above all, we encourage each force to understand and use these orders in an ambitious way as part of its response to proactive safeguarding. Local police officers, other statutory agencies, community organisations and schools will often have information that can be admitted into evidence in these applications. Positive steps should be taken to liaise routinely with such parties. This liaison is demonstrated to require improvement.[3] That liaison should address both the potential status of a child or vulnerable adult as the victim of exploitation, and the concurrent threat they represent to others as an exploiter. These are challenging issues requiring a progressive policing approach and the exchange of information and joint strategies with other local agencies and community organisations.

The NCLCC is here to help, you can contact the NCLCC Orders Team directly at:
NCLCCMailbox-.OrdersTeam@met.police.uk

Tim Champion
National County Lines Co-ordination Centre, Silver Lead

[1] Home Office, 'Guidance on STPOs and STROs under Part 2 of the Modern Slavery Act 2015' (April 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610015/110417_-_statutory_guidance_part_2_-_GLAA_updates-_Final.pdf
[2] Version 1 January 2021. The document is for use by law enforcement agencies and may be obtained from the NCLCC
[3] Crest Advisory 'County Lines and Looked After Children' (November 2020): https://www.crestadvisory.com/post/report-county-lines-and-looked-after-children.

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1. Introduction

1.1 Background to the Guidance

1.1.1 The 'Independent Review of the Modern Slavery Act 2015: Final Report' was published in May 2019 ("the Field Review"). The review was conducted by Maria Miller MP and Baroness Butler-Sloss and chaired by the Rt Hon Frank Field MP who explained in the foreword to the final report:

> The world-leading Modern Slavery Act was introduced in 2015 to tackle modern slavery in this country and set an example for other countries seeking to do the same. Four years on, many effects of the Act are apparent. It gives law enforcement agencies the tools to tackle modern slavery offences, including a maximum life sentence for perpetrators and enhanced protection for victims. But there are still sadly too few convictions being handed down for the new offences prosecuted under the Act and too few Slavery and Trafficking Prevention and Risk Orders are in place to restrict offender activity.[4]

1.1.2 The Field Report considered county lines to be an emerging form of criminality which, since the introduction of the 2015 Act, has grown exponentially. In this connection, the National Crime Agency ("NCA"), in January 2019, produced an annual intelligence assessment on County Lines Drug Supply, Vulnerability and Harm in which it concluded that there were approximately 1,000 branded county lines operating within the United Kingdom.[5] The use of county lines to export substantial quantities of controlled substances from metropolises such as London and other major cities to more rural areas and smaller towns is a growing problem which presents a number of unique challenges for law enforcement. These challenges include how best to break up county lines which often span two or more policing areas, along with the inherent difficulties involved in prosecuting or otherwise dealing with potential offenders who may also be victims of modern slavery exploitation.

1.1.3. A definition and some of the characteristics of county lines are reflected in the box below. As can be seen, county lines offending should be viewed as sophisticated organised crime which frequently involves the grooming, coercion and control of children and vulnerable adults. Some of these coercion and control tactics include the use of sexual abuse, threats, violence, and debt bondage. County lines have also adapted beyond the city-to-rural model and now involve a model of expanding drug markets from any place to any other place, including to locations where there are already established criminal groups distributing drugs, and within individual towns and cities.

[4] Independent Review of the Modern Slavery Act 2015: Final Report (May 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803554/Independent_review_of_the_Modern_Slavery_Act_-_final_report__print_.pdf.
[5] NCA, 'County Lines Drug Supply, Vulnerability and Harm: 2018' (January 2019): https://www.nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/file. These reports are produced annually and include up-to-date assessments about the operation of county lines. They can and should be used as points of reference in STPO and STRO applications.

COUNTY LINES: DEFINITION AND CHARACTERISTICS

Official Home Office definition:
"County lines is 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". They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons."

WHAT ARE THE SIGNS THAT A YOUNG PERSON MIGHT BE INVOLVED IN COUNTY LINES ACTIVITY AND/OR BE BEING EXPLOITED?

Acting withdrawn around family or friends

Persistently going missing from school or home, being found out of their home area, leaving home without explanation and staying out late on a regular basis

Suddenly losing interest in school, resulting in a decline in their attendance or academic achievement, or dropping out of other positive activities

Unexplained acquisition of money, clothes or mobile phones

Carrying weapons

Significant changes in emotional well-being, including self-harm

Gang association and increased isolation from previous groups of friends or social networks

Unexplained injuries and a refusal to seek or receive medical treatment

Travelling alone – or accompanied by older individuals – on public transport or in taxis in circumstances where the child appears unfamiliar with the local area

Carrying large amounts of cash and using it to pay for travel, food, etc

Appearing anxious, frightened, angry, or showing signs of neglect

The above is a non-exhaustive list and further and more detailed information can be found at:

1. Home Office, 'Criminal Exploitation of Children and Vulnerable Adults: County Lines Guidance' (September 2018) (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863323/HOCountyLinesGuidance_-_Sept2018.pdf)
2. The Children's Society, 'Look Closer to Spot and Report Signs of Exploitation' (https://www.childrenssociety.org.uk/what-we-do/our-work/child-criminal-exploitation-and-county-lines/spotting-signs)
3. National Crime Agency, 'County Lines' (https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking/county-lines)
4. A number of videos providing further information about different aspects of county lines can be found on the NCLCC's YouTube channel (https://www.youtube.com/channel/UC3yY_GgyH6-cIM9DPY7JUpw)

1.1.4. The NCLCC is comprised primarily of leading experts from police forces around the country, the NCA and other regional organised crime units. The need for a coordinated approach was made clear by Deputy Assistant Commissioner and lead for gangs at the National Police Chiefs' Council ("NPCC") Duncan Ball:

> The very nature of county lines offending means that we can only truly tackle it by bringing together all UK police forces, law enforcement agencies and other partners to create a unified national response.
>
> Through this collaboration, the [NPCC] and the NCA will provide national coordination, guidance and support to the frontline officers and staff who are working tirelessly to bring these ruthless gangs to justice.[6]

1.1.5. The present document commissioned by the NCLCC is designed to provide guidance, at a national level, as to the tools available to officers under the Modern Slavery Act 2015 ("the 2015 Act") to tackle county lines. In particular, it is designed to assist those involved in dealing with such offending through means other than a criminal prosecution and to address the concern, raised by Frank Field MP and others, that too few Slavery and Trafficking Risk Orders ("STROs") and Slavery and Trafficking Prevention Orders ("STPOs") are being deployed to protect the public and control the activities of those who are, or are at risk of becoming, involved in such offending.

1.1.6. The orders referenced are civil preventative orders which are akin to Sexual Risk Orders ("SROs") and Sexual Harm Prevention Orders ("SHPOs") under the Sexual Offences Act 2003.[7]

1.1.7. STROs are designed to protect members of the public from the risk that a defendant will commit a slavery or human trafficking offence even where that defendant has not committed any previous offences but has acted in such a way as to indicate that they pose a risk that they may exploit others.

1.1.8. STPOs may be obtained in two contexts. Under section 14 of the 2015 Act application can be made for an STPO 'on sentencing' for a qualifying offence, i.e. as part of the sentencing exercise for an exploitation offence. Separately, at any time following conviction for an exploitation offence, and where justified by a defendant's actions following their conviction, a later application for an STPO may be made to a magistrates' court by a chief officer (and others) against a 'relevant offender' under section 15 (referred to accordingly under section 15 as 'on application'). In simple terms, a 'relevant offender' is one who has been convicted of an exploitation offence under the 2015 Act or its predecessors.[8]

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[6] Home Office, 'NCLCC to crack down on drug gangs' (21 September 2018): https://www.gov.uk/government/news/national-county-lines-coordination-centre-to-crack-down-on-drug-gangs.

[7] As substantially amended by the Anti-social Behaviour, Crime and Policing Act 2014

[8] The meaning of 'relevant offender' is set out at section 16 of the 2015 Act, and includes provisions as to where a person has been found not guilty by reason of insanity; is under a disability; or has been cautioned (each is a 'relevant offender'); or has committed an 'equivalent' offence or act in a country outside the UK. Pursuant to section 14, 'Slavery or human trafficking' offences are defined by reference to Schedule 1 to the 2015 Act and includes not only offences under sections 1, 2 or 4 of the 2015 Act but other offences as well (essentially, certain defined trafficking and exploitation offences under preceding legislation).

1.1.9. This guidance deals with each of the situations that may arise in practice. It addresses in detail when such orders can be sought and obtained and what evidence will usually be required in order to do so. It also addresses some of the issues which commonly arise when making applications for STROs and STPOs in practice – for example, the applicable rules of evidence and disclosure in civil proceedings in the magistrates' courts; which police force ought to apply for the order, where the offending occurs across multiple policing areas; and what terms are likely to be considered necessary and proportionate by a court. There are a number of sample documents at Appendices 1 to 4.

1.1.10. This document is designed to complement the Home Office, 'Guidance on STPOs and STROs under Part 2 of the Modern Slavery Act 2015' (April 2017) – which is the statutory guidance issued by the Home Office pursuant to section 33 of the 2015 Act – by addressing the particular advantages of deploying these orders in county lines cases, along with some of the issues which can arise in practice. This document is not statutory guidance.

1.2. The subject of the order as a victim of exploitation: the need to consider other interventions

1.2.1 In county lines offending the same child or vulnerable adult may be both the victim of exploitation and a perpetrator of exploitation. There is an obligation on the police, working collaboratively with other agencies and community based parties, to address the set of challenges presented by each. It is important that a multi-agency safeguarding approach is taken for all such children, even those being served with these civil prevention orders. This approach needs to include support to address underlying concerns and likely coercion of such children; the involvement of independent specialist support (for example, the Independent Child Trafficking Guardianship Service, and Rescue and Response); and disruption of those controlling them.

1.2.2 A significant proportion of children involved in grooming and directing other children are being coerced and controlled themselves. There is a risk of concluding that children have more agency and control over county lines operations than the Organised Crime Groups exploiting them. Some children will be facing perceived and real risks of harm, including threats to life for them and/or their families. Whilst risk and prevention orders may still be necessary and proportionate in respect of such children and vulnerable adults to prevent them exploiting others, there is a potential risk of them breaching an order through their fear of perpetrators overriding their fear of sanctions. Restrictions imposed need to be cognisant of this likelihood however, active multi-agency consideration should be given in each case to concurrent (or alternative) intervention to support the subject of the order. Additional consideration should be given in such cases, to address this theme, and the necessity of referral to and relevance of positive conclusive grounds decisions under the National Referral Mechanism ("NRM"), is developed further at paragraphs 4.5 to 4.7 below.

[9] Home Office, 'Guidance on STPOs and STROs under Part 2 of the Modern Slavery Act 2015' (April 2017): https://www.gov.uk/government/news/national-county-lines-coordination-centre-to-crack-down-on-drug-gangs.

[10] 'Rescue and Response' is a pan-London service designed to support young people (<25 years' old) who have become involved in county lines activity. It is funded by the Mayor's Office for Policing and Crime ('MOPAC') and delivered by a partnership of the following organisations: Abianda, St Giles Trust, Safer London Foundation and the London Borough of Brent. For more information, see: https://www.london.gov.uk/mopac-publications/rescue-and-response-pan-london-county-lines-service.

2. The NCLCC

2.1 The NCLCC is a law enforcement task force designed to consolidate learning about county lines offending in order to promote a better understanding of the threat at a national level. It is also designed to provide coordination, guidance, analysis and intelligence support to police forces and other agencies across the country.

2.2 The body is funded by the Home Office and is headed-up by the Director of Investigations at the NCA and the NPCC lead for county lines. The NPCC county lines lead is a Metropolitan Police Service ("MPS") officer and the lead police force is the MPS. Information sharing and communication between the NCLCC, NCA and individual police forces is facilitated through the NCLCC Regional Organised Crime Unit ("ROCU") based co-ordinators and analysts for each police area. It is through these individuals that information along with advice and guidance – such as this document – are disseminated to those working at the front line and policing county lines investigations. The ROCUs are organised nationally as follows:

2.3 The NCLCC also has a number of intelligence officers, financial investigators, analysts and researchers at its disposal who are able to assist with ongoing investigations. It also has a dedicated safeguarding team. This includes a number of 'Orders Officers' who are able to provide assistance in the coordination of attempts to secure STPOs and STROs against offenders and potential offenders.

2.4 One of NCLCC's intended purposes is to assist in encouraging and facilitating the kind of inter-agency cooperation which was identified as 'essential' by HM Inspectorate of Constabulary and Fire and Rescue Services in its 2020 report 'Both Sides of the Coin: the Police and National Crime Agency's response to vulnerable people in 'county lines' drug offending'. As the Report explains at page 23:

> It is essential that police work well with other professionals to protect and support vulnerable people……
>
> Professionals from other agencies often have contact with county lines victims before the police become involved. They need to ask the right questions to recognise the signs of exploitation. Systems for collating and sharing information between the police and other agencies are crucial to preventing exploitation efficiently and effectively.

2.5 The Report identified (i) a number of 'barriers' to information sharing such as legal requirements to keep personal data secure and difficulties in interacting with a large number of different overlapping bodies; and (ii) serious issues where children are arrested outside of their local policing area following which there are often 'serious delays' in processing information passed from one public authority to another, and disagreements amongst authorities as to who is responsible for safeguarding the individual. The problems identified are accentuated in relation to 'missing' and 'high risk' children who the Report emphasises require 'strong partnership-based safeguarding'. These important issues are echoed within the Crest Advisory report (see above) which called for more centralised forums for the sharing of intelligence, guidance, information and advice. Promoting these objectives is a core purpose of the NCLCC.

2.6 The NCLCC is a modern organisation and does not have a physical 'hub' or base of operations. There is an office in Birmingham – commonly referred to as "the centre" – which is home to a number of NCA staff working on intelligence development. For the most part the NCLCC provides coordination, guidance and support through a number of different channels illustrated in the organisational structure on the next page

[11] HMICFRS, 'Both Sides of the Coin: the Police and National Crime Agency's response to vulnerable people in 'county lines' drug offending' (January 2020): https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/both-sides-of-the-coin-police-nca-response-vulnerable-people-county-lines-drug-offending.pdf.

[12] Crest Advisory 'County Lines and Looked After Children' (November 2020): https://www.crestadvisory.com/post/report-county-lines-and-looked-after-children.

2.7 The NCLCC Orders Team can be contacted via NCLCCMailbox-.OrdersTeam@met.police.uk. The Orders Team will be able to advise on the relevant Single Point of Contact ("SPOC") for each region. For wider National County Line Coordination matters the NCLCC can be contacted via NCLCCMailbox-3P@met.police.uk.

2.8 Each force/BCU has its own county lines SPOC and where assistance from the NCLCC is required they will usually liaise with the ROCU/MPS NCLCC co-ordinator in the first instance. The co-ordinator will then usually refer the officer in the case ("OIC") to the NCLCC Orders Team if the query relates to an application, or proposed application, for a civil order. The Orders Team officer for the ROCU/MPS will be able to provide advice, guidance and assistance with the making of applications for orders. They will also be able to work in unison with the OIC and regional co-ordinator to assist in establishing local intelligence gathering mechanisms with links to other agencies within the local area (schools; local authorities; community groups; etc) which will, in turn, enhance the ability of the NCLCC and individual police forces to identify those at risk and those who present a risk. The responsibility for completing the statement sits with the OIC, overseen by their supervisor.

2.7 As specialist officers it is proposed that SPOCs should provide active assistance in applications for STROs and STPOs. Non-specialist investigating and other police officers and staff should proactively consult with their SPOCs in relation to all potential county lines related prevention orders. Based on such consultation – and where other opportunities are presented – the SPOC may refer to the NCLCC Orders Team for more in depth nationally led assistance and guidance. The NCLCC Orders Team can assist with statements for cross-border county lines investigations, and facilitate the process of obtaining and reviewing relevant intelligence from other forces and agencies.

2.8 An example statement from an OIC, can be seen at Appendix 1(a). Associated example ISTROs and STROs are at Appendix 2. For cross-border investigations liaison should occur with and between CL SPOCs to identify the most appropriate person to provide an overview investigation statement.

3. Slavery and human trafficking offences

3.1 The Field Review[13] identified an exponential increase in county lines cases since 2015 and described it as a "new type of exploitation". That report specifically considered but recommended against the introduction of new legislation to tackle county lines and other types of exploitation such as orphanage trafficking:

> Section 3 [of the 2015 Act] on the meaning of exploitation should not be amended as it is sufficiently flexible to meet a range of circumstances, including new and emerging forms of modern slavery.
>
> While we are in no doubt about the seriousness of new types of exploitation that have come to light since the passing of the Act, such as county lines and orphanage trafficking, it is not practical to amend legislation every time a new form of exploitation is identified. The government instead should produce policy guidance to assist in the interpretation of the Act, building on the Home Office Typology of Modern Slavery research. This should be regularly updated to respond to new and emerging trends and should give examples of the types of exploitation that can potentially be prosecuted under the Act, including orphanage trafficking and county lines.[14]

3.2 County lines offending frequently involves slavery and human trafficking offences within the definition of the 2015 Act. That legislation was designed to consolidate and refine the previous law relating to slavery and human trafficking into a single unified statute. It created two principal offences:

(a) Section 1 – slavery, servitude or forced or compulsory labour; and
(b) Section 2 – human trafficking.

[13] See paragraph 1.1
[14] Independent Review of the Modern Slavery Act 2015: Final Report (May 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803554/Independent_review_of_the_Modern_Slavery_Act_-_final_report__print_.pdf.

3.3 It is an offence pursuant to section 4 of the 2015 Act to commit any other offence (e.g., kidnapping) with the intention of also committing an offence under section 2, or aiding, abetting, counselling, or procuring an offence under that section of the Act.

3.4 To commit an offence under section 1 a person must hold another in slavery or servitude or require them to perform forced or compulsory labour in circumstances where they know or ought to know the other person is in that position. It is important to note that regard may be had to all the circumstances in determining whether a person is a victim and whether the nature of the work or service is such that they constitute 'exploitation'. The victim's consent to provide those services 'does not preclude' a determination that they being exploited and are the victim of an offence (sections 1(1) – (2) and (5)).

3.5 To commit the offence of 'human trafficking' under section 2 a person must arrange or facilitate the travel of another with a view to their being 'exploited'. This provision goes even further than section 1 and makes clear that the person's consent to travel is simply 'irrelevant'. Recruiting, transporting, transferring, harbouring, receiving or exchanging control of a victim are all actions which are capable of constituting 'arranging or facilitating' travel within the meaning of that provision (sections 2(1) – (3)). It is likely that this latter offence will arise more frequently in county lines investigations which centre around the transportation of drugs from city centres, along distribution lines and out to the counties.

3.6 There is no minimum distance which a person must travel to be considered 'trafficked'. The travel does not have to be to a permanent location: it may be travel to and from a given place e.g. from a city to a house in a county which is used as a distribution centre for the sale of the drugs (see R v Ali (Yasir) [2015] 2 Cr App R 33 (at [77] - [80]) and R v Motroc [2019] EWCA Crim 1255 (at [19]: 'Count 23 [human trafficking] reflected the movement of the appellant of [the exploited person] from one property to another in the local area')).

3.7 The meaning of 'exploitation' for the purpose of determining whether an offence under section 2 has been committed is addressed at section 3 of the 2015 Act. That provision contains a broad list of matters which potentially constitute exploitation. It is likely that sections 3(2) ('slavery, servitude and forced or compulsory labour'), (5) ('securing services etc by force, threats or deception') and (6) ('securing services etc from children and vulnerable persons') will be the most common examples of exploitation in investigations into county lines offences.

3.8 The terms 'arranging' and 'facilitating' travel are also to be construed broadly according to the Court of Appeal in R v Karemera [2019] 1 WLR 4716. This is a judgment which will be returned to at various points within this guidance. It concerned the trial of a number of defendants for offences of trafficking persons within the United Kingdom for qualifying exploitation offences.[15] The defendants were convicted drug dealers who controlled and operated a major county supply line which involved the use of teenagers as drug couriers and distributors. Giving the judgment of the court Hallett LJ held (at [46] and [49]):

[15] i.e. those contrary to section 4(1A) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. This was a predecessor to the 2015 Act, and the exploitation offences qualify under section 14 of, and Schedule 1 to, the 2015 Act so as to engage STPOs on sentencing and thereafter.

> … In the context of the varying types of criminal trafficking at which these provisions are aimed, the two words "arranging" and "facilitating" travel are necessarily broad and should be construed accordingly. "Arranging" is a common word which in our view needs no further explanation to the jury. "Arranging" would include such matters as transporting B, procuring a third person to transport B, or buying a ticket for B. "Facilitating" is intended to be different from "arranging" and would include "making easier". It is not sensible to lay down precise definitions of these terms.
>
> …[I]t is not necessary to prove that the person arranging or facilitating travel was also the person who at some point would do, or intended to do, the exploiting. In many cases the person who arranges or facilitates the travel may have very little knowledge about the ultimate fate of the person being trafficked…

3.9 On the issue of 'consent', and its irrelevance in relation to human trafficking offences (and potential limited relevance in relation to the offence of slavery, servitude, or forced and compulsory labour), the court made clear ([60] – [61]) what the position was in relation to consent under both the old and the new legislation:

> The prosecution does not need to prove a lack of consent on the part of the young courier or any element of coercion. Any such suggestion must be defeated by (i) the agreed position of all defendants that consent is no defence (as now made express in section 2(3) of the Modern Slavery Act 2015); (ii) the protective purpose of the legislation; and (iii) the fact that the concept of "choice" assumes the willingness of the chosen. Indeed, standing back, when the provision is viewed as a whole it is clear that the mischief it seeks to address is the very fact that a vulnerable person has consented; the 2004 Act is seeking to protect the young and the vulnerable from their own decision-making.
>
> It follows that a prosecution under section 4 does not depend on the ability to call the individual said to have been exploited or the target of the exploitation.

