

## Scoping document:

A follow-up inspection of the effectiveness of Crown Prosecution Service policy and guidance for the handling of cases involving the National Referral Mechanism

## National Referral Mechanism – Scope for a follow-up inspection

1. HMCPSI conducted an inspection of the effectiveness of Crown Prosecution Service policy and guidance for the handling of cases involving the National Referral Mechanism (NRM) in 2023. The inspection was published in July 2023. [2023-07-25-CPS-GUIDANCE-NRM-REPORT-Final.pdf](https://www.justiceinspectorates.gov.uk/2023-07-25-CPS-GUIDANCE-NRM-REPORT-Final.pdf) ([justiceinspectorates.gov.uk](https://www.justiceinspectorates.gov.uk))

## Background to the original inspection

2. In December 2021, HM Government released a report titled 'From Harm to Hope: a 10-year drugs plan to cut crime and save lives'. The report identified breaking drug supply chains as a priority for the government. According to the plan, this would be achieved by: "closing 2,000 county lines gangs and disrupting 6,400 organised crime activities".
3. "County lines" is described in the Crown Prosecution Service policy as: "County lines is operated by gangs from urban areas ... introducing a telephone number in a new area to sell drugs directly at street level. Potential buyers telephone the number and local runners ... The 'runners' are almost invariably children, often boys aged 14 to 17 years, who are groomed with the promise of money and gifts and deployed or forced to carry out day to day dealing. Runaway and missing children are also used by gangs to expand inner city drugs operations into county towns."
4. Due to the frequent exploitation of vulnerable individuals, when reviewing a county lines drugs case, the prosecutor should consider whether any suspect has entered into the offending voluntarily or has been threatened, manipulated, or groomed. If the suspect fits the criteria, they may have a defence to a criminal charge. Prosecutors should also take into account section 45 of the Modern Slavery Act 2015, which covers the law on duress, as well as public interest considerations.
5. The Modern Slavery Act 2015 introduced a statutory defence to some behaviours carried out by a victim of modern slavery or trafficking, which would otherwise be criminal offences. The National Referral Mechanism (NRM) is "a framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support. In 2022 there were 16,938 potential victims of modern slavery referred to the Home Office, of which 41% (7,019) were made on behalf of a child.

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6. When information becomes available indicating that a suspect in a criminal allegation might be a victim of slavery or trafficking, it is important that a referral to the Home Office is made as soon as possible. Ideally, the evidence of the referral would be included in the police file presented to the CPS when charges are being requested. This is because a positive conclusive grounds decision may generate a large amount of relevant unused material that must be shared with the defence. Such material can have significant implications for a prosecution, particularly on the application by the CPS of the Code for Crown Prosecutors.
7. As with all prosecutions the prosecutor must apply the two-stage test set out in the Code for Crown Prosecutors, the evidential and public interest tests. When the suspect is a potential victim of modern slavery or trafficking, CPS guidance sets out a four-stage approach that the prosecutor must take when applying the Code. This four-stage approach sets out specific questions relating to Modern Slavery (county line) cases.

#### The 2023 inspection

8. Our original plan when deciding to inspect County Lines or cases where there was a defence due to the NRM conclusive grounds decision was to assess the quality of CPS decisions in county lines/NRM cases. However, after much work in trying to identify such cases to examine it became evident that there were not enough cases for us to examine to provide a meaningful evidence base which post-dated the December 2021 policy revision that set out the four-stage approach (para 8 above). As a result, the inspection focused on the effectiveness of the CPS policy regarding the handling of cases involving county lines and the National Referral Mechanism (including making an assessment of the quality of the revised guidance).
9. To make our assessment the framework for the inspection assessed the effectiveness and accessibility of the CPS policy, as well determining whether lawyers in roles dealing with county line/ NRM cases had a clear understanding of the policy and how to apply it. The primary inspection questions were: does the revised CPS policy support the prosecution of county line cases, leading to effective management and decision-making, and is there a clear awareness at operational level of the revised policy?

#### Findings and recommendations 2023 inspection

10. The inspection highlighted that there was genuine commitment at all levels, including personally by the DPP to ensuring that county line NRM was seen as a priority. There was a proactive approach that ensured that policy and guidance

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kept abreast of updates and developments, and there had also been significant effort to revise policies. The CPS worked with others across the criminal justice system, in many cases taking the lead with partners, to develop guidance, test, and develop the law in this space.

11. We concluded that large parts of the guidance documents are extremely helpful, particularly the sections on the four-stage approach to applying the Code for Crown Prosecutors. The four-stage test was developed by the CPS to enable prosecutors to navigate their responsibilities under domestic and international law and has been recognised and endorsed by the Court of Appeal in several leading judgments.
12. We found that guidance for cases in the pre-charge stage could be improved. Guidance and some additional practical advice, including how to manage delays in receiving a conclusive grounds assessment, would be helpful. This additional practical guidance would be beneficial for cases dealing specifically with section 45 defences.
13. Prosecutors dealing with cases also highlighted concerns that the legal guidance is extremely lengthy which can be impractical and daunting when trying to deal with large numbers of cases. Some prosecutors also indicated that when they did look for guidance, they could not be sure that they had located the most up-to-date information.
14. We made four recommendations.
  - a. By 30 September, the CPS should remove any outdated and inaccurate content from the internal CPS hub
  - b. By 31 October 2023, the CPS should include a link to the guidance on the section 45 defence and the non-punishment principles in the Children as suspects guidance, thereby ensuring that operational support is available across all casework types.
  - c. By 31 December 2023, the CPS to revise, restructure and retitle the current guidance to make it more accessible to volume crime units.
  - d. By 31 December 2023, the CPS to develop a system of assurance that can prove that CPS Areas are taking a consistent approach in the prosecution of cases involving the section 45 defence and the application of the non-punishment principles.