3.10 The emphasis in Karemera on the protective nature of the legislation; the need to take a purposive approach to its interpretation; and that even in a criminal prosecution it will not be necessary to obtain evidence directly from those said to have been exploited are important considerations when dealing with applications for civil preventative orders. Although the acts relied on to support the application must be proved to the criminal standard of proof, the rules of admissibility of evidence are civil not criminal, and the acts relied on need not be criminal in themselves. For example, frequent travel by a person to a particular location may be lawful, but when understood in the wider context and circumstances of a particular case this could demonstrate that an order prohibiting such travel is necessary and proportionate to prevent a future exploitation offence e.g. to prohibit them travelling to speak to children at that location and thereby preventing recruitment into a county line.

3.11 The guidance approaches the different types of order – namely STROs; STPOs on sentence (section 14); STPOs on application (section 15); and interim orders (ISTPOs and ISTROs) – in sequence. There are common underlying principles in terms of purpose; admissibility of evidence; procedure; and drafting which are dealt with below.

4. The Orders – An Overview

4.1. The Orders – An Overview

4.1.1. As already summarised, there are different types of prevention order under the 2015 Act, the detail of which is addressed below. Each type is found under Part 2 of the 2015 Act headed 'Prevention orders'. The circumstances in which to apply for each along with the effect of such orders is summarised in Table 1.

4.1.2. The two basic types of prevention order are Slavery and Trafficking Prevention Orders ("STPOs") and Slavery and Trafficking Risk Orders ("STROs"). It is possible to obtain 'interim' versions of each but only when those orders are sought on a standalone application (i.e. not when an STPO is applied for by the prosecution when sentencing a convicted offender following their trial (see below)). There are many features and principles in common between them. In terms of 'effect' they are orders 'prohibiting the defendant from doing anything described in the order' (sections 17(1) (STPOs) and 24(1) (STROs)). The terms of the orders, therefore, cannot require a defendant to do something with the limited exception of positive requirements, when ordered, in relation to the surrendering by a defendant of their travel documents when a foreign travel prohibition is imposed (sections 18 (STPOs) and 25 (STROs)) and the notification requirements which can oblige a defendant to provide a name and address to the police (sections 19 (STPOs) and 26 (STROs)).

4.1.3. The only prohibitions allowed are '… those which the court is satisfied are necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence' (sections 17(2) (STPOs) and 24(2) (STROs)).

4.1.4. The orders may prohibit the defendant from doing acts in any part of the United Kingdom and/or anywhere outside the United Kingdom (sections 17(3) (STPOs) and 24(3) (STROs)).

4.1.5. If the court makes a prevention order where a person is already subject to one of the same type the earlier order ceases to have effect (sections 17(6) (STPOs) and 24(6) (STROs)). In other words, a person cannot be subject to more than one order at a time.

4.1.6. The key provisions under the 2015 Act relating to STPOs are sections 14 to 22. As set out below, these apply to 'relevant offenders' i.e. those who have been convicted of an exploitation offence within Schedule 1 to the 2015 Act. There are two types of STPO: (1) an STPO 'on sentencing' for a qualifying exploitation offence (section 14); and (2) an STPO 'on application' to a magistrates court at any time after their conviction for the original exploitation offence where the defendant's subsequent acts justify it.

4.1.7. The effect of an STPO in each case is the same and is covered by section 17. The period which an STPO has effect for must be 'at least 5 years' or 'until further order' (s. 17(4)) and there may be different fixed periods for different parts of the order (s. 17(5)).

4.1.8. 'Variation, renewal, and discharge' are addressed in section 20, and 'Appeals' by section 22. In headline terms, it is open to the applicant or defendant to apply to the court which made the order to vary, renew or discharge it. However, only the defendant may appeal the order. If the order was imposed by a magistrates' court the appeal is to the Crown Court. If the order was originally imposed by the Crown Court (as part of the sentencing process – s.14) then the appeal by the defendant lies to the Court of Appeal.

4.1.9. If the original order was imposed by a magistrates' court the Crown Court appeal is effectively a re-hearing of the application as distinct from the Crown Court asking whether the original order was open to a reasonable tribunal (a review jurisdiction). If the order was imposed on sentencing by a Crown Court however the basis of appeal is that applicable to any sentence appealed to the Court of Appeal, namely that the sentence was either wrong in principle or excessive. A variation may arise if there is a change in circumstances such that either the original prohibitions are no longer necessary, or that further prohibitions have become necessary.

4.1.10. There is a 'continuing obligation' on a chief officer to protect children, vulnerable adults and others from harm. This protective duty forms the basis for all of the prevention orders under the Sexual Offences Act 2003 (R v Cheyne [2019] 2 Cr App R (S) 14 at [17]-[18], relating to a sexual harm prevention order) and the same principle could be advanced in relation to analogous prevention orders under the Modern Slavery Act 2015. While there must be some basis for seeking a variation – i.e. a change of circumstances – this can derive from a mistake on the part of the applicant police force in not 'learning as much' as they should have before the original application was made. If there was material that should have been included in the original application the overriding purpose of the prevention order, namely to prevent harm, means such evidence can form 'a compelling basis' for a variation application (Cheyne at [18]).

4.1.11. Interim Slavery and Trafficking Prevention Orders ("ISTPOs") are addressed by section 21. They have effect 'only for a fixed period, specified in the order' and the order 'ceases to have effect, if it has not already done so, on the determination of the main application' (section 21(7)). The applicant or defendant may apply to the magistrates' court to vary, renew or discharge the ISTPO (section 21(8)) and the defendant may appeal it to the Crown Court (section 22(2)).

4.1.12. STROs are addressed by sections 23 to 29 of the 2015 Act. As set out below, in contrast to STPOs, there is no requirement for the defendant (or 'subject') to be a 'relevant offender' or indeed for them to have been convicted of any criminal offence. STROs will often be obtained where there is no intended prosecution.

4.1.13. The 'effect' of an STRO is that the prohibition(s) contained in the order have effect for a fixed period 'of at least 2 years' or until further order (section 24(4)) and there may be different fixed periods for different parts of the order (section 24(5)).

4.1.14. 'Variation, renewal, and discharge' are addressed by section 27, and 'Appeals' by section 29. In headline terms, it is open to the applicant or defendant to apply to a magistrates' court to vary, renew or discharge the original order. However, only the defendant may appeal the original order imposed by a magistrates' court to the Crown Court.

4.1.15. Interim Slavery and Trafficking Risk Orders' ("ISTROs") are addressed by section 28. An ISTRO has effect 'only for a fixed period, specified in the order' and 'ceases to have effect, if it has not already done so, on the determination of the main application' (section 28(7)). The applicant or defendant may apply to the magistrates' court to vary, renew or discharge the ISTRO (section 28(8)) and the defendant may appeal it to the crown court (section 29(1)(b)).

Table 1: summary of different types of slavery and trafficking prevention orders

	Slavery and trafficking prevention order on sentencing (s. 14 MSA 2015) **STPO**	**Slavery and trafficking prevention order on application** (s. 15 MSA 2015) **STPO**	**Slavery and trafficking risk order** (s.23 MSA 2015) **STRO**	**Interim slavery and trafficking prevention order** (s.21 MSA 2015) **ISTPO**	**Interim slavery and trafficking risk order** (s.28 MSA 2015) **ISTRO**
Who	A defendant (relevant offender) who has been convicted for a slavery or Human Trafficking Offence A defendant who has been found not guilty of a slavery or human trafficking offence by reason of insanity A defendant who is under a disability has done the act charged against them in respect of a slavery or human trafficking offence	A defendant who is a relevant offender, and since they became a relevant offender they **acted in a way** which meets the criteria in subsection (3): see below These can also be granted against individuals who have been convicted, found not guilty by reason of insanity, found to have done the act but to be under a disability, or who have been cautioned for an equivalent offence abroad	For any person where there is a risk they **will** commit a slavery or human trafficking offence There is no requirement for the defendant (or 'subject') to be a 'relevant offender' or indeed for them to have been convicted, cautioned, etc, for any criminal offence	The defendant has acted in such a way that there is a risk that they **may** commit such an offence, and that it is necessary to have an order in place to protect any potential victims from harm	For any person where there is a risk that they **will** commit a slavery or human trafficking offence and it is necessary to have an order in place to protect any potential victims from harm There is no requirement for the defendant (or 'subject') to be a 'relevant offender' or indeed for them to have been convicted of any criminal offence
When	**Upon sentencing** if the court is satisfied that the defendant **may** commit a slavery or human trafficking offence, and it is necessary to make the order to protect persons generally, or particular persons from the physical or psychological harm which would be likely to occur if the defendant	**On application after conviction and sentencing and according to subsection 3** i.e. if they acted in a way after conviction that shows there is a risk they **may** commit a slavery or trafficking offence and it is necessary to make an order to protect persons, or particular persons from physical or psychological harm	**No need for a conviction or prosecution** Applies where there is a risk that the defendant/subject **will** commit a slavery or human trafficking offence; and it is necessary to make the order for the purpose of protecting persons generally, or particular persons,	An interim STPO is imposed where an application for a full STPO has been made under s.15 and its purpose is to provide protection pending the main application. These orders are designed to last only to the hearing of the main application but will be imposed if the	An interim STRO is imposed prior to the application of a full STRO to provide protection pending the main application. These orders are designed to last only to the hearing of the main application but will be imposed if the court determines 'it just to do so'.

	Slavery and trafficking prevention order on sentencing (s. 14 MSA 2015) **STPO**	**Slavery and trafficking prevention order on application** (s. 15 MSA 2015) **STPO**	**Slavery and trafficking risk order** (s.23 MSA 2015) **STRO**	**Interim slavery and trafficking prevention order** (s.21 MSA 2015) **ISTPO**	**Interim slavery and trafficking risk order** (s.28 MSA 2015) **ISTRO**
	committed such an offence	which would be likely to occur if the defendant committed such an offence	from physical or psychological harm **An STRO may be considered where a section 14 STPO was not obtained but the section 15 'on application' criteria is not met**	court determines 'it just to do so'.	
Where	The sentencing court	Magistrates' court (<18 Youth court)	Magistrates' court (<18 Youth court)	Magistrates' court (<18 Youth court)	Magistrates' court (<18 Youth court)
How long	Fixed minimum of not less than **5 years** or until further order If the order contains a travel restriction, this should be no longer than 5 years	Fixed minimum of not less than **5 years** or until further order If the order contains a travel restriction, this should be no longer than 5 years	Fixed minimum of not less than **2 years** or until further order If the order contains a travel restriction, this should be no longer than 5 years	For a fixed period specified in the order and ceases to have effect upon the determination of the main application for an STPO	For a fixed period specified in the order and ceases to have effect upon the determination of the main application for an STRO
Variation, renewal and discharge	The applicant or defendant may apply to the court which made the order to vary, renew or discharge the original order	The applicant or defendant may apply to a magistrates' court to vary, renew or discharge the original order	The applicant or defendant may apply to a magistrates' court to vary, renew or discharge the original order	The applicant or defendant may apply to a magistrates' court to vary, renew or discharge the ISTPO	The applicant or defendant may apply to a magistrates' court to vary, renew or discharge the ISTRO
Appeal	Only the defendant may appeal the order. If the Crown Court imposed the order the appeal is to the Court of Appeal, otherwise it is to the Crown Court	Only the defendant may appeal the original order imposed by a magistrates' court. The appeal is to the Crown Court	Only the defendant may appeal the original order imposed by a magistrates' court. The appeal is to the Crown Court	Only the defendant may appeal the original order imposed by a magistrates' court. The appeal is to the Crown Court	Only the defendant may appeal the original order imposed by a magistrates' court. The appeal is to the Crown Court
Acquittal	Not applicable if defendant is acquitted	Not applicable if the defendant has never previously been convicted of a slavery or human trafficking offence	An STRO can be applied for when someone is acquitted of any offence or at any stage of an investigation	An interim STPO may not be applied for if someone is acquitted.	An interim STRO can be applied for pending determination of an application for a full STRO. This can be when someone has been acquitted of a slavery or trafficking offence (or any offence), or after any stage of an investigation

4.2. Slavery and trafficking risk orders

4.2.1. The applicable statutory provision relating to the imposition of STROs is section 23 of the 2015 Act. This guidance starts with STROs (and interim STROs) since these are available without the subject of the application having been convicted of any criminal offence. They are accordingly available where a criminal prosecution has not occurred or is not possible (e.g. because the evidence is admissible in civil but not criminal proceedings); to address immediate risk whether or not a criminal prosecution is contemplated; and even following acquittal at trial for exploitation offences (this is not a breach of the principle against double jeopardy: an STRO is addressing different purposes, and on different evidence, than the criminal prosecution, and such orders do not constitute a conviction).

4.2.2. The circumstances in which a court can make an STRO are defined by section 23 of the 2015 Act:

> **Section 23 – Slavery and trafficking risk order**
> …
> (2) The court may make the order only if it is satisfied that the defendant has acted in a way which means that –
>
> (a) there is a risk that the defendant will commit a slavery or human trafficking offence; and
>
> (b) it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.
>
> …

4.2.3. This section, coupled with decided case-law, give rise to three questions which the court must consider:

(a) **Have the acts relied upon by the applicant as part of the application been proved?** (these acts must be to the criminal standard of proof, but using the civil rules of admissibility of evidence);

(b) **If so, do those acts show that there is 'a risk' that the defendant 'will' commit a slavery or human trafficking offence?** (the 'risk' must be 'real, not remote' (see below); the question of what standard of proof (if any) applies to this question has yet to be conclusively determined. However, It is anticipated that as with the question of whether the order is necessary this will be an exercise of 'judgment or evaluation' (see below)).

(c) **If so, is it necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence?** (as to which question there is no particular standard of proof: see below)

4.2.4. If the answer to each of those questions is 'YES' an order should be made. The only remaining consideration will be whether the individual terms of the order are necessary, proportionate and effective: see below.

4.2.5. To repeat, there is no requirement for a defendant to have been convicted of a slavery of human trafficking (or any other) offence before the court can make them the subject of a STRO. That is because these orders are forward looking and preventative. The only relevant factors are that the defendant has acted in such a way that there is a (real not remote) risk that they will commit such an offence, and that it is necessary to have an order in place to protect any potential victims from harm. These orders are, therefore, broadly analogous with SROs under the Sexual Offences Act 2003. As explained above, it is anticipated that while the acts relied upon must be proved to the criminal standard the question of whether there is a risk that the defendant will commit a slavery and human trafficking offence is one of 'judgment and evaluation'. This conclusion is supported by R v Wabelu [2020] EWCA Crim, at [36](a), where it was held that no standard of proof applied to the question of whether a defendant posed such a risk. While that judgment related to STPOs following sentence – where there was no separate 'fact finding' exercise – it is likely that the principle will also apply to STROs and STPOs on application once the acts relied on have been proved to the

criminal standard. However, this question has yet to been finally determined and defendants may seek to argue that the assessment of risk forms part of the 'fact finding' exercise such that the court will need to be 'sure' that the defendant poses such a risk. Whatever the position, as the Court also identified in Wabelu, this is a "distinct pre-condition" which must be assessed separately before turning to whether the order and its terms are necessary.

4.2.6. The question of whether it is 'necessary' to impose the order in order to protect members of the public from harm does not involve the application of any standard of proof. It is instead an 'exercise of judgment or evaluation' for the court (see Commissioner of the Police of the Metropolis v Ebanks [2012] EWHC 2368 (at [29]). The same applies to this limb of the test in relation to STPOs (see below).

4.2.7. The order can prohibit the defendant from doing anything defined within the terms of the order (section 28(1)). What prohibitions are permissible will depend upon what is necessary to protect the public from harm and what terms are proportionate in the circumstances of the case: see 'Terms of the Order', below.

4.2.8. Where justified – for example where the risk is real and immediate and must be addressed on a holding basis until the main STRO is determined by the court – an application can be made for an interim STRO under section 28. The test to obtain such an interim order is different, and less onerous, than that in relation to an STRO. This reflects the fact that it will only last until the determination of the main STRO application. ISTROs are addressed below.

4.2.9. As set out below an STRO (and ISTRO) may arguably be considered where a section 14 STPO was through mistake (or lack of available material) not obtained on sentencing, but where there are no subsequent acts which would justify a section 15 STPO 'on application'.

4.3. Slavery and trafficking prevention orders

4.3.1 STPO on sentencing: section 14 of the 2015 Act

4.3.1.1. STPOs on sentencing are defined by reference to section 14 of the 2015 Act:

> **14 Slavery and trafficking prevention orders on sentencing**
>
> (1) A court may make a slavery and trafficking prevention order against a person ("the defendant") where it deals with the defendant in respect of—
> (a) a conviction for a slavery or human trafficking offence,
> (b) a finding that the defendant is not guilty of a slavery or human trafficking offence by reason of insanity, or
> (c) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of a slavery or human trafficking offence.
>
> (2) The court may make the order only if it is satisfied that—
> (a) there is a risk that the defendant may commit a slavery or human trafficking offence, and

(b) it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.

(3) A "slavery or human trafficking offence" means an offence listed in Schedule 1.

(4) The Secretary of State may by regulations amend Schedule 1.

(5) For the purposes of this section, convictions and findings include those taking place before this section comes into force.

4.3.1.2. In context, the court's starting point is that the defendant has been convicted etc under section 14(1) for a qualifying slavery and human trafficking offence i.e. is a 'relevant offender'. This produces some changes in procedure relative to other forms of prevention order, starting with the fact that the application is made by the CPS rather than the chief officer of police or NCA, etc. It may take into account the evidence admitted at trial, and any other evidence not admitted at trial, in addressing the questions under section 14(2). Although arising on sentencing in criminal proceedings, the prevention order is a civil order and the civil rules of admissibility apply in determining whether and in what terms it should be made.

4.3.1.3. The test is also different to that in relation to STROs: under section 14(2)(a) it is whether the court is satisfied that 'there is a risk that the defendant may commit a slavery or human trafficking offence' rather than will. This question does not involve a particular standard of proof but rather 'judgement and evaluation' (see R v Wabelu at [36](a))".

4.3.1.4. A further procedural difference is that the rules of evidence and admissibility are as set out under Rule 31 of the Criminal Procedure Rules (2020) ('the CrimPR', which are updated periodically) although the nature of the order remains a civil one and accordingly the underlying principles are in common with 'on application' orders. CrimPR Rule 31.1(1) specifically provides that the civil rules of evidence apply.

4.3.1.5. The CrimPR substantively reflect the provisions set out below relating to 'on application' prevention orders in the magistrates' courts. In particular, the rules on hearsay evidence apply to section 14 orders save that the relevant procedural rules are found under Rule 31.6 to Rule 31.8 of the CrimPR. These provisions set out the requirement that notice be served before reliance can be placed on hearsay material, along with the applicable safeguards such as the ability of a party to apply to cross examine the witnesses in question (as to which see below). There are some differences, including the lack of a time-limit under Rule 31.6 within which to serve notice to adduce hearsay evidence.

4.3.1.6. Case law is clear however (see e.g. Smith [2012] 1 WLR 1316 at [26]) that where the prosecution intends to apply under section 14 for an STPO on sentencing the bases and terms of the order (1) should be carefully considered applying the relevant principles; (2) notified to the court and defendant well in advance of the sentencing hearing at which they will be considered; and (3) given careful consideration at the sentencing hearing. Many avoidable appeals have reflected failures to follow one or more of these requirements. The procedure under CrimPR Rule 31 should be both understood and followed.

4.3.1.7. Given the application for a section 14 STPO on sentencing is made by the prosecutor, the necessity of liaison with the investigating and other authorities throughout the process is self-evident. This will extend to determining at an early stage of the criminal justice process whether to apply for a section 14 prevention order, and the evidence that will be needed to support it. Hearsay material should be identified that is admissible for the prevention order application but not at the criminal trial itself, and the process under CrimPR Rule 31 followed. The contended bases of an application should be reflected in an MG3, and this may often be provided by the NCLCC SPOC. An MG5 may be used to give the defendant early notice that such an application will be made if there is a conviction.

4.3.1.8. The court will take into account any 'professional risk assessment' by the probation services: see Hughes [2018] EWCA Crim 495 at [10] – [11]. It is advisable, therefore, that where a prosecutor is applying for a section 14 STPO the court is invited to determine whether the probation report addresses the specific type of offending to which it is directed.

4.3.1.9. The principles applicable to evidence and admissibility of hearsay set out below apply to section 14 applications. A clearly defined justification from an NCLCC SPOC will often provide the best and most consistent approach.

4.3.2 Slavery and trafficking prevention orders on application: section 15 of the 2015 Act

4.3.2.1. Where a defendant is a relevant offender – i.e. they have been convicted, etc, of a qualifying offence – but for whatever reason not made subject to an STPO under section 14 on sentencing, it is possible to apply later for an STPO under section 15, hence it is called an STPO '… on application'. Regardless of which court dealt with the qualifying conviction (i.e., magistrates' court or Crown Court), the standalone process starts (as with STROs and interim orders) by way of civil complaint to a magistrates court.

4.3.2.2. The relevant part of section 15 provides as follows:

Section 15 – Slavery and trafficking prevention orders on application

...

(2) The court may make the order only if it is satisfied that –

(a) the defendant is a relevant offender (see section 16); and

(b) since the defendant first became a relevant offender, the defendant has acted in a way which means that the condition in subsection (3) is met.

(3) The condition is that –

(a) there is a risk that the defendant may commit a slavery or human trafficking offence; and

(b) it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.

...

4.3.2.3. A person is a 'relevant offender' if any of the conditions set out within section 16 are met:

Section 16 – Meaning of 'relevant offender'

...

(2) This subsection applies to a person if –

(a) the person has been convicted of a slavery or human trafficking offence;

(b) a court has made a finding that the person is not guilty of a slavery or human trafficking offence by reason of insanity;

(c) a court has made a finding that the person is under a disability and has done the act charged against the person in respect of a slavery or human trafficking offence; or

(d) the person has been cautioned in respect of a slavery or human trafficking offence.

(3) This subsection applies to a person if, under the law outside of the United Kingdom –

(a) the person has been convicted of an equivalent offence (whether or not the person has been punished for it);

(b) a court has made, in relation to an equivalent offence, a finding equivalent to a finding that the person is not guilty by reason of insanity;

(c) a court has made, in relation to an equivalent offence, a finding equivalent to a finding that the person is under a disability and has done the act charged against the person; or

(d) the person has been cautioned in respect of an equivalent offence.

(4) An 'equivalent offence' means an act which –

(a) constituted an offence under the law of the country concerned; and

(b) would have constituted a slavery or human trafficking offence under the law of England and Wales if it had been done in England and Wales, or by a United Kingdom national, or as regards the United Kingdom.

...

4.3.2.4. A 'slavery or human trafficking offence' is an offence listed under Schedule 1 to the 2015 Act. This includes offences under sections 1 – 4 of the 2015 Act and analogous offences under previous legislation. It also includes 'equivalent offences' committed abroad.

4.3.2.5. It will be seen that in order to obtain an STPO 'on application', the court will have to be satisfied that 'since the defendant first became a relevant offender, the defendant has acted in a way which means that the condition in subsection (3) is met'. In simple terms, a person 'first becomes' a relevant offender on the date they are convicted, etc, of the qualifying slavery or trafficking offence. If no STPO was obtained 'on sentencing' under section 14, it will accordingly be necessary to produce evidence of 'actions' since the date of conviction to justify the section 15 'on application' order. As before, these actions will have to be proved to the criminal standard of proof but using the civil rules of admissibility.

4.3.2.6. In what should be wholly exceptional circumstances it is arguable that an application could be made for an STRO (and ISTRO) where there was a failure to obtain a s.14 STPO on sentencing. That failure could have resulted from intelligence having only become available after sentencing, or from a straightforward mistake on the part of the prosecutor (see R v Cheyne [2019] 2 Cr. App. R. (S) 14, [17] – [18]). In either case, it would have to be clear that the defendant's earlier conduct demonstrated a risk but that they have not acted in a way, since sentencing, which would justify a s.15 order on application.

4.3.2.7. It is also possible to obtain an STRO where a defendant has been prosecuted for offending but the matters proved did not include a qualifying exploitation offence. An example might be a defendant pleading guilty to substantive offences of supplying drugs (or conspiracy to supply drugs) but not to an exploitation offence. The facts giving rise to the conviction, potentially coupled with wider evidence, may well satisfy the test for an STRO. It would be good practice to notify this possibility to a defendant if they plead guilty to non-exploitation offences.

4.3.2.8. Seeking an STRO in these circumstances would accord with the underlying protective purpose of these orders, and the test for an STRO somewhat favours the defendant: an STPO requires the court to conclude he 'may' commit an offence, whereas an STRO requires them to find that he 'will' do so, and the minimum periods of duration are different. It is clear from this and first principles that efforts should be made to ensure that all relevant material has been obtained and consideration given to applying for an STPO on sentencing. Where there has been a failure to do so, and although there is no time limit on an application for an STRO, the application should be made as soon as is practicable once the need for it is identified. Any delay will promote a conclusion by a court that it is neither necessary nor proportionate.

4.3.2.9. As with STROs, for STPOs it is not necessary to prove acts that are themselves criminal. The acts that qualify may be of many forms. It may include, for example, evidence documenting the defendant's attitude to offending when in prison: he or she may through the action of expressing these attitudes demonstrate that they meet the conditions for imposing an order.

4.3.2.10. Taken overall, there are four questions which the court must consider when considering whether to make an STPO following an application under s.15:

(a) **Is the defendant a 'relevant offender' within section 16 of the 2015 Act?**

(b) **If so, have the acts of the defendant since they became a 'relevant offender', which are relied upon by the applicant, been proved?** (these acts must be to the criminal standard of proof, but using the civil rules of admissibility of evidence);

(c) **If so, do those acts show that there is a risk that the defendant may commit a slavery or human trafficking offence?** (the 'risk' must be 'real, not remote' (see below). As with STROs, the question of what standard or proof (if any) applies to this question has yet to be conclusively determined, but it is anticipated that this will be an exercise of 'judgment or evaluation': see above).

(d) **If so, is it necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence?** ('judgement and evaluation', as to which question there is no particular standard of proof: see below)

4.3.2.11. If the answer to all of those questions is 'YES' an order should be made and the only remaining consideration will be whether the individual terms of the order are necessary, proportionate and effective: see below.

4.3.2.12. The above provision demonstrates that these orders are preventative not punitive in nature. They are designed to protect members of the public from harm and do not involve findings of criminal conduct. An order is not a criminal conviction: it is a breach of the order once imposed that is a criminal offence punishable with imprisonment. That fact means, of course, that any order must be necessary and proportionate.

4.3.2.13. The underlying principles applying to applications were rehearsed by the Court of Appeal in the second appeal arising from the prosecution of Wabelua and others.[16] Although arising under section 14 – i.e. on sentencing for an exploitation offence – the principles are of general application. The difference in language between section 23 STRO ('will' commit an offence) and section 14 and 15 STPOs ('may') is reflected above. Other than that the underlying principles are of direct relevance.

4.3.2.14. At [36] the Court stated:

'… we would summarise the principles which are applicable in a case covered by section 14(1) of the 2015 Act as follows:

(a). As subsection (2) makes clear, an order can be made if the court is satisfied that there is a risk that the defendant may commit a slavery or human trafficking offence and satisfied that the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical and psychological harm which would be likely to occur if the defendant committed such an offence. This subsection does not require the court to apply any particular standard of proof.

(b). Although an STPO is a civil order, breach carries a serious criminal sanction. The risk that the defendant may commit a slavery or human trafficking offence must therefore be real, not remote, and must be sufficient to justify the making of such an order. In considering whether such a risk is present … the court is entitled to have regard to all the information before it …

(c). The order must be necessary for the purpose of protecting persons generally, or particular persons, from a physical or psychological harm which would be likely to occur if the defendant committed a further slavery or human trafficking offence, and not merely desirable or helpful in that regard.

[16] R v Wabelua [2020] EWCA Crim 783

(d). In many cases where the risk is identified, there will also be a necessity to make an order. However, they are distinct preconditions to the making of an order and they require separate consideration. In determining whether any order is necessary, the court must consider whether the risk is sufficiently addressed by the nature and length of the sentence imposed, and/or the presence of other controls on the defendant, and/or the important ability of a Chief Officer of Police to apply for an order if it becomes necessary to do so at some time in the future.

(e) The criterion of necessity applies not only to the making of an order at all, but also to the individual terms of the order where one is necessary.

(f) The terms of the order must in addition be both reasonable and proportionate to the purposes for which it is made: that is one of the reasons why the court must first have made a clear assessment as to why an order is necessary. The court should take into account any adverse effect of the order on the defendant's rehabilitation, and the realities of life in an age of electronic means of communication.

(g) The terms of the order must be clear, so that the defendant can readily understand what he is prohibited from doing and those responsible for enforcing the order can readily identify any breach.

(h) A draft order must be provided to the court and all defence advocates in good time to enable its terms to be considered before the sentencing hearing.

4.4. Interim orders:

Interim slavery and trafficking prevention orders: ISTPOs, section 21 of the 2015 Act
Interim slavery and trafficking risk orders: ISTROs, section 28 of the 2015 Act

4.4.1. Prior to the court making a determination on the application for a full STPO or STRO it may decide to impose an interim STPO ("ISTPO") or interim STRO ("ISTRO").

4.4.2. These orders will ordinarily contain precisely the same terms as are applied for in relation to the full order. They are however designed to be temporary in nature, and must only be for a fixed period which is specified within the order. That period will usually be until 1700 hrs on the date of the final hearing (or a fixed date later to ensure a little wiggle room if the hearing runs over). The order will also, regardless of the date specified on the face of the order, expire on the determination of the main application.

4.4.3. The test for the imposition of such an order is set out at section 21 (ISTPOs) and section 28 (ISTROs) and is the same for both orders – i.e. that the court 'may, if it considers it just to do so, make an' ISTPO or ISTRO.

4.4.4. Sections 21 and 28 are similarly drafted up to subsection 6. Interim STROs have an obvious potential value during ongoing police operations where the subject is not a 'relevant offender'. In the context of county lines they should be considered by investigating and safeguarding officers proactively at all times. Section 28 is accordingly reproduced:

28 Interim slavery and trafficking risk orders

(1) This section applies where an application for a slavery and trafficking risk order ("the main application") has not been determined.

(2) An application for an interim slavery and trafficking risk order—
- (a) may be made by the complaint by which the main application is made, or
- (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim slavery and trafficking risk order.

(4) An interim slavery and trafficking risk order is an order which prohibits the defendant from doing anything described in the order.

(5) The order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom.

(6) The order may (as well as imposing prohibitions on the defendant) require the defendant to comply with subsections (3) to (6) of section 26. If it does, those subsections apply as if references to a slavery and trafficking risk order were to an interim slavery and trafficking risk order.

(7) The order—
- (a) has effect only for a fixed period, specified in the order;
- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

(8) The applicant or the defendant may by complaint apply to the court that made the interim slavery and trafficking risk order for the order to be varied, renewed or discharged.

4.4.5. ISTPOs under section 21 are similarly drafted with 'prevention order' replacing 'risk order' where used, and reference to section 19 rather than section 26. Sections 26 (STROs) and 19 (STPOs) are directed at requirements imposed to provide a name and address.

4.4.6. There is very limited guidance as to when it will be 'just' for the court to impose an order and that assessment will ultimately be a further exercise of judgement by the court. The statutory Home Office Guidance ([3.10.4]) provides that where 'an application is properly made and supported' an interim order may be granted. To assist it in coming to that conclusion the applicant should usually ensure that the majority of the evidence relied upon (or, at least, the principal statement of the officer in the case providing an overview of that evidence) is available at the initial hearing and that the material is presented in a clear and easily legible format.

4.4.7. Securing an interim order may be especially important where there is a wider ongoing investigation and an immediate risk of harm is identified to vulnerable persons that cannot be addressed in other ways. It is to be noted that they are intended to provide protection pending the main STRO/STPO application, and that STROs and STPOs have minimum periods of duration i.e. are directed at ongoing risks of harm as distinct from one-off acute risks. The application should address why an STRO/STPO will be justified.

4.4.8. Examples of an interim STRO witness statement, and associated draft orders, are at Appendices 1(a)-(b) and (2).

4.5. When might a STPO or STRO be appropriate?

4.5.1. Reference should be made to paragraphs 4.3.1 – 4.3.2 above. More generally, paragraphs [3.1.2] – [3.2.3] of the statutory guidance produced by the Home Office makes the purpose of these orders clear:

> STPOs are aimed at those convicted, cautioned, who received a reprimand or final warning, found not guilty by reason of insanity, or found to be under a disability and to have done the act charged … in respect of a slavery or human trafficking offence (as set out in Schedule 1 to the Act …) or an equivalent offence abroad. STROs are aimed at individuals who have not been convicted of a slavery or human trafficking offence. For both types of Order, the Court will only make the Order where it is satisfied that the behaviour giving rise to the application took place and it considers that it is necessary to make the Order applied for to protect persons or a person from harm caused by the commission of slavery or human trafficking offences.
>
> In both cases the court may impose a wide range of restrictions on individuals depending on the nature of the case, as long as these are necessary to prevent harm associated with slavery or trafficking offences. The orders are designed so that law enforcement bodies and the courts can respond flexibly to the risks posed by an individual of committing future modern slavery offences. This flexibility enables law enforcement and the courts to respond and to take action in relation to changing modern slavery practices and to tailor prohibitions to the specific risk posed by an individual.

4.5.2. Each type of order is available against those aged under 18 years – i.e. a child under the international Convention definition. If made against a child as defined the application is to the youth court.

4.5.3. Whilst applications in such circumstances will need particularly careful consideration, where necessary with other statutory agencies (including an assessment of whether there are other equally effective forms of intervention available), the nature of the underlying offending is such that children are often those most directly involved in recruiting and directing the criminal exploitation of other children. Preventing serious harm which may be caused to others as a result of such offending is the purpose of these orders.

4.5.4. Whilst the fact that such a recruiting/directing child is also a victim of exploitation may represent a defence to certain offences under section 45 of the Modern Slavery Act 2015 (e.g. substantive offences of supplying drugs under the Misuse of Drugs Act 1971), the extensive list of offences not covered by section 45 are set out in Schedule 4 to the 2015 Act.[17] These include common law offences;[18] sexual, violent or firearms offences; or the exploitation offences under the 2015 Act itself. It follows that whilst the basis of the application must be the prevention of harm to others, a secondary benefit of obtaining the order will be to prevent serious criminal offending by the child that would not be covered by section 45. This can also be seen as in that child's interests.

4.6. Significance of conclusive grounds decisions under the National Referral Mechanism

4.6.1. A further potential consideration is whether the proposed defendant has previously been identified as a victim (or potential victim) of slavery or human trafficking by the Single Competent Authority ("SCA") pursuant to the National Referral Mechanism ("NRM").[19] There is a positive duty on State agencies, including the police, under the ECHR (as implemented in England and Wales through the NRM and Modern Slavery Act 2015) to take positive investigative measures to determine whether a person is the victim of exploitation (see VCL and AN v the United Kingdom ECtHR 16 February 2021)[20] regardless of whether that person raises the question of exploitation themselves (many children and vulnerable adults will not).

4.6.2. A positive conclusive grounds decision under the NRM (i.e. to the effect that the person is the victim of exploitation) does not preclude a STPO or STRO being made in respect of them. The purpose of the NRM is different. The mechanism is one of a number of measures which are designed to give effect to the United Kingdom's obligations under international conventions including the Council of Europe Convention on Action Against Trafficking in Human Beings.[21] In particular, Article 26 states that national legal systems must provide for the possibility of not imposing penalties on victims [of human trafficking] for their involvement in unlawful activities, to the extent that they have been compelled to do so.

[17] For a broad overview of the section 45 defence please see the NCLCC, 'Section 45 defence awareness video' which is available here: https://www.youtube.com/watch?v=1w3Zc0MdmyU.

[18] False imprisonment; kidnapping; manslaughter; murder; perverting the course of justice; or piracy

[19] For an overview of the National Referral Mechanism ('NRM') see the NCLCC, 'NRM Awareness video' which is available here: https://www.youtube.com/watch?v=jkpXxS6dzkw.

[20] 77587/12 and 74603/12. The facts and law of the case predated section 45 of the 2015 Act.

[21] Council of Europe, 'Convention on Action Against Trafficking in Human Beings' (2005): https://rm.coe.int/168008371d.

4.6.3. This is not an absolute prohibition – even on prosecution – and is only designed to preclude a person from being punished in relation to activities that they were themselves compelled to carry out. Indeed, even where a conclusive grounds decision has been made by the SCA a person may still be prosecuted provided there is evidence that their actions went beyond those which they were compelled to carry out and that it is in the public interest to do so. Prosecuting individuals in those circumstances is not an abuse of process (R v DS [2020] EWCA Crim 285) The criminal courts have grappled in this regard with the question of whether SCA decisions under the NRM are admissible in criminal proceedings engaging section 45 as a non-conclusive part of the evidence. It was initially held in DPP v M [2020] EWHC 3422 (Admin) that such decisions were admissible as expert evidence. However, that judgment has recently been doubted by the Court of Appeal. In R v Brecani [2010] EWCA Crim 731 the court held that caseworkers were not experts in human trafficking or modern slavery, but junior civil servants performing an administrative function. Additionally, the account provided by the defendant to the caseworker and relayed in the report was said to constitute inadmissible hearsay. Although, the Court did leave the door slightly ajar, noting that a suitably qualified expert might well be able to opine on relevant questions arising under the 2015 Act which were outwith the knowledge of the jury. The value of NRM decisions is therefore limited in criminal proceedings to the question of whether the prosecution should be proceeded with in the first place and / or as an indicator that a defendant may have been a victim of trafficking and that further admissible evidence should be sought.

4.6.4. The purpose of STPOs and STROs is different to decisions under the NRM: these orders are not criminal convictions, or punitive in nature, but are designed to protect the public from an objective risk of harm presented by the defendant. It is for this reason that such an order can be obtained even where the defendant has not been convicted of any criminal offence. This is perhaps best reflected in the fact that, in the closely analogous context of Sexual Harm Prevention Orders and Sexual Risk Orders, statutory guidance suggests the fact a person has an underlying mental health condition rendering them more of a risk to the public may, in certain cases, be a factor which 'strengthen[s] the case for making an order'.[22]As a preventive order it is accordingly possible to seek an order in circumstances where a proposed defendant has had a 'Reasonable Grounds' or 'Conclusive Grounds' determination by the SCA provided they meet the tests for an order under the 2015 Act.

4.6.5. It is also potentially possible to obtain an STPO or STRO where a person has had a positive decision made by the SCA and a decision taken not to prosecute on the basis that the person is a victim of slavery or human trafficking. Different public interest considerations are engaged in each decision. Before deciding to pursue a civil order in those circumstances, legal advice should be sought and the decisions of the SCA and CPS should be obtained and scrutinised. An application in those circumstances should only be made where there are no other protections in place for the public and where there is clear evidence that the proposed defendant presents a future risk of committing slavery and human trafficking offences if no order is made. In this regard, the question of the admissibility of 'Reasonable Grounds' or 'Conclusive Grounds' determinations in civil proceedings for a STPO or STRO has yet to be determined. As discussed below, hearsay is admissible in such proceedings and the issues which the court identified in Brecani may well go to the weight to be attached to such evidence rather than its admissibility. However, non-expert opinion evidence is also inadmissible in civil proceedings and it may be that courts are equally reluctant to admit such evidence without corroboration in the form of evidence from a "suitably qualified expert".

[22] Home Office, 'Guidance on Part 2 of the Sexual Offences Act 2003' (September 2018) at p.41.

4.6.6. If a STPO or STRO has been applied for or granted in respect of a defendant who has subsequently been referred to the NRM, the enforcement authority which obtained the order should 'consider notifying the [SCA] that an order has been applied for or granted' as this may be relevant to any determination they make in respect of the individual (see Home Office Guidance at [3.11.1] and [6.3.4]).

4.7. Multi-agency collaboration and other interventions for the subject of the prevention order

4.7.1. Multi-agency collaboration is required in all cases where exploitation of a child or vulnerable adult is suspected. Should any safeguarding concerns arise, engagement with all relevant partner agencies should commence through a strategy discussion. A section 47 (Children's Act 1989) investigation may be opened to manage the risk to a child and support their family.

4.7.2. It is implicit in this that the same child or vulnerable adult may be both victim and perpetrator. Obtaining a prevention order against a victim of exploitation clearly requires careful consideration. This should be considered in parallel to other interventions, whilst the investigation progresses to identify any additional perpetrators. There will however be situations where a prevention order is necessary to prevent the criminal exploitation of other children or vulnerable adults. If so the police (and other applicants) have a duty to act to prevent harm. Used when necessary and in a proportionate way the orders can attract support from the communities they are designed to protect.

4.7.3. The child or vulnerable adult made subject to a prevention order may often live in the same geographical environment as those exploiting them.

4.7.4. While the purpose of the orders is preventive and protective, it is worth bearing in mind that from their point of view (and potentially their families/communities), they might be experienced as a form of de facto punishment. This is especially the case because they have the potential to significantly restrict freedom of movement and association and, if breached, will constitute a criminal offence attracting imprisonment.