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## The follow-up inspection

15. In line with the HMCPSI inspection strategy we may use follow-up inspection as a means to assess progress and consider whether the recommendations made have been implemented and resulted in improvement or made a positive impact.
16. As well as follow-up inspection there are other arrangements in place to support the assurance process. The inspectorate and the CPS meet quarterly to discuss progress on the implementation of recommendations and discuss evidence of the impact of change before the CPS recommends closure of recommendations. The CPS have indicated that the four recommendations made in the original inspection have been implemented and the necessary changes have been embedded. On a risk-based approach we have decided to undertake a short follow-up inspection to independently assess the progress made.

## Inspection Question

17. Has the CPS successfully implemented the four recommendations made in HMCPSI's report "An inspection of the effectiveness of Crown Prosecution Service policy and guidance for the handling of cases involving the National Referral Mechanism" published in July 2023.

## Follow-up methodology

18. The follow-up inspection will assess progress and impact against the four recommendations only. Given the focus of the recommendations there will be no file examination. There will be limited on-site activity to support assessment of recommendations 3 and 4 only.

Recommendation.7;By.96.September.the.CPS.should.remove.any.outdated.and.inaccurate.content.from.the.internal.CPS.hub;

19. The follow-up inspection will review of the current guidance to assess the accuracy of guidance. A desk top review of current guidance will be conducted by an inspector – assessing whether the current guidance and any linked guidance is up to date and includes only appropriate content. The assessment will set out a judgement based on the review which will be marked as achieved or not achieved depending on findings.

Recommendation.8;By.97.October.8689.the.CPS.should.include.a.link.to.the.guidance.on.the.section.01defence.and.the.non\_punishment.principles.in.the.Children.as.suspects.guidance;thereby.ensuring.that.operational.support.is.available.across.all.casework.types;

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20. The follow-up inspection will examine whether guidance on the section 45 defence and the non-punishment principles in the Children as suspects guidance contains a clear link. The Children as suspects guidance will be located and links checked by the inspector. An assessment will be marked as achieved or not achieved depending on findings.

Recommendation.9;By.97.December.8689?the.CPS.to.revise?restructure.and.retitle.the.current.guidance.to.make.it.more.accessible.to.volume.crime.units;

21. The follow-up inspection will make an assessment of current guidance to assess its accessibility, and ease of use. Current guidance will be examined, and an assessment made by the inspector of the ease of understanding, and how navigation and signposting helps aid understanding and usage. To assess the impact of whether the changes made have improved accessibility to legal staff dealing with volume crime work (magistrates' court units only) a series of short focus groups will be conducted in two CPS Areas. An inspector assessment overlaid with evidence from staff engagement on usability and accessibility will provide for an assessment of achieved, partially achieved or not achieved.

Recommendation.0;By.97.December.8689?the.CPS.to.develop.a.system.of.assurance.that.can.prove.that.CPS.Areas.are.taking.a.consistent.approach.in.the.prosecution.of.cases.involving.the.section.001defence.and.the.application.of.the.non\_punishment.principles;

22. The follow-up will assess the systems and processes that have been developed to support assurance mechanisms. The inspection will request evidence from both Headquarters and two CPS geographic Areas to test the assurance mechanisms developed. Using the provided evidence the inspector will make an assessment of the system of assurance. To assess the impact of local (CPS Area) assurance mechanisms an interview will be conducted identified leads for NRM work in two CPS Areas. The inspector assessment will provide for an assessment of achieved or not achieved.

CPS Areas to be visited

23. The original (2023) inspection included visits to five CPS Areas: East Midlands, East of England, Mersey/Cheshire, London North and London South.
24. Given that we will be using on-site visits to assess in part recommendations 3 and 4 it would be appropriate to include an Area from the original (2023) inspection and another Area not included in 2023. This will allow for as an assessment of whether change has been made in other Areas than those that

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were subjected to the original inspection. The two Areas to be included for the short on-site visit are London North (as the Area who was in the original inspection) and South East as the other Area.

## Interviews/focus groups/national interviews

25. There will be a short (no longer than 30mins), targeted focus group with up to six magistrates' court unit prosecutors to enable testing of recommendation 3. Additionally, there will also be a one-to-one interview with the nominated Area lead for modern slavery to discuss local assurance (to test recommendation 4). On site visits will be conducted half a day (morning or afternoon depending on availability of Area lead).

26. To support the evidence for recommendation 4 it may be appropriate to interview the national lead for modern slavery. Arrangements will be made to accommodate such an interview if it is deemed necessary.

## Document request

27. To support the assessment of recommendation four the following documents will be requested and will be analysed as part of the inspection:

- a. Assurance logs from London North and South East relating to Section 45 cases
- b. Assurance documentation held by HQ to support national consistency
- c. Any national instructions or guidance that has been issued since the original inspection to support assurance and consistency
- d. Last 6 sets of minutes of the national monthly modern slavery meetings

28. CPS policy and guidance will be accessed using the CPS intranet – there will be no specific request or support needed as part of the follow-up inspection.

## Resource and timescales

29. The follow up inspection will be carried out by one inspector. Quality assurance and challenge of judgements and findings will be provided by a senior legal inspector.

30. On site activity and guidance and policy review will be completed by the end of November 2024 and the final report published in January 2025.