4.7.5. Alternative forms of intervention that are not experienced as similarly punitive potentially bring a number of other benefits that might be relevant to consider:

- Research shows that violence and crime are best addressed from the grassroots level: that young people are best positioned to exit a life of violence and crime where they have stable and trusting relationships around them, including mentoring figures and support structures in their social lives;

[23] e.g. in Croydon, funding from the violence reduction unit will be used, amongst other initiatives, to offer training by local young people, especially from Black and minority ethnic communities, for police officers. Previous work in this area has already made a huge difference, with some of the young people now preparing to be police officers themselves and police officers being in a position where they can 'embed' themselves in communities that have historically been hostile towards them. Other successful recent initiatives include: peer support groups for families of both victims/perpetrators (e.g. by the NWG Exploitation Response Unit); mentoring schemes for young people (e.g. by St Giles Trust); non-violence resistance training for frontline professionals and affected parents (e.g. by WalkwithMeUK and by Missing People); as well as inter-agency meetings engaging grassroots community representatives and professionals.

- Grassroots-led initiatives help build trust between young people and local support services, thus strengthening communities from within and helping to build 'social capital' especially in neighbourhoods that suffer from high levels of violence;

- These initiatives help build trust between young people and the police. Over time this will promote understanding as to the use of prevention orders within the community, and potentially facilitate obtaining evidence and intelligence to apply for them, including from children, parents and other community members.[23]

4.8. Home Office Guidance as to STPOs and STROs

4.8.1. The Home Office guidance also provides a non-exhaustive list of cases where it might be considered appropriate to seek to obtain a STPO or a STRO (see [3.3.3]). The examples provided are generic and apply across the broad spectrum of potential modern slavery offences. The majority could potentially apply to cases involving a risk that a person will become involved in county lines offending. To illustrate this point the examples from the Home Office Guidance are set below followed by scenarios where it might be appropriate to seek a STPO or STRO in a county lines investigation:

- A defendant is coming to the end of a licence period and their behaviour suggests they may still pose a risk. In these circumstances, consideration may be given to whether restrictions will be likely to prevent the offender from committing further slavery offences. Imposition of an STPO may be a useful tool to enable the authorities to manage the defendant's behaviour.

  EXAMPLE: the defendant was convicted, following a trial, for her involvement in trafficking young children along a county line. Her role involved recruiting children and arranging for them to stay at addresses once they reached the county where they were travelling. That address would thereafter act as a local distribution centre for the drug supply operation. The CPS did not seek a STPO following her conviction; but she has subsequently been recalled to prison having breached her licence conditions a number of times, including having failed to stay in touch with her supervising officer and having been found residing outside of London at an address with links to drug supply. The police might make an application for a STPO on the basis that since her conviction for a qualifying offence the defendant has behaved in such a way as to suggest that she is at risk of committing further offences of that nature.

- There is evidence that slavery and human trafficking offences have taken place and may continue to take place in future. Despite there being evidence of this type of wrongdoing, there may be obstacles to prosecution, for example, witnesses returning to their country of origin. In such cases it may be appropriate to apply for an STPO or STRO. The civil rules of evidence allow for the evidence of witnesses who have returned to their home country to be relied upon.

  EXAMPLE: there is evidence that the defendant, who is of good character, has been hosting children who have been travelling from London at his home in Sussex. The police have obtained a statement from a vulnerable young person who was found to have stayed at the man's home and to have been in possession of a substantial quantity of cocaine. A decision was taken that it would not be in the public interest to prosecute her and she has since stated that she is unwilling to give evidence in court. It may be appropriate, in those circumstances, to apply for a STRO against the defendant and to rely upon her statement, as hearsay, along with any other evidence of the defendant hosting children at his home.

- A person may have been convicted of non-slavery and trafficking offences in the past, which can be associated with slavery and trafficking activity … An application may be appropriate if that person is engaged in further activity which does not in itself amount to an offence but which, when looked at in conjunction with the previous convictions, creates a picture which indicates a risk of future involvement in slavery and trafficking.

  EXAMPLE: the defendant has a long list of previous convictions for possession and possession with intent to supply cocaine and heroin. He was recently arrested at a train station in the company of two high risk missing children both of whom were in possession of a relatively large quantity of cash which, when tested, had traces of cocaine on it. The arrest followed an intelligence operation whereby he had been seen meeting children at the station on a number of occasions. He was also in possession of a number of mobile telephones. The police have not yet been able to gain access to those devices as the defendant refused to provide the PIN and he gave a 'no comment' interview. It may be appropriate in this case to apply for a STRO.

- There may be cases where civil action has been taken in the past, the evidence of which may, when considered with other activity taking place, point to a risk of future slavery or trafficking offences. For example a closure notice issued in respect of premises used for child sex offences (section 136BA of the Sexual Offences Act 2003) or a possession order in respect of a property where other offences of exploitation have taken place (see Schedule 2A of the Housing Act 1985) could be relevant.

  EXAMPLE: the defendant resides in the West Midlands and has previously been made subject to a gang injunction for his suspected connections to an organised crime group in Birmingham with links to a prominent county line. His premises has also, recently, been the subject of a closure order on the basis that there was evidence that drugs were being distributed from the property. Reliance could be placed, in this instance, on his links to the OCG, along with his prior convictions and the two recent civil orders which he was subject to.

- There is evidence of previous exploitation of a person or persons (whether undertaken by the defendant or by others) and the defendant is now behaving in a way which suggests a future intention to exploit that person in a similar way. Again there does not need to be proof of an offence but the combination of factors may indicate a future risk of offending.

  EXAMPLE: either a STPO or STRO may be appropriate (depending on whether the defendant is a qualifying offender) if there is evidence that a young person has previously been exploited, directly, by that person or persons associated with the defendant in circumstances where s/he played an indirect role in the exploitation and will continue to do so unless an order is made to protect that person.

- There may be a larger modern slavery investigation where law enforcement will seek to restrict the behaviour of individuals who are at the periphery of the investigation through STROs. This may be because law enforcement wants to restrict their behaviour immediately whilst they are focussing on prosecuting the main offenders.

  EXAMPLE: in large investigations with multiple defendants carrying out distinct roles it is sensible to liaise with the CPS about the appropriate way to ensure that the suspects are pursued, where appropriate, in the criminal courts but where there are also orders in place to protect the public from harm. For example, while a 'line holder' and other key players are prosecuted as part of a wide conspiracy, the police might wish to proceed in tandem to seek STPOs / STROs against lower level offenders who still present a risk – e.g., drug runners who have taken up a leadership role, or those involved at a lower level in the recruitment of young persons to be exploited by the OCG.

- STPOs and STROs may be useful to control the behaviour of those who pose a risk but where it may be difficult to prosecute, such as brothel keepers who advertise internationally and move victims backwards and forwards.

  EXAMPLE: there may be instances involving difficulties obtaining witness evidence capable of being used at a criminal trial due to the vulnerable nature of those involved. Similarly, a defendant may have been the subject of a positive NRM decision leading the CPS to drop a planned prosecution but in circumstances where the available material indicates that there is a high risk that they will commit future slavery and trafficking offences. In such cases, an application for a STPO or STRO may be appropriate (such orders being preventative and designed to protect members of the public, rather than punitive).

- The application of STROs to those under the age of 18 may be necessary to prevent serious harm to other (possibly younger) children. Depending on the circumstances, it may be worth considering whether it might be appropriate to apply for an STRO for a young person rather than prosecuting them.

  EXAMPLE: in a county lines case it may be appropriate to seek a STPO / STRO against a young person where there is a risk that without an order they may cause harm to other, potentially even younger, children (e.g., where the defendant has been involved in recruitment, or has taken on a leadership role in the transporting of drugs from the city to the counties).

4.8.2. The above is simply a fleshed out version of the non-exhaustive list of potential scenarios in which recourse to STPOs or STROs to protect members of the public from harm may be appropriate. The statutory guidance makes plain these are designed to be flexible remedies capable of being pursued in a wide range of potential situations. It is therefore a matter for individual applicants, looking at each case on its own merits and if necessary in conjunction with the CPS, to determine whether a prevention order should be sought.

4.8.3. As explained above, where the subject of the application is a child, or otherwise vulnerable person, careful consideration will necessarily have to be given to whether to make an application for such an order. Each application is fact specific, and the seriousness of the harm to others that the order seeks to prevent is one of a number of important considerations. These considerations include the practical consequences for the subject of the order, including the risk of unintended but foreseeable adverse consequences or harm. The reasons why other alternative forms of intervention are not considered sufficient should be reflected within the body of the application, where necessary integrating the fact and outcome of consultation with other agencies such as schools and local authorities.[24] It is important that these matters are considered by the applicant prior to any application being lodged: the court will itself have to be satisfied that the order is necessary and proportionate in all the circumstances, and the same matters are relevant to that determination.

[24] See Pitts HMIP Academic Insights 2021/01 https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/01/Academic-Insights-county-lines-.pdf (noting the 'patchy and poorly coordinated' national inter-agency approach to county lines, and stressing (at pp. 10 – 11) 'the importance of ... multi-agency approaches - criminal justice, welfare and educational agencies - with a clear understanding of roles and responsibilities'. See also associated academic papers, including Covid 19, County Lines and the seriously left behind, Pitts, Journal of Children's Services Vol 15 Issue 4 https://www.emerald.com/insight/content/doi/10.1108/JCS-06-2020-0024/full/html

4.9. Jurisdiction

4.9.1. Applications for STPOs and STROs can only be made by the following individuals:

(a) A chief officer of police;
(a) An immigration officer;
(b) The Director General of the NCA;
(c) The Labour Abuse Authority (in relation to gangmasters)

4.9.2. There has been some confusion as to the meaning of a 'chief officer of police' and who can make an application.

4.9.3. The term 'chief officer of police' is not defined within either the 2015 Act, or within the Sexual Offences Act 2003, or any other legislation authorising the 'chief officer of police' to make application for a civil preventative order. It is defined under section 2 of the Police Act 1996 as the chief constable for a given police area.

4.9.4. It can be implied that the power to make such an application is capable of delegation: see, for example, R (Hamill) v Chelmsford Justices [2015] 1 WLR 1798. There is a separate question of whether the delegation of that power itself can be implied (based, for example, on the structure of the police force and the responsibilities assigned to different units) or whether there must be a written document signed by the chief constable expressly delegating authority to bring each individual type of application in their name. This can be an ongoing delegation rather than specific to individual cases.

4.9.5. An express written (ongoing) delegation stating clearly that the power to make applications under the 2015 Act has been delegated to officers of 'X' rank or above would be the clearest and most straightforward way of delegating that power. Any court will need to be satisfied that the chief officer has, through delegated authority or otherwise, made the application. There is some authority for the proposition that the delegation need not necessarily be express and that it can also be sub-delegated, an approach that has the benefit of not requiring a new written document to be signed and circulated each time a new piece of legislation is introduced. Ultimately, as the question is unresolved, it will be a matter for each police force (along with the Director General of the NCA) to ensure the basis of delegated authority is understood by those making such applications. Applicants should seek advice from their force legal services for further information on the delegation of powers where the issue arises.

4.9.6. The applicant from a particular force area should set out the basis of their authority in the application.

4.9.7. A police officer (acting on behalf of the chief officer) who makes an application for an order is only permitted to do so where the defendant lives in the chief officer's police area, or they believe that the defendant is either in that area or is intending to come to it: see sections 15(3) and 23(3) of the 2015 Act.

4.9.8. This can present challenges in county lines cases where the offending behaviour often straddles different policing areas.

CASE STUDY

The Metropolitan Police Service conducted an investigation into a case involving a suspect in Sussex who appeared to have been harbouring vulnerable children at his home address. That address was being used as a local distribution centre by the operators of a county line running out of London. The principal defendants who hold the county line mobile phone and are based in London have been arrested and charged, but the MPS wish to obtain a STRO against the defendant in Sussex.

4.9.9. In the above example, which is based on a real case, the chief constable of Sussex Police, or an officer with appropriate delegated authority, will have to lodge the application as the MPS lacks jurisdiction to do so.

4.9.10. In these situations one police force is likely to have the most detailed knowledge of the underlying county lines operation (in the above example, the MPS) and the other the local knowledge as to other agencies; what orders are practicable; and the primary duty of enforcing the order after it is imposed (in the above example, Sussex). It is accordingly obvious that there must be a close working relationship between relevant officers from each force at each stage of the process, including before and after the application is made.

4.9.11. Although each application is specific, in general terms it is likely that the evidence used to support any such application will include statements from (1) an investigating officer from the non-local force summarising the wider history and features of the county lines operation and investigation; and (2) a statement from the local applicant officer addressing their review of the underlying investigation; their liaison with other local agencies and the investigators; and the contended necessity and proportionality of the prevention order.

4.9.12. In theory it may be possible for a chief officer simply to delegate the practical elements of an application to officers attached to a different force. This is however not the recommended approach since it creates avoidable complexity, both legal and practical, in relation to delegated authority. In legal terms the application would still have to be made in the name of the local chief officer and remains their legal responsibility. Complete practical delegation to an officer from another force by the local chief officer making the application is not recommended, not least because the limits of that delegation may not be clear and – importantly – the benefits of continuing liaison with specialist officers from the local force would be compromised.

4.9.13. Forces must be willing and proactive in sharing evidence and intelligence to promote these objectives. In this regard, cooperation by police forces across jurisdictional lines is mandated by the 'strategic policing requirement' introduced by section 77 of the Police Reform and Social Responsibility Act 2011. That provision (which inserted section 37A into the Police Act 1996) provides that the chief officer of police must have regard in exercising their functions to the 'strategic policing requirement' and in particular matters which are identified within that document by the Home Secretary as 'national threats'. The extant 'Strategic Policing Requirement' ('SPR', March 2015)[25] underpins the relationship between police forces in England and Wales and the NCA' and identifies as a national threat serious and organised crime' including 'trafficking of drugs, people and firearms'. This and the other threats identified within the SPR are deemed of 'national importance' and chief constables are expected to 'plan and prepare, together or in support of national arrangements, to address these threats'.

4.9.14. County lines operations routinely involve different forms of serious and organised criminal activity. This includes drug and firearms offences which provide the funding which organised crime groups need to operate; the commission of modern slavery offences against vulnerable people to transport vast quantities of class A drugs across the country; and laundering the proceeds generated by the sale of the substances. This category of offending falls squarely within the SPR. It is imperative that police forces cooperate to ensure that offenders are not only prosecuted but where necessary subject to other means of control. The NCLCC – as a national entity incorporating officers of both police forces and the NCA – can assist in the coordination of joint investigations by providing guidance and advice and ensuring that any applications which result are pursued in the most effective way.

4.9.15. There is no geographical restriction on the ability of either immigration officers or the Director General of the NCA to apply for an STPO or STRO. They are simply required to notify the chief officer of police for the area in which the defendant resides: see sections 15(7) and 23(6).

[25] Home Office, 'Strategic Policing Requirement' (March 2015): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/417116/The_Strategic_Policing_Requirement.pdf.

5. Evidence and Procedure

5.1. Introduction

5.1.1. Applications for STPOs on application under section 15 and STROs are by way of civil complaint in the magistrates' courts: see sections 15(5) and 23(4) of the 2015 Act.

5.1.2. The effect of this is that the proceedings are civil (not criminal) in nature. This is a fundamental difference in terms of procedure and the admissibility of evidence from many applications that are made under the Criminal Procedure Rules. It extends the type of material that may be admitted in evidence, and that being the case forces should seek to obtain all potentially relevant sources of evidence. This principle applies equally to 'on sentencing' applications under section 14 and each form of interim order. Obtaining and reviewing this wide class of evidence will require liaison, statements and exhibiting of materials with and from the public; schools; local police officers; local statutory agencies; community groups/ representatives; and others. If necessary and justified statements and materials from such third parties may be exhibited to the statement of a police officer making the application.

5.1.3. Depending on the application, the following key pieces of legislation apply:

(a) Magistrates' Courts Act 1980 ("the 1980 Act") – sections 51 to 74;

(b) Magistrates' Courts Rules 1981 ("the Magistrates' Courts Rules");

(c) Civil Evidence Act 1995 ("the 1995 Act") – sections 1 to 4 ;

(d) Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 ("the Hearsay Rules")

5.1.4. The following sections address some detail as to the applicable rules of procedure and evidence when bringing civil complaints in the magistrates' courts.

5.2. Disclosure

5.2.1. Proceedings relating to complaints in the magistrates' courts are not criminal and as a result the provisions of the Criminal Procedure and Investigations Act 1996 do not apply. These proceedings are also not governed by either the Criminal Procedure Rules or the Civil Procedure Rules. This was made clear by the High Court in R (Cleary) v Highbury Corner Magistrates' Court [2007] 1 WLR 1272 where May LJ indicated the proper approach to disclosure in cases involving civil prevention orders pursued by way of complaint in the magistrates' courts (at [34]):

> The Civil Procedure Rules do not specifically apply in magistrates' courts. But CPR r 31(6) seems to me to be a good guide to what is necessary and proportionate. This provides that standard disclosure requires a party to disclose only documents on which he relies and documents which adversely affect his own case or support another party's case. The commissioner is concerned that a requirement such as this would be imprecise so as to frustrate the statutory purpose. He suggests that there should be no initial duty of disclosure in advance of a written statement on behalf of the defendant of the nature of his defence and a specific request for particular admissible documents relevant to that defence. I have some general sympathy with this, in that disclosure under the CPS supposes that the parties have exchanged pleadings crystallizing the issues. Requests for documents should certainly be for specific relevant documents and not a fishing expedition. But applications for closure orders threaten to trample on defendants' article 8 rights and defendants may be vulnerable and unrepresented. I think, therefore, that the police should disclose documents which clearly and materially affect their case adversely or support the defendant's case.

5.2.2. The case of Cleary concerned a closure order. The principles are analogous as those orders are preventative and pursued by way of civil complaint in the magistrates' courts.

5.2.3. The disclosure obligations in these proceedings were subject to further consideration in Newman v Commissioner of the Police of the Metropolis [2009] EWHC 1642. That case concerned football banning orders (another civil prevention order) and the appellant argued that it was wrong of the magistrates' court below to refuse to direct disclosure (1) of the material underlying the statement of an 'intelligence officer' collating various incidents at different football matches said to involve the appellant; and/or (2) a copy of the full CCTV video from which a compilation had been created by the police for use at the hearing.

5.2.4. Richards LJ, sitting in the High Court, found that there was no obligation to disclose that material in the circumstances. He explained ([37] – [40]):

> I do not think that fairness can be said to have required wholesale disclosure of the source material underlying PC Davies' witness statement. Fairness did require disclosure of anything known to undermine the Commissioner's case or to assist the appellant's case, but the stance adopted by the Commissioner was that the material included nothing of that character, and there is no reason, on the fact of it, to doubt the correctness of that stance, even though the third witness statement of PC Davies does not fully cover the point. Beyond that, in the absence of a defence case, raising any specific issues concerning the incidents covered in the witness statement (indeed, in the absence of any indication whatsoever as to whether and to what extent the allegations made were accepted or denied), I do not think that there was any reason why further disclosure was required as a matter of fairness or, therefore, why non-disclosure of further material should be regarded as a bar to the admission of the witness statement sought to be relied on. Indeed, in those circumstances, there seems to be to be some force in the point that the generalised request for disclosure had some of the character of a fishing expedition.

> As to the compilation disc and the related witness statement, I acknowledge the potential dangers of cherry picking and of giving a misleading impression by taking clippings out of context, but it does not follow that the entirety of the videos from which the clips were drawn had necessarily, as a matter of fairness, to be made available to the appellant or his legal advisers. I have referred already to the Commissioner's stance that there was nothing in the underlying material that undermined his case or assisted the appellant's case.

5.2.5. Accordingly, while there is a duty on the applicant to disclose material which assists the defence, or undermines its own case, the defence is not entitled to simply put the applicant to proof and make open-ended disclosure requests (i.e. a 'fishing expedition') in the absence of any defence material having been forthcoming setting out what specific issues are in dispute. This approach corresponds with Rule 3A of the Magistrates' Courts Rules which places a duty on both parties to the proceedings to assist the court by narrowing down the issues in so far as possible and at an early stage (see further 'Case Management', below).

5.2.6. Despite the lack of any more specific statutory disclosure obligations it is nonetheless advisable for officers to ensure that they review all material in the case and draw any material which may undermine the application (or assist the defence) to the attention of those instructed to bring proceedings to court. It is also worth including, within the body of the principal statement of the officer in the case, a statement to the effect that all available material has been reviewed and that either (1) there is no disclosable material; or (2) that all such material has or will be disclosed.

5.2.7. It will not be uncommon for applications for STPOs or STROs to be pursued in parallel with criminal proceedings. These may be against the subject of the orders sought or other individuals within a wider county lines investigation. If that is the case, and the stricter criminal test for disclosure has been applied when assessing whether there is any material which ought to be disclosed to the defendants in the civil proceedings, that should also be made clear within the principal statement of the officer in the case.

5.2.8. If there is any doubt about whether material ought to be disclosed to the defence in civil proceedings legal advice should be sought and documented from the relevant home force legal department or in-house NCA lawyers. The NCLCC is available to provide guidance (in most cases in liaison with the NCLCC SPOC) and a list of contacts can be found at Appendix 6.

5.3. Hearsay evidence

5.3.1. Hearsay evidence is admissible in applications for each type of civil prevention order under the 2015 Act. This is in contrast to criminal proceedings where, subject to limited exceptions, hearsay evidence will not be admissible.[26]

5.3.2. What, then, is hearsay evidence?

5.3.3. Hearsay is, simply put, any statement which is not made during oral evidence in the proceedings.

5.3.4. A practical example illustrates some of the different forms which hearsay can take. A witness in proceedings may have an account to give as to each or any of the following:

i. That they have directly witnessed their neighbour associating with children at regular intervals at a particular address (that address being one the police believe is being used to distribute drugs as part of a county line); and/or

ii. What a defendant/subject has said in their presence; and/or

iii. What the children have said in their presence but in absence of the defendant; and/or

iv. What has been reported to them by other neighbours (e.g. '… my neighbour said she heard the defendant give instructions to the children at the address …').

5.3.5. In each case the evidence must be relevant to the issues before the court.

5.3.6. Evidence within (i) and (ii) is direct evidence of fact and is not hearsay.

5.3.7. Evidence within (iii) and (iv) is hearsay evidence from the outset. Whatever the position in criminal proceedings, this is admissible in civil proceedings. As set out below, what weight is attached to it by the court is case-specific. Hearsay in a witness statement from this person is accordingly admissible in applications for STROs / STPOs and should be reflected in statements taken from such witnesses.

5.3.8 If the witness in relation to points (i) and (ii) provided a statement but then refused to give evidence at court about those matters that statement would become hearsay on the basis it would be a statement not made in oral evidence in the proceedings. In criminal proceedings, the statement alone would not be admissible unless it either fell within one of the hearsay exceptions identified above or unless both parties agreed that it should go before the court using the 'workaround' found at section 9 of the Criminal Justice Act 1967. Police officers will be familiar with that provision which is referenced at the top of almost all MG11 witness statements produced in criminal proceedings.

[26] The exceptions to the general rule that hearsay is not admissible in criminal proceedings are found under sections 114 to 118 of the Criminal Justice Act 2003. They are where the witness: (a) is dead; (b) is unfit to be a witness because of his bodily or mental condition; (c) is outside the United Kingdom; (d) cannot be found; (e) does not give evidence through fear (s.116(2)(a)-(e)). There is a general exception where it is in the 'interests of justice' for the evidence to be admitted (s.114(1)(d) and (2)). There are further specific exceptions – such as the 'business records' and 'res gestae' rules – under sections 117 to 118 of the CJA 2003.

It provides that where the other party does not propose to challenge the evidence it can go before the jury in written format exactly as if that person had attended court to give oral evidence of those matters: the court, in effect, adopts a legal fiction (or 'workaround') that the witness has come to court to give that evidence in person. Since the evidence is treated as if it were oral evidence however points (iii) and (iv) would still be inadmissible because those matters are hearsay on the basis that the witness is describing what she had heard from people other than the defendant. Those matters would therefore have to be removed before the statement was read to the court in a criminal case (subject to exceptions if the statements are made by co-defendants in the course or furtherance of a conspiracy or joint enterprise. These are not addressed further in this guidance).

5.3.9. Section 9 of the Criminal Justice Act 1967 does not however apply in relation to civil proceedings such as applications for all types of prevention order under the 2015 Act. This is an important distinction that needs to be understood. Hearsay evidence of all types is automatically admissible in civil proceedings and accordingly the 'workaround' described above is not needed. This means that the statement of a witness which deals with points (i), (ii), and even points (iii) and (iv), will be admissible in civil proceedings even if the witness refuses to come to court, and even if the evidence in relation to all of those points is disputed by the other party. Police intelligence is similarly admissible: the issue is the weight to be attached to it, rather than admissibility.

5.3.10. This principle of admissibility may be taken even further. What for example if the witness declines to make a witness statement at all – e.g. through fear, or other reasons – but has given this account to someone else, for example a school liaison officer or police officer?

5.3.11. In these circumstances, what has been reported to that person is also admissible hearsay in civil proceedings. The police officer can give a statement setting out that the witness told them of matters falling within (i) to (iv). As before, what weight the court attaches to this 'second hand' hearsay is a question of fact. Considerations will include (1) the assessed reliability of the person giving the original account (i.e. witness giving the account to the teacher/police officer); (2) the accuracy of what is said by the person to whom it was said (how soon after the conversation was it recorded by the teacher/police officer? etc); (3) the reasons why the person will not, or cannot, give evidence; (4) corroboration (not necessary in law, but obviously a relevant consideration where reasonably available).

5.3.12. As set out below, the procedures and law provide protections for a defendant in terms of hearsay evidence. Equally, it is admissible evidence and the weight to be attached to it in appropriate cases will or may be significant.

5.3.13. The long established position in relation to the admissibility of hearsay material in proceedings for civil prevention orders is set out by Kerr J in Chief Constable of Lancashire v Wilson [2015] EWHC 2763 (at [86]):

> I will go on briefly to consider the position in relation to hearsay evidence. It is common ground that in civil proceedings hearsay evidence is admissible under the Civil Evidence Act 1995 … It was common ground that the weight attached to hearsay evidence will be affected by the factors set out in section 4 of [the 1995 Act]. Those statutory provisions are supplemented by rules of court which enable a party wishing to cross-examine the maker of a hearsay statement to seek an order directing his or her attendance at court to answer questions.

5.3.14. That case concerned gang injunctions but the principles are analogous. Counsel for the appellant argued that there was a violation of article 6(1) of the European Convention on Human Rights ("ECHR") in the reliance on hearsay evidence (including anonymous hearsay) in those proceedings. This argument was rejected (at [92]):

> [T]he admissibility of hearsay evidence does not of itself entail a breach of article 6(1) of the Convention. It is tempered by the ability of the court to direct attendance of available witnesses, to adopt appropriate case management measures to enable witnesses to be put at ease and to adjust the weight to be given to hearsay evidence where the witness does not attend. In an appropriate case, that could include deciding that the weight to be attached to such evidence is nil or negligible. That seems to me sufficient protection for the fairness of the trial process.

5.3.15. This section will cover, in some detail, the applicable rules when adducing hearsay material along with the safeguards alluded to by Kerr J in Wilson. It will also set out those matters which officers seeking to obtain STPOs and STROs should have in mind when preparing their applications where hearsay is relied upon.

5.3.16. Sections 1 to 4 of the 1995 Act are given effect in relation to civil complaints in the magistrates' courts by the Hearsay Rules: see above.

5.3.17. The effect of this, in short, is that hearsay evidence is admissible in proceedings for STPOs and STROs. The merits of that evidence will usually be dealt with by way of submissions by those representing the applicant and the defendant as to the weight to be accorded to that evidence. This much is made clear by sections 1 and 4 of the 1995 Act itself: the former simply provides that '… evidence shall not be excluded on the ground that it is hearsay' and 'nothing in this Act affects the admissibility of evidence admissible apart from this section' (sections 1(1) – (2)(a)).

5.3.18. Further, section 4 provides:

> **Section 4 – Considerations relevant to weighing of hearsay evidence**
>
> (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following —

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
(c) whether the evidence involves multiple hearsay;
(d) whether any person involved had any motive to conceal or misrepresent matters;
(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

5.3.19. This should be read alongside Rule 5 of the Hearsay Rules:

Rule 5 – Credibility and previous inconsistent statements

(1) If –

(a) a party tenders as hearsay evidence a statement made by a person but does not call the person who made the statement to give oral evidence, and
(b) another party wishes to attack the credibility of the person who made the statement or allege that the person who made the statement made any other statement inconsistent with it, that other party must notify the party tendering the hearsay evidence of his intention.

(2) Unless the court or the justices' clerk otherwise directs, a notice under paragraph (1) must be given not later than 7 days after service of the hearsay notice and, in addition to the requirements in paragraph (1), must be served on every other party and a copy filed in the court.

(3) If, on receipt of a notice under paragraph (1), the party referred to in paragraph (1)(a) calls the person who made the statement to be tendered as hearsay evidence to give oral evidence, he must, unless the court otherwise directs, notify the court and all other parties of his intention.

(4) Unless the court or the justices' clerk otherwise directs, a notice under paragraph (3) must be given not later than 7 days after the service of the notice under paragraph (1).

5.3.20. These important provisions should be considered carefully by law enforcement officers when putting together an application for an STPO, STRO or interim versions of each. This is because while hearsay is admissible in proceedings of this nature, those drafting the statute and the accompanying rules recognised that such evidence still carries inherent dangers, in particular arising from the inability for defendants to test the witness in cross-examination.

5.3.21. The balance for the dilution of the strict rules of evidence which apply in criminal proceedings was the introduction of certain safeguards such as the above provisions. These provide the defence with an opportunity to invite the court to give limited or no weight to hearsay evidence where the factors under section 4 of the 1995 Act apply. Equally, the greater flexibility is directed at enabling the court to get to the truth of the matter unobstructed by the technical rules of admissibility appropriate to criminal proceedings.

5.3.22. To take a couple of examples of how this might apply in practice:

Example 1:

The police obtain a statement from a neighbour claiming that a vulnerable youth has been exploited by the defendant.

The statement is helpful, but part of it relates to allegations made to her by a third-party. It also relates to incidents which occurred some time ago and there is no information as to why she is unable to attend court.

Example 2:

The police obtain a statement from a neighbour claiming that a vulnerable youth has been exploited by the defendant.

The statement provides a first-hand account of events occurring 2 days prior to the making of the statement. It also makes clear, in the body of the statement, that the witness fears attending court because she understands that the defendant is involved in a local gang and he has acted in an intimidating way toward her in the past.

5.3.23. The defence, in Example 1, will be in a far stronger position when arguing that the court should only give limited weight to the statement than in relation to Example 2. They would likely contend that the statement contained multiple hearsay; it was not made contemporaneously with the events themselves; and that there was no available information as to why it would not be reasonable and practicable to call the maker of the statement live. They may also (pursuant to Rule 5 (above)) seek to lead evidence undermining the credibility of the witness in either case.

5.3.24. There will be occasions where evidence simply has inherent issues which affect the weight likely to be given to it and there is nothing that can be done about it. Law enforcement officers when gathering evidence with the intention of applying for a civil order should apply their minds to the factors set out above. If Witness A says she was told by Witness B about the exploitation (as in Example 1) consideration should be given to obtaining a separate statement from Witness B. If the statement is not taken contemporaneously, those investigating should consider whether any supporting evidence is required or available to strengthen and corroborate the statement.

5.3.25. Where practicable makers of statements should be asked whether they would be willing to attend court and, if not, why not. If the maker explains, as in Example 2, that they have a genuine fear of the defendant, this ought to be recorded in the body of the statement and may result in the court giving greater weight to the statement in question. If on the other hand the witness has no problem attending court the applicant should consider whether to call them. It may be that there is another reason why the applicant wishes in the first instance to seek to rely on the statement alone (for example, that the defence has made no attempt to identify what, if any, parts of the statement are in dispute and/or there is an abundance of corroborating evidence in the case). If so a hearsay notice should be served, and it will then be a matter for the defence to decide whether to make an application to the court to call the witness having defined the factual issues.

5.3.26. Turning to the applicable procedural rules, the key provisions are Rules 3 and 4 of the Hearsay Rules:

Rule 3 – Hearsay notices

(1) Subject to paragraphs (2) and (3), a party who desires to give hearsay evidence at the hearing must, not less than 21 days before the date fixed for the hearing, serve a hearsay notice on every other party and file a copy in the court by serving it on the designated officer for the court.

(2) Subject to paragraph (3), the court or the justices' clerk may make a direction substituting a different period of time for the service of the hearsay notice under paragraph (1) on the application of a party to the proceedings.

(3) The court may make a direction under paragraph (2) of its own motion.

(4) A hearsay notice must–
- (a) state that it is a hearsay notice;
- (b) identify the proceedings in which the hearsay evidence is to be given;
- (c) state that the party proposes to adduce hearsay evidence;
- (d) identify the hearsay evidence;
- (e) identify the person who made the statement which is to be given in evidence; and
- (f) state why that person will not be called to give oral evidence.

(5) A single hearsay notice may deal with the hearsay evidence of more than one witness.

Rule 4 – Power to call witness for cross-examination on hearsay evidence

(1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the court may, on application, allow another party to call and cross-examine the person who made the statement on its contents.

(2) An application under paragraph (1) must–
- (a) be served on the designated officer for the court with sufficient copies for all other parties;
- (b) unless the court otherwise directs, be made not later than 7 days after service of the hearsay notice; and
- (c) give reasons why the person who made the statement should be cross-examined on its contents.

(3) On receipt of an application under paragraph (1)—
- (a) the justices' clerk must—
  - (i) unless the court otherwise directs, allow sufficient time for the applicant to comply with paragraph (4); and
  - (ii) fix the date, time and place of the hearing; and
- (b) the designated officer for the court must—
  - (i) endorse the date, time and place of the hearing on the copies of the application filed by the applicant; and
  - (ii) return the copies to the applicant forthwith.

(4) Subject to paragraphs (5) and (6), on receipt of the copies from the designated officer for the court under paragraph (3)(c), the applicant must serve a copy on every other party giving not less than 3 days' notice of the hearing of the application.

(5) The court or the justices' clerk may give directions as to the manner in which service under paragraph (4) is to be effected and may, subject to the designated officer's giving notice to the applicant, alter or dispense with the notice requirement under paragraph (4) if the court or the justices' clerk, as the case may be, considers it is in the interests of justice to do so.

(6) The court may hear an application under paragraph (1) ex parte if it considers it is in the interests of justice to do so.

(7) Subject to paragraphs (5) and (6), where an application under paragraph (1) is made, the applicant must file with the court a statement at or before the hearing of the application that service of a copy of the application has been effected on all other parties and the statement must indicate the manner, date, time and address at which the document was served.

(8) The court must notify all parties of its decision on an application under para (1).

5.3.27. These provisions offer guidance as to what information should be included on the face of a hearsay notice and the time-limits for serving such notices. It is important to note that while a failure to comply with these rules will not render evidence inadmissible, it may be a relevant factor for the court to consider when assessing the weight to be attributed to the evidence. In other words, if the applicant fails to comply with these rules and to serve a hearsay notice in good time, the court may decide to give less weight to the written statements it has served.

5.3.28. Guidance as to what ought to be included both within the body of statements intended to be relied upon as hearsay and within the hearsay notice itself was offered by Brooke LJ in Moat Housing Group Ltd v Harris [2006] QB 606 (at [140]):

> While nobody would wish to return to the days before the Civil Evidence Act 1995 came into force, when efforts to admit hearsay evidence were beset by complicated procedural rules, the experience of this case should provide a salutary warning for the future that more attention should be paid by claimants in this type of case to the need to state by convincing direct evidence why it was not reasonable and practicable to produce the original maker of the statement as a witness. If the statement involves multiple hearsay, the route by which the original statement came to the attention of the person attesting to it should be identified as far as practicable. It would also be desirable for judges to remind themselves in their judgment that they are taking into account the section 4(2) criteria so far as they are relevant...

5.3.29. If the defendant wishes to cross-examine a witness in respect of whom a hearsay notice has been served the onus is on them to serve an application to call and cross-examine that witness within 7 days of service of the hearsay notice. Importantly, as Rule 4(2)(c) states, the defendant must 'give reasons' why they require that witness to be called.

5.3.30. It is good practice for hearsay notices to be designed to pre-empt any potential application to call the witness by setting out, in terms, why the intention is to rely on the statement alone. For example, if the witness is vulnerable or has returned to their home country this should be explained within the body of the notice along with any other sensible reason for not wishing to require each witness to attend court. The defence will then have to set out why, despite those factors, the witness nonetheless should be required to attend.

5.3.31. While the Hearsay Rules offer no guidance as to what 'reasons' are appropriate, it is suggested that a simple statement that the applicant is put to proof and/or a general assertion that the defence wishes to test all of the evidence is not good enough: see, in the context of criminal proceedings, Leveson LJ in Balogun v Director of Public Prosecutions [2010] 1 WLR 1915 (at [16]: 'I do not accept that the spirit or letter of the [Criminal Procedure Rules] is complied with by asserting that the Crown is put to "strict proof", in the absence of detail, so as to ensure precisely which witnesses should be brought to Court because there are substantial or real challenges to their evidence rather than because of a desire to call witnesses to attend to see what might emerge and in the vague hope that some defence might appear or some failure might manifest itself …').

5.3.32. Once a notice has been served and an application made to cross-examine witnesses the court will, as per Rule 5, typically arrange a case management hearing at which to determine the question of which witnesses should be called or read.

5.3.33. The hearing will present an opportunity for representations to be made by each party relating to why a witness should or should not be required to attend for cross-examination at the hearing. The shape which those representations will take will depend entirely on the nature of the evidence in question and the individual circumstances of the case.

5.3.34. To assist officers and those representing them when coming up against applications to cross-examine witnesses it is worth emphasising the rationale which underpins the use of civil orders of this nature to protect the public. One leading case is R (McCann and ors) v Crown Court at Manchester and anor [2003] 1 AC 787. The judgment concerned appeals against Anti-Social Behaviour Orders made in respect of defendants pursuant to the Crime and Disorder Act 1998. It was argued that it had been wrong to find that the proceedings were civil in nature and accordingly engaged civil rules of evidence. Those submissions were rejected by the House of Lords. The leading judgment was given by Lord Steyn who explained (at [25]):

> Counsel for the defendants also emphasised the consequences which an anti-social behaviour order may have for a defendant. This is an important factor. Section 1 is not meant to be used in cases of minor unacceptable behaviour but in cases which satisfy the threshold of persistent and serious anti-social behaviour. Given the threshold requirements of section 1(1) it can readily be accepted that the making of such an order against a person inevitably reflects seriously on his character. In response to this argument Lord Phillips … observed [2001] WLR 1084, 1094-1095, para 39:
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> > "Many injunctions in civil proceedings operate severely upon those against whom they are ordered. In matrimonial proceedings a husband may be ordered to leave his home and not to have contact with his children. Such an order may be made as a consequence of violence which amounted to criminal conduct. But such an order is imposed not for the purpose of punishment but for protection of the family. This demonstrates that, when considering whether an order imposes a penalty or punishment, it is necessary to look beyond its consequences and to consider its purpose."
>
> Similarly, Mareva injunctions, which are notified to a defendant's bank may have serious consequences. An Anton Piller order operates in some ways like a civil search warrant and may be particularly intrusive in its operation. Breach of such orders may result in penalties. Nevertheless, the injunctions are unquestionably civil.

5.3.35. Having made clear that the proceedings were 'unquestionably civil' and the orders in question were 'preventative and not punitive', Lord Steyn also noted that the imposition of such an order would not result in the defendants incurring a criminal record, nor would they result in any penalty being imposed. It followed that there was no breach of Article 6(1) in the admission of hearsay in the proceedings and both the 1995 Act and the Magistrates' Courts Rules were applicable. His Lordship also dealt with what appeared to be the legislative intent behind the introduction of civil orders in order to address the issue, in this case, of anti-social behaviour (at [16]-[18]):

> **VI The Social Problem**
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> 16 Before the issues can be directly addressed it is necessary to sketch the social problem which led to the enactment of section 1(1) and the technique which underlies the first part of section 1. It is well known that in some urban areas, notably urban housing estates and deprived inner city areas, young persons, and groups of young persons, cause fear, distress and misery to law-abiding and innocent people by outrageous anti-social behaviour. It takes many forms. It includes behaviour which is criminal such as assaults and threats, particularly against old people and children, criminal damage to individual property and amenities of the community, burglary, theft, and so forth. Sometimes the conduct falls short of cognisable criminal offences. The culprits are mostly, but not exclusively, male. Usually they are relatively young, ranging particularly from about 10 to 18 years of age. Often people in the neighbourhood are in fear of such young culprits. In many cases, and probably in most, people will only report matters to the police anonymously or on the strict understanding that they will not directly or indirectly be identified. In recent years this phenomenon became a serious social problem. There appeared to be a gap in the law. The criminal law offered insufficient protection to communities. Public confidence in the rule of law was undermined by a not unreasonable view in some communities that the law failed them. This was the social problem which section 1 was designed to address.
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> **VII The Legislative Technique**
>
> 17 The aim of the criminal law is not punishment for its own sake but to permit everyone to go about their daily lives without fear of harm to person or property. Unfortunately, by intimidating people the culprits, usually small in number, sometimes effectively silenced communities. Fear of the consequences of complaining to the police dominated the thoughts of people: reporting incidents to the police entailed a serious risk of reprisals. The criminal law by itself offered inadequate protection to them. There was a model available for remedial legislation. Before 1998 Parliament had, on a number of occasions, already used the technique of prohibiting by statutory injunction conduct deemed to be unacceptable and making a breach of the injunction punishable by penalties. It may be that the Company Directors Disqualification Act 1986 was the precedent for subsequent use of the technique. The civil remedy of disqualification enabled the court to prohibit a person from acting as a director: … Breach of the order made available criminal penalties: sections 13 and 14 of the 1986 Act. In 1994 Parliament created the power to prohibit trespassory assemblies which could result in serious disruption affecting communities, movements, and so forth: see

section 70 of the Criminal Justice and Public Order Act 1994 which amended Part II of the Public Order Act 1986 by inserting section 14A. Section 14B which was introduced by the 1994 Act, created criminal offences in respect of breaches. In the field of family law, statute created the power to make residence orders, requiring a defendant to leave a dwelling house; or non-molestation orders, requiring a defendant to abstain from threatening an associated person: sections 33(3) and (4) and section 42 of the Family Law Act 1996. The penalty for breach is punishment for contempt of court. The Housing Act 1996 created the power to grant injunctions against anti-social behaviour: section 152; section 153 (breach). This was, however, a power severely restricted in respect of locality. A broadly similar technique was adopted in the Protection from Harassment Act 1997: section 3; section 3(6) (breach). Post-dating the Crime and Disorder Act 1998, which is the subject matter of the present appeals, Parliament adopted a similar model in sections 14A and 14J (breach) of the Football Spectators Act 1989, inserted by section 1(1) of the Football (Disorder) Act 2000: Gough v Chief Constable of the Derbyshire Constabulary [2001] 3 WLR 1392. In all these cases the requirements for the granting of the statutory injunction depend on the criteria specified in the particular statute. The unifying element is, however, the use of the civil remedy of an injunction to prohibit conduct considered to be utterly unacceptable, with a remedy of criminal penalties in the event of disobedience.

18. There is no doubt that Parliament intended to adopt the model of a civil remedy of an injunction, backed up by criminal penalties, when it enacted section 1 of the Crime and Disorder Act 1998. The view was taken that proceedings for an [ASBO] would be civil and would not attract the rigour of the inflexible and sometimes absurdly technical hearsay rule which applies in criminal cases. If this supposition was wrong, in the sense that Parliament did not objectively achieve its aim, it would inevitably follow that the procedure for obtaining anti-social behaviour orders is completely or virtually unworkable and useless. If that is what the law decrees, so be it.

5.3.36. The judgment of the House of Lords in McCann provides essential context in relation to why hearsay plays an important role in relation to ASBOs/CBOs which were used to tackle the particular problem of anti-social behaviour which was difficult to prosecute. Parliament has since decided to utilise the same model of civil prevention orders to tackle a variety of other social problems, for example revising the bases of sexual harm prevention and risk orders, and introducing prevention order regimes to address female genital mutilation and domestic violence. The procedures associated with these statutory regimes are human rights compliant.

5.3.37. For multiple reasons modern slavery and human trafficking can be difficult to prosecute. Indeed, many of the same issues which plagued attempts to use criminal proceedings to deal with anti-social behaviour will also arise in modern slavery investigations, and particularly county lines operations. Reasons include that the existence of organised crime groups render potential witnesses fearful of giving live evidence; it is difficult to attribute specific telephones to specific defendants; and many witnesses (and defendants) in such cases are likely to be young and/or vulnerable and accordingly requiring them to give evidence may itself produce harm. Many of those exploited will not see themselves as victims of crime and will not engage with the police or other agencies.

5.3.38. The statutory guidance produced by the Home Office expressly states that witnesses who are either children, or are otherwise vulnerable, should not be called save in exceptional circumstances: see [4.2.1]:

> Rule 14 of the Magistrates' Courts Rules 1981 makes provision for the order of evidence and speeches. In relation to evidence from children and vulnerable witnesses, it is recommended that, due to the strain such a case will place upon them, they should only be called to give evidence in exceptional circumstances. If such evidence is necessary, the Court should, as far as possible, ensure that appropriate measures used in criminal proceedings, such as separate waiting facilities, are provided.

5.3.39. This section of the statutory guidance should be brought to the attention of the court on any application to call a young or vulnerable witness.

5.4. Anonymous hearsay and anonymity generally

5.4.1. The position in relation to anonymous hearsay evidence is more complicated.

5.4.2. This material might take the form of a statement from a neighbour who does not wish to provide an account about criminal behaviour occurring next-door for fear that they will be subject to reprisals. At the other end of the spectrum it could be a statement of an undercover police officer who has been involved in making test purchases of drugs from a drug dealer thought to be involved in county lines offending. Evidence of this nature is admissible in principle in civil proceedings in the magistrates' courts. Equally, however, courts have repeatedly cautioned against over-reliance on anonymous hearsay.

5.4.3. The leading case in this area is Cleary (above). That was a case in which the High Court overturned a closure order originally granted in respect of a defendant's domestic premises where it was alleged that he had been using drugs and engaging in anti-social activity. The police had relied heavily on anonymous reports by neighbours of the defendant. May LJ explains that while anonymous statements are admissible such evidence carries 'inherent dangers' ([30]-[31]):

> In my view, it may too easily be supposed that people who give information about drug dealers should not be required to come to court to give evidence. In individual cases, the fear may be genuine. But an easy assumption that this will always be so and that hearsay evidence is routine in these cases risks real injustice. After all, defendants to an application for a closure order may risk being dispossessed from their home for up to six months … Credible direct evidence of a defendant in an application for a closure order may well carry greater weight than uncross-examined hearsay from an anonymous witness or several anonymous witnesses.

5.4.4. Those subject to STPOs and STROs risk being bound by significant prohibitions on their activity for a number of years, and non-compliance may result in them being prosecuted and imprisoned. It is therefore essential that care is taken to explore all possible options and to ensure that anonymous hearsay (or other anonymous sources of evidence) is only relied upon where there is a good reason to do so. Over-reliance on (especially anonymous) hearsay can result in applications being lost where the defendant decides to provide direct evidence at the hearing and offers a credible account.

5.4.5. If a witness has suggested that they are fearful of giving evidence against the defendant and having their identity revealed they should be asked whether any special measures might offer acceptable safeguards. Assuming they do not wish to attend or risk having their identity revealed the reasons why should also be explored and included within the body of the witness statement and any hearsay notice.

5.4.6. It is important to note that the court did recognise that there were situations in which anonymous evidence (or other hearsay) will inevitably be relied upon. In such cases, officers should ensure ([30]-[31]) that:

5.4.6.1. The statement sought to be relied upon contains direct evidence as to why it is not reasonable or practicable to call the witness;

5.4.6.2. The statement itself contains a first-hand (and ideally contemporaneous) account of the events supported, where possible, by corroborating material;

5.4.6.3. If the account was provided to a police officer (or other law enforcement officers) 'the officer should [also] give direct evidence of what was said and the circumstances in which it was said' and should be made available for cross-examination at the hearing.

5.4.7. Section 4 of the 1995 Act sets out the factors the court is required to consider when determining 'the weight (if any) to be given to hearsay evidence'. As May LJ noted in Cleary, the words 'if any' indicate that 'some hearsay evidence may be given no weight at all' ([30]). Those compiling evidence to support an application for a STPO or STRO should have those factors closely in mind if the intention is to produce statements to be relied upon as hearsay.

5.5. Sensitive material

5.5.1. Other than these circumstances justifying anonymity, there may be occasions where certain material cannot be disclosed because it is sensitive.

5.5.2. There could be any number of reasons, for example, disclosure may risk revealing the identity of an informant or an undercover police officer, or it may risk revealing the means by which certain information, material or intelligence is gathered by law enforcement.

5.5.1. The basic principle is that the only evidence that may be used by the court to determine the merits of any application is that which is disclosed in open court to the defendant. Whilst the applicant chief officer may make a public interest immunity ("PII") application in closed session (i.e. without either the defendant or his representatives being present in court), these applications will be directed at determining what is disclosed to the defendant. It is only the material that is disclosed to the defendant that may be considered by the court in determining the prevention order application itself.

5.5.4. These points are amplified briefly below. With sufficient thought the hearsay provisions will usually facilitate use of the substance of much material in this category. Further, where the sensitivity relates to the source of the material, the applicant will need to consider whether it is essential to the application. If so, it should usually be possible to provide a gist of the relevant intelligence to the defendant following a PII application. It is the gist that provides the admissible evidence for the court to consider. In any application engaging a PII application, or gisting, legal advice should be obtained throughout the process.

5.5.5. The question of whether a magistrates' court has jurisdiction to consider a PII application during a non-criminal hearing was considered in Commissioner of the Police of the Metropolis v Bangs [2015] EWHC 546. The short answer is that there is such a power.

5.5.6. Where the applicant objects to an order directing disclosure of particular material on the basis of PII 'the question of whether or not to accept the PII claim is an issue for the magistrates' court to consider' (at [28]). While that was a search warrant case, the court also held that the correct procedure to be followed is broadly that which applies in criminal proceedings – namely, a redacted or 'gisted' copy of the document should be supplied to the defendant and the court should then hear representations in open court by the defendant and the applicant before going into closed session to hear further submissions from the applicant. The need for the judge to provide both 'open' and 'closed' judgments (and for the former to identify every conclusion reached in light of points referred to in the closed judgment) was also emphasised. This procedure was recently endorsed in R (on the application of Jordan) v Chief Constable of Merseyside Police [2020] EWHC 2274 (at [12]).

5.5.7. An application for PII will be assessed based on a careful balancing exercise between the defendant's right to be provided with the information and the need to safeguard the public interest which will be put at risk if the information is disclosed. Importantly, as the court emphasised in Bangs, the public interest in the court having all of the information which may assist it in coming to a decision will 'be stronger in criminal cases than in civil cases' because the defendant's liberty is at stake. Similar considerations will, of course, apply where an application is made for a STRO or STPO and it is incumbent on both the applicant and the court to ensure that any derogation from full disclosure be the 'minimum possible derogation' (at [39] and [42]).

5.5.8. Confusion as to these basic principles may have arisen because there are certain proceedings where a magistrates' court does hear and consider material in closed session. One common example is applications for search warrants. If authorised by the court a search warrant produces a different, and lesser, level of interference with individual rights than a civil prevention order: a warrant does not result in any change to the 'substantive rights' of the subject. There is 'no question of loss of liberty, or indeed any direct loss of rights, or even adjudication of rights, as a consequence of the warrant' (R (Haralambous) v Crown Court at St Albans [2018] AC 236 (at [33]); R (Terra Services Limited) v National Crime Agency and others [2020] 1 WLR 1149 (at [23]-[24])).

5.5.9. By contrast, the effect of a civil prevention order is to engage substantive rights and for significant periods. Breach creates a criminal offence punishable with imprisonment. The application giving rise to any such order must accordingly be (i) on notice; (ii) with the defendant present; and (iii) determined strictly according to disclosed evidence (which may include the gisted product of a PII application, and/or hearsay and/or (expert) opinion statements from an applicant officer). This is made clear within the statutory Home Office Guidance at [4.1.3]:

> If the material which has allowed the risk to be identified is sensitive (e.g., from intelligence sources) and not disclosable it cannot be relied on in evidence, just as in ordinary criminal proceedings. In that type of case, consideration should be given to what further investigative steps need to be taken in order to be able to gather evidence which can be disclosed and therefore used in evidence to gain an order (or indeed to prosecute where an offence has been committed).[28]

5.5.10. The application remains civil in character. The significance of this for present purposes is as follows:

(a) While the applicant must prove the acts which it relies upon to show that the defendant poses a risk to the public to the criminal standard, it is not necessary for applicants to prove that a slavery or human trafficking offence has been committed. The types of act which may indicate that a defendant poses a risk are therefore wide-ranging and it should certainly be possible in all but a small minority of cases to secure non-sensitive material to support the case against the defendant.

Examples of such material could include:

i. Frequent trips by a defendant to a suspect address known to be used for drug supply (this could be evidenced, for example, by intelligence from police officers; hard evidence such as train tickets purchased by the defendant for others; or ANPR footage showing frequent trips to that location);

ii. CCTV footage or photographs showing the defendant acting in a concerning manner (for example, accompanying a young person, or being accompanied, regularly to a train station heading out of a city to a county, or exchanging suspect items such as cash, drugs, or unidentified parcels);

[28] For the limits of the admissibility of material following a 'closed material procedure' see the Supreme Court decision in Al Rawi and Ors v Security Service and Ors [2012] AC 531.

iii. Material obtained through an examination of the defendant's social media accounts which may indicate that they are committing, or at risk of committing, such offences;

iv. Previous convictions for related offences (for example, drug supply, child neglect, offences of violence or abuse where that is what is alleged to be taking place as part of the present application, etc);

v. Previous civil orders in relation to the defendant (for example, closure orders, gang injunctions, or other orders which tie the defendant to conduct said to relate in some way to the present risk which s/he poses);

vi. Previous formal warnings, resolutions or notices served on the defendant (for example, Child Abduction Warning Notices, or other warnings, cautions or notices which are of relevance to the present application);

vii. Previous convictions, civil orders, warnings, etc, made by a court outside of the United Kingdom for a relevant offence;

viii. Evidence that the defendant is living a lifestyle beyond his/her known means (this could, for example, be supported by evidence from HMRC highlighting that they have no known sources of legitimate income);

ix. Possession of a large number of mobile telephones;

x. Possession of a large quantity of cash in public (or, indeed, at home where there is no legitimate explanation);

xi. Possession of identity documents belonging to other individuals;

xii. Evidence that an adult defendant has had children at their address in Place B who have travelled from Place A (which may be in the same town or city) in circumstances where the children are unrelated and have no other obvious connections to him her and where those children, for example, are vulnerable;

xiii. Evidence of an adult defendant's interactions with children who are not related to him/her and where concerns have been raised by professionals (for example, teachers or social workers);

xiv. Intelligence provided by one or more credible local people to the police (or others) as to any relevant activity in circumstances where through fear they were not prepared to provide a statement, or where the information is so specific that it could only have come from one such credible local source. Such intelligence may have to be gisted for use in open court following a PII application, and coupled with an assessment of credibility by the applicant officer as part of an intelligence profile: see below.

Hearsay, including anonymous hearsay, is admissible as explained in the preceding section. Accordingly, if there are witnesses who are either vulnerable or are otherwise willing to provide an account on condition that their anonymity is maintained that evidence can be placed before the court. Care must be taken to bring to the court's attention the reason for the witness's reluctance. The statement, if possible, should be supported by direct evidence of the officer who took the account from the witness and who is available at the hearing for cross-examination should that be necessary.

(b) A professional assessment of the credibility of any hearsay based intelligence used by the applicant officer should be provided, and what if any corroboration exists.

(c) If undercover officers were used to carry out test purchases (or for any other reason) their statements will also be admissible in proceedings for a STPO or STRO.

5.5.11. As already stated, the sources of any one of these categories of material can and should include information from the public (including family and/or friends); schools/workplace; other statutory agencies; local police intelligence; and wider specialist interpretation of what the proven facts demonstrate, e.g. from the force NCLCC single point of contact. Many of the actions relied on will not be criminal in themselves but will be part of a pattern of grooming that leads to exploitation.

5.5.12. The need to consider all potential sources of evidence, and to liaise pro-actively with other agencies, cannot be overstated.

5.5.13. In relation to statutory 'looked after children' the Crest Advisory November 2020 report County Lines and Looked After Children[29] highlights the failures of state agencies including the police adequately to seek and/or share intelligence that could have been used to prevent the criminal exploitation of looked after children in the care system: to quote the introduction from the Children's Commissioner, 'They have all the risk factors you can imagine, but still end up without the protection they need'.

5.5.14. It may also sometimes be possible to incorporate 'sensitive material' into an application through the flexible use of hearsay evidence. An example of this in action can be seen in the cases of Gough and Newman (referenced above) both of which concerned football banning orders. A key form of material relied upon in such cases is intelligence gathered by 'intelligence officers' at football matches and collated into an 'intelligence profile' produced by the officer bringing the application. The intelligence consists of the officers at football matches looking out for 'prominents' (i.e. fans who are known to the police) and reporting on their involvement in any disorder arising at those matches. The underlying material may, itself, be sensitive on the basis that disclosure thereof would reveal the tactics used by the officers to gather the requisite intelligence. Indeed, in Newman, counsel for the Commissioner of the Police of the Metropolis opposed disclosure on the basis that the material was sensitive and would likely be subject to PII.

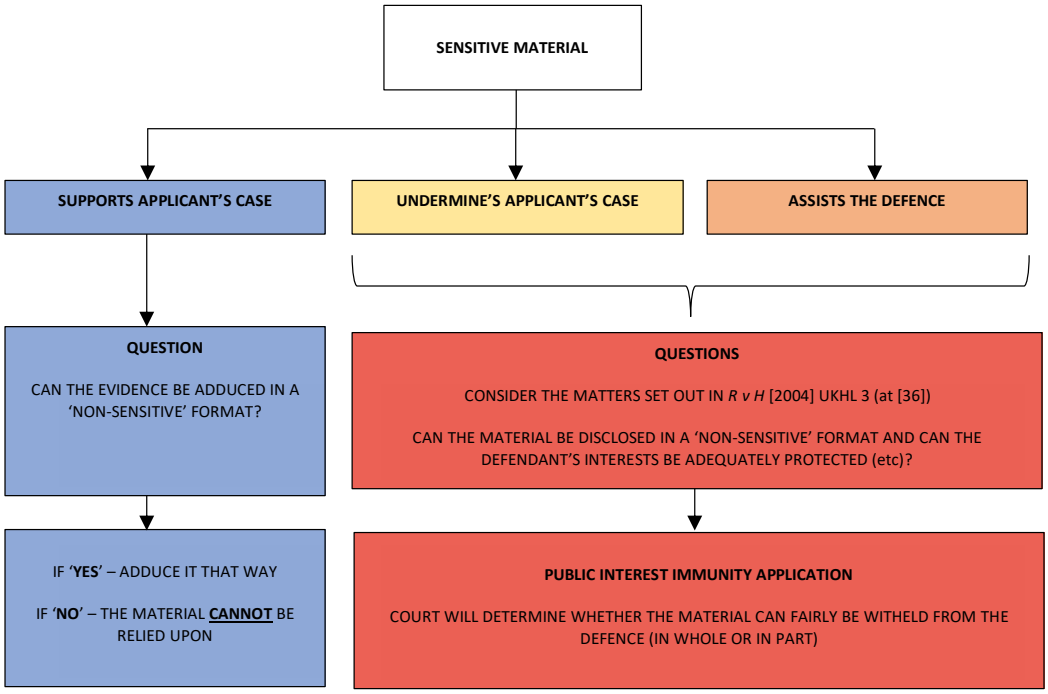
[29] Crest Advisory 'County Lines and Looked After Children' (November 2020): https://www.crestadvisory.com/post/report-county-lines-and-looked-after-children.

5.5.15. Those 'intelligence profiles' were not only admissible but were deemed to be of some importance to such applications as a whole. As Richards LJ explained in Newman: 'I attach some significance to the fact that this kind of intelligence profile was evidently regarded in Gough as potentially important and that whilst points were raised in the passage at paragraph 102 … which I have quoted, the court does seem to have regarded the evidence as of value, even in the absence of cross-examination of the police officers in respect of such material' (at [39). It was held that provided the underlying material did not undermine the applicant's case or assist the defence it did not need to be disclosed.

5.5.16. As the court in McCann explained in relation to ASBOs, these orders are generally introduced to address the limitations of criminal proceedings and in any event are directed at preventing harm. Where there is sensitive material obtained through intelligence operations it may well be possible to include that material in a principal / consolidating witness statement produced by the officer in the case (having themselves reviewed the relevant underlying material) and to adduce it by that means in an intelligence profile. If this approach is taken the officer should ensure that information within the statement is as detailed as possible, including by reference to specific times, dates and places of incidents and any corroborating (non-sensitive) material. The officer should also ensure that all underlying material is considered, and that a statement is included within the body of the statement to the effect that there is no further material which undermines the applicant's case or assists the defence.

5.5.17. If there is sensitive material which cannot be disclosed to the defence but which does appear to materially undermine the applicant's case, or to assist the defence, those applying for the order may need to make an application to withhold that material on the basis of PII. The central questions for the court on a PII application are (1) what the material is that the applicant is seeking to withhold; (2) whether it may weaken the applicant's case, or strengthen that of the defence; (3) whether there is a real risk of serious prejudice to an important public interest (and if so what that public interest is) if full disclosure is ordered; and (4) if the answer to questions (2) and (3) is 'YES' can the defendant's interests be protected without full disclosure of the material, or can disclosure be ordered to an extent or in such a way as will provide adequate protection to the public interest in question and afford adequate protection for the interests of the defence? (see R v H [2004] UKHL 3 (at [36]). This is the same test which applies in criminal proceedings and it may well be possible for a summary of the material, or a redacted version, to be provided if required.

5.5.18. The flowchart on the next page, provides an illustration of the approach to be taken when encountering 'sensitive' material:



5.5.19. This can be a difficult area and guidance should be sought from either your in-house legal team, the NCLCC or instructed counsel as the case may be.

5.6. Summary of principles relating to hearsay and sensitive material

5.6.1 The principles which can be derived from the statute, rules, guidance and authorities identified above can be summarised in the following way:

(a) These proceedings are 'unquestionable civil' (McCann at [25]);

(b) Hearsay evidence – including that of anonymous witnesses – is admissible and the 'rigour of the inflexible and sometimes absurdly technical' hearsay rules applicable in criminal proceedings do not apply. Such evidence carries inherent dangers, however, and care should be taken when admitting evidence of anonymous witnesses. Their statements should be full and complete and set out why they do not wish their identities to be revealed;

(c) It is for the defendant(s) to give reasons in order to justify why the court ought to exercise its discretion to require any witness to attend court to be cross-examined;

(d) It is possible to adduce 'sensitive' hearsay through open material in a number of ways – for example:

i. The admission of anonymous hearsay in order to protect the identity of a witness who fears giving evidence, or who otherwise ought not to have their identity revealed;

ii. A police officer – i.e., a professional witness – can give direct evidence of what they have been told by a witness who is otherwise unwilling to provide evidence and can be called, if necessary, to give that evidence orally;

iii. Material can be collated into 'intelligence profiles' in football banning order cases. This technique is likely capable of being applied in relation to other cases where evidence, or intelligence, is gathered by a number of different sources and is collated into a single statement by an officer who is available to provide evidence at court if necessary;

(e) (Vulnerable witnesses ought not to be called save in exceptional circumstances (Home Office Statutory Guidance [4.2.1]); and

(f) Section 75 of the Police and Criminal Evidence Act 1984 does not apply to civil proceedings in the magistrates' courts and neither does rule 32.1 of the Civil Procedure Rules. As noted in Cleary, once admitted it is possible for a court on the merits to attach limited or no weight to hearsay adduced in such proceedings.

5.6.2. There are adequate safeguards in place to protect a defendant's rights under Article 6(1). Those safeguards include the ability (under the 1995 Act and the Hearsay Rules) of a court (1) to direct that a witness attend to be cross-examined; and/or (2) to notify the party adducing the hearsay evidence of an intention to adduce evidence attacking that witness's credibility or alleging that they have made previous inconsistent statements (Rule 5, Hearsay Rules).

5.6.3. A defendant is also able to make submissions as to the weight to be attributed to hearsay evidence based upon the factors set out at section 4 of the 1995 Act.

5.7. Witnesses

5.7.1. It is good practice, as in criminal proceedings, for the officer in the case to provide a principal witness statement adducing any key material and to be in attendance and available to answer questions at the hearing(s). As a principal witness he or she can exhibit the statements and material from others to their own witness statement to demonstrate the evidence on which they have based their conclusions.

5.7.2. The question of what other witnesses should be required to attend in person is a question of judgment based on the circumstances of the individual case. As explained in the preceding sections, young and/or vulnerable witnesses should not be required to attend court save in exceptional circumstances. Where a witness is not vulnerable and is willing and able to attend court consideration should be given to calling that witness rather than relying solely upon their statement unless there is a good reason not to. This question may best be determined when the factual issues are defined.

5.7.3. It is possible in civil proceedings in the magistrates' courts to obtain a witness summons provided:

(a) The person in respect of whom it is sought resides in England and Wales and is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the hearing of a complaint by a magistrates' court; and

(b) It is in the interests of justice to issue a summons under the section to secure the attendance of the person to give evidence or produce the document or thing.

5.7.4. This power to issue a summons (and the two limbs set out above) is found at section 97 of the Magistrates' Courts Act 1980.

5.7.5. If the decision is taken to call a witness who is fearful or otherwise vulnerable the magistrates' courts have been held to have a common law (inherent) power to grant special measures, such as screens, in order to assist the witness in giving their evidence (see R v X (1989) 91 Cr App R 36). The applicant should ensure that the court is made aware of any such requirements at the earliest opportunity:

5.7.5.1. If the decision has been taken by the applicant to call the witness then details of the special measures required should be included on the face of the application (i.e. the 'complaint') lodged at court;

5.7.5.2. If on the other hand the applicant seeks to rely upon the statement as hearsay but this is challenged by the defence, the court should be made aware in advance either by way of a written response to the defendant's application to call and cross-examine those witnesses or at the subsequent case management hearing.

5.7.6. The court should be given an opportunity to consider and determine applications well in advance of the final hearing. This approach is basic case management and provides some time for the witness to be notified of the outcome of the decision ahead of the hearing and, if the application is refused, for consideration to be given as to how to reassure the witness, or what other steps might be taken (e.g. what further material might be obtained) if that witness refuses to cooperate in view of the decision.

5.7.7. The proceedings will be civil in nature and, as such, during the hearing witnesses will generally be invited to adopt their written statements as their evidence in chief before they are tendered for cross-examination.

5.8. Procedure and case management

5.8.1. Proceedings in the magistrates' (or youth) court will be initiated once the application (along with the appropriate fee) has been lodged.

5.8.2. The Magistrates' Courts Rules and, in particular, Rule 4 provide that there is no requirement for any particular formality when lodging a complaint at court ('an information or complaint need not be in writing or on oath'). It is however good practice when bringing applications for STPOs or STROs to ensure that the application is lodged in writing and using a pro forma containing a summary of the relevant information. The complaint should in particular make clear that alongside the main application the applicant is also requesting (if this is the case) that an interim order be imposed pending the main hearing.

5.8.3. A sample 'STRO' application is included at Appendix 5 below and this will generally be lodged with the court by the officer in the case and on behalf of the chief officer of the local policing area or the Director General of the NCA.

5.8.4. Having lodged the complaint there will be an 'initial' or 'first' hearing of the case which will serve the following purposes:

(a) To establish whether the application is contested;

(b) If it is contested, to determine the application for an interim order (which will often itself be contested);

(c) To fix a date for the final hearing; and

(d) To fix directions for service of material, written representations and for any further case management hearings as may be necessary.

5.8.5. A sample set of directions is included at Appendix 3.

5.8.6. Those appearing on applications for STPOs and STROs should be fully familiar with Rule 3A of the Magistrates' Courts Rules. This rule provides the court with its general case management powers and can be an especially useful tool in requiring defendants to cooperate and to identify what the real areas of dispute are with the applicant. The court's case management powers can also be used, for example, to prevent a defendant from 'ambushing' the applicant with a large quantity of documents on the day of the hearing e.g. by fixing a timetable for service of evidence, with a further direction that no party may rely on evidence served after a particular date without the express leave of the court.

5.8.7. The first hearing should be treated as an opportunity (1) to secure an interim order providing protection up until the date of the final hearing; and/or (2) to secure case management directions as to service of notices, evidence and legal arguments.

5.8.8. The nature and purpose of interim orders and the test which will be applied by the court when deciding whether to impose one was set out above. While the statutory purpose of such orders (i.e. to provide protection to individuals prior to a final order being made) is clear, in practice it is not uncommon for the initial hearing to be listed in busy remand courts. This is particularly problematic where the defendant is seeking to challenge the imposition of the interim order: the judge or lay bench may be reluctant to hear the application where they have a number of priority custody cases to consider in a limited time.

5.8.9. It is advisable when lodging the application and securing a summons to indicate in writing – and have acknowledged – that the case should not be placed in a remand list, and to provide a time estimate (including on the assumption any application for an interim prevention order is opposed). Although a matter for individual forces, an experienced person should be responsible for service and communications with the court. In many forces applications will be managed by the force solicitor. The defendant should also be notified of the hearing and supplied with the papers relied upon as far in advance as possible, at least 7 days if possible, in order to ensure that they cannot contend that they have had insufficient time to prepare their case. If the court's time proves limited and/or the defence apply to adjourn the following passage from the statutory Home Office Guidance should be drawn to the attention of the court (at [3.10.5]):

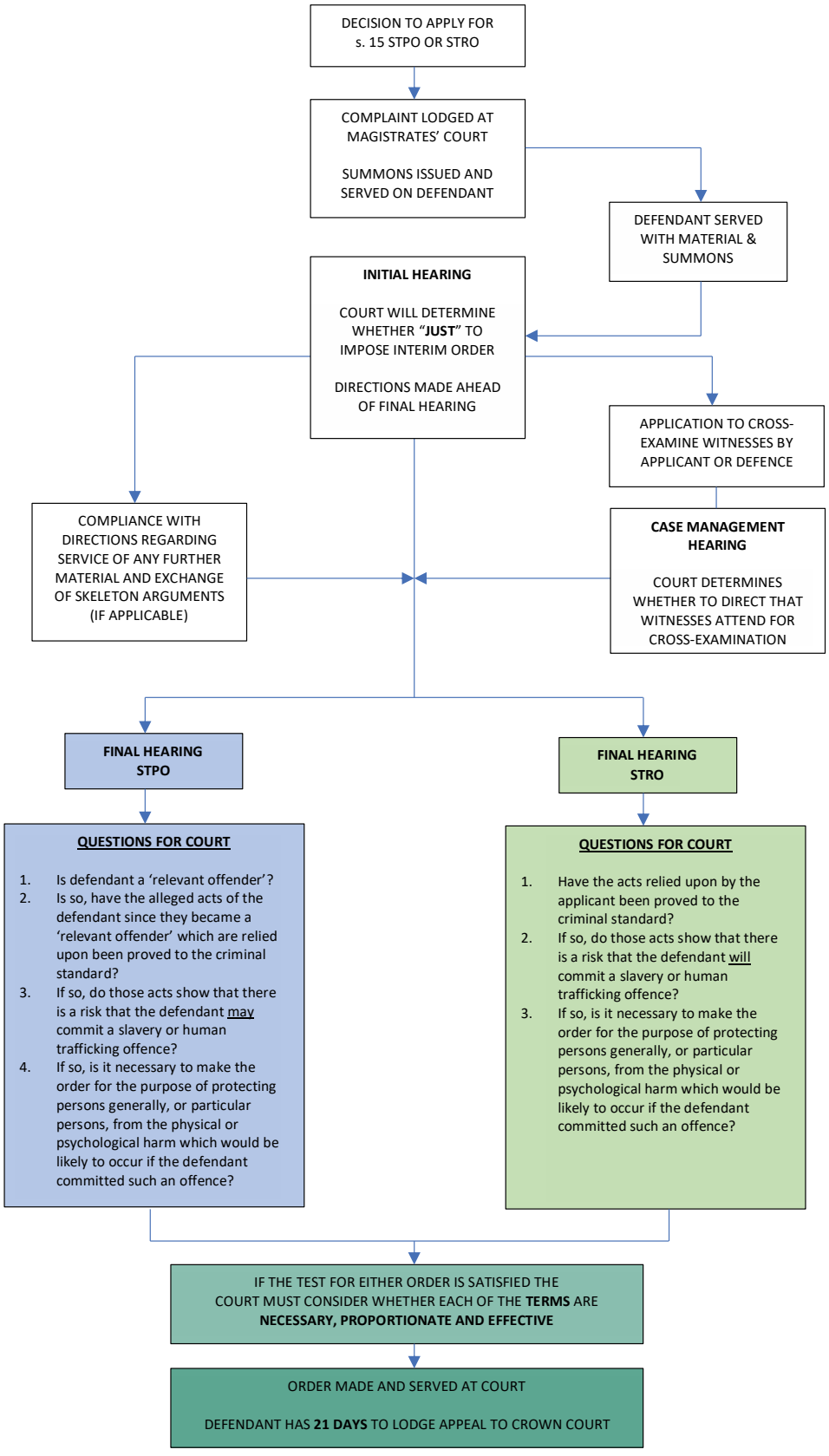
> Whilst recognising that the defendant must be allowed adequate time to prepare, interim hearings will not normally be adjourned since the purpose of an interim Order is to provide a degree of public protections pending the determination of the main application.

5.8.10. This obviously puts a premium on the quality of the written application and supporting material, and it is pragmatic to have a draft set of directions prepared in advance to promote the conduct of the directions hearing. This may include directions as to identifying the factual and legal issues for the main hearing in advance.

5.8.11. As to the procedure at the final hearing, this will be broadly similar to the procedure during a criminal trial in the magistrates' courts. The main exception will be that as a result of the applicability of the civil rules of evidence the applicant will not typically call the witnesses and examine them in chief at any length. Instead, they will usually be asked to adopt their written evidence in chief before possibly being asked some supplementary questions and then being tendered for cross-examination.

5.8.12. These cases may involve significant volumes of written material and it is not uncommon for the legal representatives on both sides to serve written submissions. It is therefore good practice when timetabling to ensure that the court is aware that there may need to be some reading time at the outset. If the case is particularly complex it is advisable to request that a District Judge deal with the matter and/or that it be reserved to a particular judge from the outset so that any material can be served on them to read and consider prior to the hearing.

5.8.13. The process of section 15 (on application) STPOs and STRO applications may be represented as follows:



6. The Order

6.1. Terms of the Order

6.1.1. The 2015 Act leaves it up to the court to decide what prohibitions to attach to an order. The single defined objective is that each individual prohibition must be 'necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence' (see sections 17(2) and 24(2)). Since a person cannot commit an exploitation offence against themselves, an order cannot be obtained on the basis that it will stop the person harming themselves through the act of committing such serious criminal offences against others. Other than specifics under the Act (e.g. as to providing names and addresses) the orders cannot require a defendant to do an act, and orders must be framed in negative terms (i.e. as prohibitions).

6.1.2. There is some general guidance as to the sort of terms which might be appropriate within the statutory Home Office Guidance (see [3.7.1] – [3.7.2]). It will almost always be advisable before preparing the final draft of any proposed order to seek advice or guidance from your NCLCC SPOC and / or legal advisors.

6.1.3. As referenced above, R v Wabelua and others [2020] EWCA Crim 783 is the first (and presently only) reported appeal against a STPO. The Court of Appeal offers guidance as to the correct approach when considering which prohibitions are appropriate. The case concerned a section 14 STPO on sentencing made following the conviction of a number of defendants for trafficking in a county lines context. The relevant 'principles' identified by the court are set out above at paragraphs 4.3.2.13 to 4.3.2.14 and should be read.

6.1.4. On the specifics, the Court in Wabelua echoed concerns raised by the Court of Appeal in decisions relating to SHPOs under the Sexual Offences Act 2003. In particular, it held that regard must be had to the realities of an individual's need to use the internet and to have access to mobile devices in the modern age. It will not generally be proportionate to place a blanket restriction on a person's possession of more than one mobile telephone. Instead, if there is a need to monitor their access to devices, the correct approach is to include a provision that the defendant cannot own/possess any mobile devices unless they notify the police within 3 days of acquiring or otherwise coming into possession of that device of its name, make, model, etc.

6.1.5. The prohibitions must also relate directly to the behaviour which is said to give rise to concerns that the defendant may (STPO) or will (STRO) commit a slavery or human trafficking offence in the future. In Wabelua, for example, the court had originally imposed a prohibition on the defendants owning or using vehicles. The court overturned those terms on the basis that there was only limited evidence that the defendants had made any car journeys connected with the offences for which they were convicted, and accordingly (absent any other evidence) restricting use in future was not necessary.

6.1.6. The judgment is plainly an important one. However, those applying for standalone STPOs and STROs should bear in mind that it related to a STPO obtained as an ancillary order following sentencing in a criminal case pursuant to section 14 of the 2015 Act. There are a number of matters which distinguish it from cases where standalone applications are pursued in the magistrates' courts. One of the factors which motivated the court in Wabelua to dilute the original orders imposed was that the defendants had already been convicted of an offence and the STPO was imposed immediately on sentence. There were therefore no additional findings of fact made save for those which formed the basis of the original convictions. Each defendant was already serving a lengthy prison sentence, and the period between the qualifying conduct and release was extensive. As the court explained, it had to consider whether the risk was 'sufficiently addressed by the nature and length of the sentence imposed' and by the other controls on the defendants such as the fact that they were already barred by statute from working with children. It is accordingly arguable that there may be more justification for stringent prohibitions being attached to a STRO or section 15 on application STPO in circumstances where the defendant is acting in a way to engage the need for immediate preventive measures.

6.1.7. As Holyrode LJ notes ([36](d)) an important consideration was the very fact that once released from prison the chief officer of police would be able to apply for an STPO under section 15 if further concerning behaviour came to light. The prohibitions must nevertheless still be proportionate.

6.2. Exclusion zones' and draft order

6.2.1. Where a geographical boundary is imposed – effectively an exclusion zone for defined periods – this should be clear and reflected on a map. The boundaries should be justified by reference to local considerations and what purpose is intended to be achieved. If, as in the example in this Guidance, it is directed at preventing access to children at defined places (a school and local authority residential home) the boundary should reflect actual roads and junctions so there is certainty, rather than a 'radius' from a fixed point or cutting half way across roads. Consideration should be given to where the subject of the order lives and, where necessary, preventing access by the subject to areas where grooming may occur such as bus stops and newsagents.

6.2.2. A draft order can be found at Appendix 2.

6.2.3. These orders are recorded on the **PNC** and each force should have its own management and monitoring system (just as it does in relation to orders under the Sexual Offences Act 2003). If the order contains travel restrictions it should be added to the **NBTC**.

6.3. Foreign travel prohibitions

6.3.1. Under each type of prevention order the court has the power to impose a foreign travel prohibition prohibiting the defendant from travelling to any country at all, or from travelling to specific countries identified within the order (sections 18(2) and 25(2)). If the former, the order must also contain a term requiring the defendant to surrender their passport as soon as reasonably practicable to a police station specified within the order (sections 18(4) and 25(4)). These prohibitions must also only be imposed for a period of not more than 5 years although this period may be extended on subsequent application.

6.3.2. There is nothing within the 2015 Act which indicates that a foreign travel prohibition is solely designed for cases involving offending with an international element. There is also some authority – in relation to SHPOs under the Sexual Offences Act 2003 – that such a prohibition can be attached to an order even where all of the offending behaviour took place within this jurisdiction but where there is a risk that the defendant would commit offences abroad and/or where the defendant has previously absconded to another country (R v Cheyne [2019] 2 Cr App R (S) 14). This is important because while in county lines cases the offending will usually take place within this jurisdiction, if the defendant nevertheless has strong links to another country, or has previously absconded abroad, it may be appropriate to seek a foreign travel prohibition.

6.4. 'Notification requirements' as to names and addresses

6.4.1. The other positive terms which can be imposed are 'notification requirements' pursuant to sections 19 or 26. These are limited requirements which oblige the defendant to notify the police within 3 days of their name(s) and address(es) and to notify again if those details change. These are the only positive requirements which can be attached to the order, save for the requirement to hand over passports where a foreign travel prohibition is included, and are designed to assist in the enforcement and monitoring of the other terms.

6.4.2. Where the order is directed at prohibitions addressed in the legislation itself – e.g. the notification requirements – the terms of the order can usefully follow the language of the legislation. In other respects, so long as the tests of necessity and proportionality are met, a starting point may be the statutory language of notification requirements under other prevention order regimes, for example the Sexual Offences Act 2003 notification requirements. These are automatic on conviction under that regime. Whilst there is no equivalent under the 2015 Act, the language is clear and use of it will promote consistency.

7. Enforcement

7.1 Once a STPO or STRO has been made by the court the next question becomes how best to ensure that the prohibitions contained therein are monitored and enforced and any breaches properly dealt with.

7.2 This should always be considered prior to the application for an order being lodged and the unit within the relevant police force, NCA, or other law enforcement body which will be responsible for its enforcement should be involved in the process. The offending and enforcement areas may be different. In such cases, while the area within which the defendant resides must apply for the order and should be the principal police force responsible for monitoring compliance, the forces within the other affected areas should also be kept informed of the application process. It will be appropriate to have in place a clear system for ongoing information sharing and recording, not least between NCLCC SPOCs.

7.3 The NCLCC can assist with this in a number of ways. It can help police forces act jointly through its co-ordinators in making an application, and has intelligence analysts and an 'Orders Team' which can help individual forces and officers to share intelligence and information once an order has been made.

7.4 The terms of the order should be readily accessible to patrol and other officers in relevant force areas. There should be proactive enforcement. Breaches should be documented and decisions as to prosecution taken expeditiously.

7.5 Expedition is especially important when an order has been obtained against and breached by a young person. The CPS Guidance 'Youth Offenders' (updated 28 April 2020) makes clear that proceedings against youth offenders must be dealt with expeditiously and avoid delay: the guidance '… has at its core the principle that there is little point in conducting a trial for a young offender long after the alleged commission of an offence when the offender will have difficulty in relating the sentence to the offence.'

7.6 More generally, there is power under the 2015 Act to apply to the court to vary or discharge any order. This should be an active process. If, contrary to expectations when the order was made, the necessity for it has clearly ended an application should be made to discharge it. Similarly, evidence may emerge that justifies a variation of the existing terms if they are not meeting their objectives. The same principles as to application and admissibility apply to these applications to vary as to the original order.

8. Conclusion

8.1 As can be seen from the foregoing guidance, these orders represent an opportunity for the police proactively to safeguard children and vulnerable adults who are at risk of serious harm from county lines criminality. As purposive civil prevention orders the circumstances in which they may be obtained, and the evidence that may be used, are deliberately much wider than that applicable to criminal proceedings. Orders may be obtained where there have been no criminal proceedings; will be no criminal proceedings; or even following acquittal. They are directed at preventing the serious crime of human exploitation, and the harm to others – usually children and vulnerable adults – before it occurs.

8.2. Evidence and experience suggest that civil prevention orders of this type (e.g. sexual risk orders) have not been used sufficiently by police forces where available. Their use will require close integration by the police with local organisations, statutory bodies and schools. This is necessary and progressive policing and will require strong leadership within every force area. The philosophy is one of disruption and harm prevention. This in turn will require understanding across policing. This guidance is directed at promoting this understanding as well as delivering practical assistance. The NCLCC will play its part in delivering these orders as intended in every force area. Existing areas of best practice show that it works and this best practice must be established nationally.

8.3. Coupled with prevention of harm is the need to take a proportionate approach based on the facts of each individual case. Those against whom prevention orders are necessary may sometimes be children and/or victims of exploitation themselves. The necessary integrated approach will require other forms of intervention to be considered to promote the extraction of that child from the county line. This is challenging policing, demanding an informed and progressive approach.

8.4. These prevention orders – reasonably characterised as innovative proactive safeguarding – are one of a number of tactics. Through this guidance their use is intended to increase significantly: they are an effective way of addressing risk and preventing exploitation. This guidance will be updated, and further guidance and support is available through the NCLCC, local force legal teams, and specialists within modern slavery units.

9. Appendices

Appendix 1a - statement
Appendix 1b - map
Appendix 2 - draft orders
Appendix 3 - draft directions
Appendix 4 - draft hearsay notice
Appendix 5 - template application.

Appendix 1a

IN THE [NAME] MAGISTRATES' COURT

IN THE MATTER OF

CHIEF CONSTABLE OF [NAME OF POLICE FORCE]

-and-

[DEFENDANT/SUBJECT NAME]

WITNESS STATEMENT OF [OFFICER'S NAME]

NOTE

This is an example statement only. Each application and set of circumstances is unique and the associated statements served in support must be adapted accordingly. Advice should be sought from the Force Solicitor/Legal Services as necessary

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The above header is also only an example and your force may have its own statement pro forma. A Section 9 pro forma would suffice but be aware that Section 9 of the Criminal Justice Act 1967 does not apply in civil proceedings in the magistrates' courts.

Declaration

This statement is true to the best of my knowledge and belief. It is made in support of the application by the Chief Constable of [*insert force name*] for (1) an interim slavery and trafficking risk order; and (2) a slavery and trafficking risk order.

Qualification and role

1. In terms of my relevant experience and qualifications, I attested as a police constable in [*year*] and have since worked in the following roles [*set out brief summary, with emphasis on any (i) public protection; (ii) intelligence; and (iii) risk assessment roles*].

2. In relation to the policing of county lines, and the use of risk and prevention orders under the Modern Slavery Act 2015, I have the following experience and training [*set out summary of relevant matters in chronological order, with dates included*]. I am the dedicated specialist single point of contact ('SPOC') within the Force for the National County Lines Co-ordination Centre ('NCLCC'). In this capacity I have

acquired and maintain specialist knowledge of the patterns of county lines offending by reference to both open source and non-public relevant intelligence and information. I have received specialist training from the NCLCC and receive regular updates as to county lines offending and guidance as to the use of the various forms of civil prevention orders under the Modern Slavery Act 2015. I have applied these principles in relation to the immediate applications.

The application

3. This statement is in support of an application for a Slavery and Trafficking Risk Order ('STRO') and an Interim Slavery and Trafficking Risk Order ('ISTRO') in relation to [*insert defendant/subject name*].

4. I confirm that all available material has been reviewed and that either (1) there is no disclosable material; or (2) that all such material has or will be disclosed. As necessary certain material has been [gisted] and/or [reflected in intelligence profiles] and I anticipate that the admissibility of this material will be addressed by way of separate application to the Court.

5. The background to the immediate application is that county lines are running between towns in the [*insert force area*] and London. The predominant pattern is that children are recruited in the local town and persuaded by their recruiters (on various bases, including for commercial reward) to travel to London to collect packages of Class A drugs which are then distributed on their return to their local towns. This distribution takes different forms, but includes the child courier distributing drugs directly to users, or being housed in the properties of adult drug users to distribute deals to users who visit the premises. The child courier is directed by those running the county line, who in turn communicate with users directly by a dedicated mobile telephone number.

6. This activity is criminal and intrinsically dangerous for the child couriers. Putting aside the violence, forced labour and drug addiction which children caught up in these criminal networks frequently experience, such recruits, if arrested, are liable to prosecution even if they may seek to establish a defence to certain offences under section 45 of the Modern Slavery Act 2015. Even if acquitted, exposure to the criminal justice system causes serious developmental and/or other forms of harm to the child affected. Those recruiting them for the purpose of this activity commit exploitation offences under the Act. Such exploitation offences are not covered under section 45.

7. These criminal networks are difficult to police and a significant degree of cooperation between police forces is often required because, by their very nature, county lines are often spread across more than one policing area [*a paragraph along these lines will usually be helpful in cases where one police is bringing an application in relation to a person who resides in their policing area but where the investigation was carried out by another force*].

Material relating to the application

8. This statement is based on statements and exhibits provided to me by [*if a different police force has investigated and compiled the evidence please say so here*].

9. I have considered the evidence served alongside this application with the investigating officers from that force. This includes:

   (1) Statement of [*name liaison officer at school*]

   (2) [*List other statements and material, with roles/organisations reviewed subject to preserving anonymity*].

10. My analysis of the evidence is set out below.

Analysis of the evidence

(a) The [*name*] county line

11. It is clear from the underlying intelligence supplied by the force intelligence officer, and addressed in more detail in his/her statement [*reference statement*], that in relation to the relevant county lines those in control are predominantly targeting children at specific schools in [*town X*].

12. Two predominant bases of recruitment have been identified in this case.

13. Firstly, boys aged between 14 and 17 years are approached by recruiters with the offers of financial reward for acting as couriers and distributors on the county lines. Those recruiting them appear to know the boys in question from prior association at the school, and/or from local knowledge based on living in the same area.

14. The majority of the boys recruited are particularly vulnerable to such inducement because they are part of the school's behavioural unit and their record of attendance at school is poor. These and others may also have a limited level of control from their parents or guardians at home, and others have been recruited from local authority care [*include individual references to any supporting material here*].

15. As the statement from [*name liaison officer at school*] demonstrates these boys are known to have been approached at or around the school by recruiters and several have seen a further deterioration in school attendance and engagement [*provide dates of specific incidents*]. Without effective intervention these boys are likely to engage in serious criminality for reward on county lines, and expose themselves to significant risks of serious physical and psychological harm. The statement from the school indicates

that it does not believe that the school can take effective measures to address these risks, most specifically because the recruitment appears to occur outside the physical boundary of the school. There children are being invited to meet with more senior figures operating the county line and are being provided with disposable mobile telephones ('burner phones') for use when contacting the group.

16. Secondly, girls aged between 12 and 16 years are being targeted. In some cases reliable police intelligence suggests they are groomed by gifts and the initial status as girlfriends of those recruiting them, but are thereafter manipulated into acting as drugs couriers as described above. The police have also conducted interviews with girls at the school which corroborate this account and relate directly to the actions of [*defendant's name*]. Transcripts of the interviews have been provided. The girls shall be referred to as Student A and Student B as they wish to remain anonymous based on fears expressed both by them and their parents for their safety. However, they provide a clear first-hand account of how the recruitment works in practice [*provide dates of any specific matters relied upon*].

17. A significant proportion of these girls are known to be at acute risk of such recruitment because of the lack of support at home from those in positions of responsibility: see statement from the school liaison officer [*name and reference*].

18. As the evidence from [*the local authority liaison officer*] demonstrates, children in local authority care are particularly vulnerable to recruitment to county lines, and are being targeted by those responsible for the county lines.

(b) Necessity of the order

19. The subject of the present applications for an ISTRO and STRO is 17 years of age and attended the school until he was expelled [*insert date*] for repeated violent conduct towards teachers and fellow pupils along with reports that he was involvement in the recruitment of students as described above. Those reports are detailed within the statement of [*name of school liaison officer*]. The police have also secured and attached redacted copies of the most recent reports which led to his expulsion. While he is resident at [*insert address*] he effectively determines his activity independently of his mother and stepfather. In my opinion it is not credible to seek to address his role in the county line through parental direction or advice.

20. The subject has knowledge of those attending the school; and/or living locally; and/or in local authority care who may be targeted for recruitment. Equally I am satisfied that the intelligence and other material which supports this application demonstrates that he is approaching all these children for the purpose of recruiting them to county lines activity rather than as a continuation of any previous friendship.

21. There is also evidence [*reference that material/intelligence here*] that he has been using burner phones and distributing them for use by other students. As the school liaison officer explains, more than one of the boys about whom teachers had expressed concerns (see paragraph 14 above) were seen in possession of Pay As You Go ('PAYG') devices which were not provided to them by their parents [*reference statement of school liaison officer*]. When asked about the devices the boys refused to explain where they had originated. Student A also suggests in her statement that an older boy, who matches the defendant's description, spoke to her friend outside the school gates on [*date*] and said he would provide one of her friend's with a phone. She describes how he attempted to recruit her friend and asked her to meet him outside of school if she wanted to earn some money. When police attended [*defendant's name*] house to relay their concerns to his parents on [*date*] the officers saw four mobile devices in his bedroom which his mother confirmed belonged to him. Unfortunately the officers were not conducting a search and none of the devices were seized. That visit is detailed in the statement of [*officer's name*].

22. I am satisfied based upon the material which I have considered that there is a clear risk that the defendant will commit a slavery or human trafficking offence unless subject to an STRO. I am also satisfied that the terms of the orders sought are both necessary and proportionate in the circumstances.

23. I have considered whether there is any other form of intervention than the orders sought that could achieve the objective of protecting children in the categories identified from the risk of harm associated with recruitment to county lines offending. I am wholly satisfied that it is not either practicable or realistic to seek to achieve the objective through intervention by his parents/guardians; the school authorities; the local authority responsible for him and those resident at the specified local authority accommodation, or any combination of the above.

24. Neither is it practicable or realistic for the police to prevent future association between the subject of the application and those identified at risk of recruitment by him without the orders sought. Without the orders sought there would be insufficient powers for the police effectively to intervene if the association were observed. The nature of some of the underlying evidence is such that it would not be admissible in criminal proceedings, although the possibility of criminal proceedings remains under continuing review.

(c) <u>Interim Slavery and Trafficking Risk Order</u>

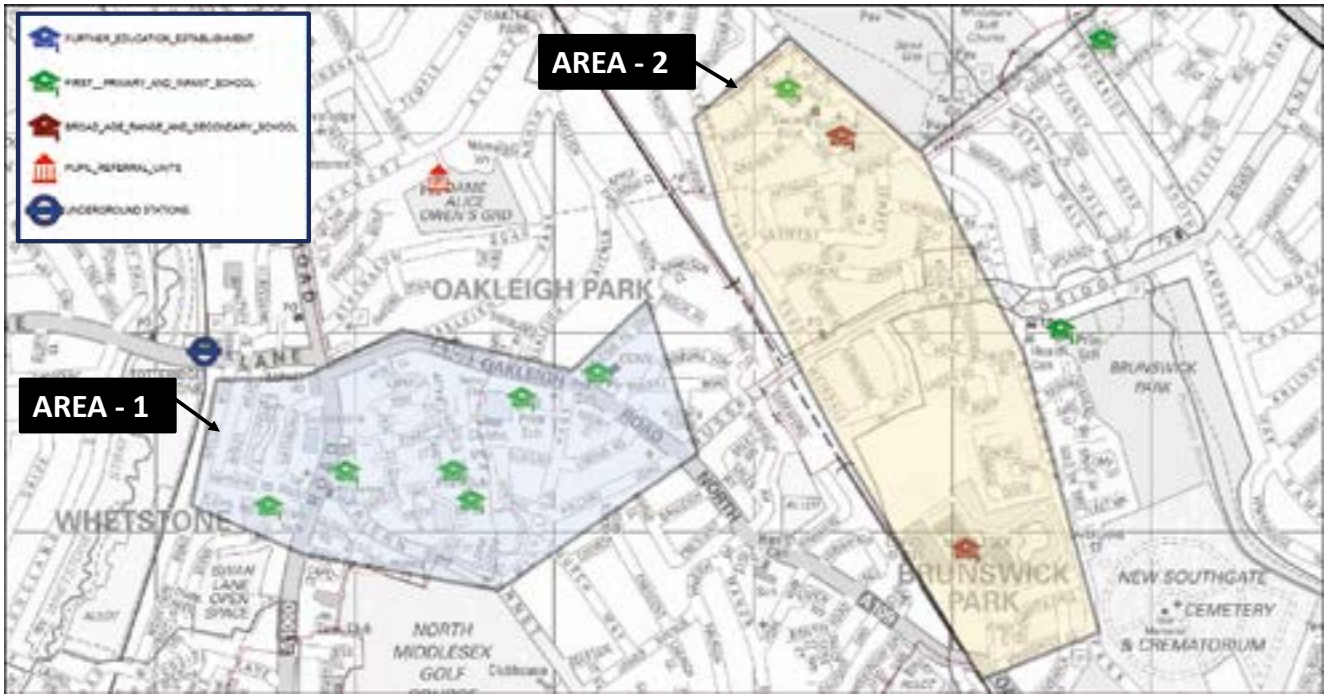
25. I have separately considered whether it is 'just' to impose an ISTRO until the application for the full order is determined. This is a case in which the risk of recruitment of others in the specified categories by the subject is both significant and immediate and where the physical or psychological harm to those individuals would be serious.

26. Accordingly an interim order is sought to prevent harm pending determination of the application for the risk order.

[**End**]

[**See separate document for draft interim risk and risk orders**]

Appendix 1b



Appendix 2

NCLCC STPO STRO Orders Guidance 2021:

Draft risk orders to accompany draft model statement

MODERN SLAVERY ACT 2015

-

DRAFT ORDERs

-

(1) INTERIM SLAVERY AND TRAFFICKING RISK ORDER (s. 28);
(2) SLAVERY AND TRAFFICKING RISK ORDER (s. 23)

Note: This is an example set of orders only. Each application and set of circumstances is unique and the associated statements served in support must be adapted accordingly. Advice should be sought from the Force Solicitor/Legal Services as necessary. The different minimum and maximum times limits under the statute should be checked (section 24 prohibitions; section 25 foreign travel; section 26 notification of names and addresses)

Interim slavery and trafficking risk order: section 28

[Name of defendant]

From [*the date of the Order*] until [*set out a date e.g. 7 days beyond the date fixed for the hearing of the substantive STRO application*]:

1. You must not contact, directly or indirectly, through any means any child (that being a person under the age of 18 years') who you know or suspect attends the pupil behavioural unit at [*named school or schools*];

2. During the term dates for [*named school or schools*] you must not attend the area marked as **Area 1** on the accompanying map between the hours 0700 – 1100 and 1500 – 2000;

3. You must not contact, directly or indirectly, through any means any child (that being a person under the age of 18 years') who you know or suspect is resident at [*named local authority residential addresses*];

4. You must not visit at any time the area marked as **Area 2** on the accompanying map in the locality of [*local authority residential addresses listed*];

5. You must not own or possess any mobile phone handset or SIM card, or any computer, unless (i) it is registered with your service provider in your full name and at your current address, and (ii) details of its make, model and identification number have been provided to the police within three days after you acquire it.

6. You must notify your home address to the nearest police station, and notify any change of that address to the police within 3 days after you move (*n.b. this is the time period specified under section 25 of the 2015 Act*)

[End]

Slavery and trafficking risk order: section 23

[Name of defendant]

From [*the date of the Order*] until [*set out a fixed period as under the statute 'or until further' order' where justified*]:

1. You must not contact, directly or indirectly, through any means any child (that being a person under the age of 18 years') who you know or suspect attends the pupil behavioural unit at [*named school or schools*];

2. During the term dates for [*named school or schools*] you must not attend the area marked as **Area 1** on the accompanying map between the hours 0700 – 1100 and 1500 – 2000;

3. You must not contact, directly or indirectly, through any means any child (that being a person under the age of 18 years') who you know or suspect is resident at [*named local authority residential addresses*];

4. You must not visit at any time the area marked as **Area 2** on the accompanying map in the locality of [*local authority residential addresses listed*];

5. You must not own or possess any mobile phone handset or SIM card, or any computer, unless (i) it is registered with your service provider in your full name and at your current address, and (ii) details of its make, model and identification number have been provided to the police within three days after you acquire it.

6. You must notify your home address to the nearest police station, and notify any change of that address to the police within 3 days after you move (*n.b. this is the time period specified under the 2015 Act*)

[End]

Appendix 3

IN THE [NAME] MAGISTRATES' COURT
B E T W E E N:-

[APPLICANT'S NAME]

-v-

[DEFENDANT'S NAME]

DIRECTIONS

BEFORE [[DEPUTY] DISTRICT JUDGE / LAY BENCH], sitting at the [COURT NAME]

IT IS ORDERED THAT:

1. The Applicant must serve on the Defendant any further witness statements and other evidence on which it intends to rely, in addition to any hearsay notices, by no later than 4pm on [DD/MM/YYYY].

2. The Defendant must serve any evidence on which it intends to rely, in addition to any hearsay notices, by no later than 4pm on [DD/MM/YYYY].

3. The Court shall, if necessary and upon receipt of any application(s) to cross-examine witnesses in respect of whom hearsay notices have been served, fix a case management hearing in accordance with Rule 4(3) of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999.

4. The final hearing is fixed for [DD/MM/YYY] with a time estimate of 1 day.

5. Any written submissions relied upon by either party must be filed and served no later than 7 days prior to the final hearing.

6. The Applicant shall be responsible for preparing an indexed and paginated bundle which must be filed and served no later than 7 days prior to the final hearing.

7. Either party may apply to the court to vary these directions giving not less than 48 hours' written notice to the other party.

Dated:

Signed:

Appendix 4

IN THE [NAME] MAGISTRATES' COURT

B E T W E E N :

[NAME OF CHIEF CONSTABLE]

-and-

[NAME OF DEFENDANT]

HEARSAY NOTICE SERVED
PURSUANT TO S.2 CIVIL EVIDENCE ACT 1995 AND
PARAGRAPH 3 MAGISTRATES' COURT (HEARSAY EVIDENCE
IN CIVIL PROCEEDINGS) RULES 1999

---

1. This Hearsay Notice is served in relation to proceedings before the Magistrates' Court brought against you by the Applicant under [*section 14 [STPO] or section 23 [STRO] as the case may be*] of the Modern Slavery Act 2015 pursuant to which a [*STPO or STRO*] is sought.

2. It is the intention of the Applicant to adduce hearsay evidence at the substantive hearing of this application.

3. Such hearsay evidence is as follows: -

   (a). [*STATEMENT A*]

(b). [*STATEMENT B*]

(c). [*STATEMENT C*]

4. [*Provide brief reasons why you are seeking to rely on the evidence as hearsay, for example: that it is disproportionate to call all of the witnesses; that some of the witnesses are vulnerable or in fear, etc*].

5. You have 7 days from the date of service on you of this notice to make an application to the clerk of the Magistrates' Court for leave to call the witness(es) refeenced at paragraph 4 above for the purpose of cross-examination.

Date: [*Insert date*] Signature: [*Force lawyer*]

Appendix 5

Application for a Slavery and Trafficking Risk Order and/or Interim Slavery and Trafficking Risk Order (Modern Slavery Act 2015 s23 and s28)

…….. Magistrates' Court
[*Code*]

Date: ……

Defendant's name:

Defendant's address:

It is alleged that the defendant has acted in such a way that there is a risk that a slavery and trafficking offence will be committed and that the order is necessary to protect the public, or any particular member(s) of the public, from the harm which would be likely to occur if he committed such an offence.

Short description of act(s), including date(s), and further comments:

[*Provide a short description of the acts which you are able to prove to the criminal standard and which are said to give rise to a risk that the defendant will commit a slavery or human trafficking offence. It is important, also, to provide the dates on which the act(s) are alleged to have taken place and to cross-reference to the evidence which forms the application*]

[*Include a paragraph along the following lines: 'See statements of [OFFICER 1], [OFFICER 2] and [CIVILIAN WITNESS 1] and accompanying exhibits'*]

Information relating to an application for an interim slavery and trafficking risk order:

[*The same application form should be used to apply for both the final and the interim order (if applicable). The latter is a temporary remedy designed to offer immediate protection to those at risk prior to the final hearing at which the evidence will be heard and the full order will either granted or refused*]

[*This section should be used to explain, in brief, why it is "just" in the circumstances to impose an interim order to protect members of the public ahead of the final hearing. This will be the subject of argument at the initial hearing, in the event that the imposition of a full order is contested. Where there are particular reasons why it is necessary to have an order in place immediately – for example, the defendant poses an immediate and ongoing risk to vulnerable individuals – they should be made clear on the face of the application*]
Accordingly an application is made for: a slavery and trafficking risk order and an interim slavery and trafficking risk order, containing the following prohibition(s):

IT IS ORDERED THAT [Defendant's name] is prohibited from:

1.
2.
3.

Applicant's name:

DC Simon Smith on behalf of,
The Commissioner of Police for the Metropolis

Applicant's address:

[Police Force / NCA]
[ADDRESS]
[POSTCODE]
[DX NUMBER]

Telephone number:

who [upon oath] states that the facts given in this form are true to the best of his knowledge and belief.

Taken [and sworn] before me

Justice of the Peace
[Justices' Clerk]

Supporting documentation is attached to this form.

National County Lines Coordination Centre