

Presentation Ms Pam Bowen
Cross-Border Cooperation in Claiming Compensation
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Enhancing compensation via prosecution

Ensuring justice through successful prosecutions is just one way in which we can respond to human trafficking and slavery – it's an important one as it brings justice for victims, as well as safeguarding future potential victims; it sends out a message that this despicable crime won't be tolerated by our society; and we're able to confiscate assets and forfeit property to prevent it from being reinvested in organised crime and to compensate victims. But – our response should not and cannot just be predicated on a Criminal Justice response which is what many governments promote – including the UK govt.

The picture over the last few years is positive - one of increasing investigations by law enforcement and increasing numbers of victims identified leading to an increase in prosecutions and convictions.

But, we're also aware that there are so many more cases not being prosecuted because victims are not supporting investigation and prosecution. Only a little over 1% of victims being supported by the government contracted organisation go on to support a criminal prosecution.

This can be for a variety of reasons – many don't want to go to court; but justice may be achieved through other remedies – for example we know that some victims of domestic servitude go on to employment tribunals.

But we are also bringing more victimless prosecutions – falling into 2 types –

1. Victims are identified but we have sufficient evidence – without having to call them to provide testimony; and
2. Secondly, victims aren't identified but we can prosecute on the basis of evidence obtained by covert techniques – increasingly relying on digital and financial evidence, which is great – but victims lose out. Assets may be identified and confiscated – but goes straight to the government.....

This then highlights the points made in the first panel by Albin Dearing –that many criminal justice actors see criminal justice as being between the State and offender. There are significant international cooperation provisions which highlight the entitlements and rights of victims to access compensation and legal redress for the harm and loss they have suffered as a result of their trafficking and exploitation. Without confiscation, securing and realising assets for compensation to victims can be compromised.

Those provisions arise under

UN Convention TOC 2000 Art 25

Article 15 CoE Convention 2008 – Compensation and legal redress

But also for victims to have access to information in a language they can understand, on relevant judicial and administrative proceedings; and finally internal laws should provide for rights to legal assistance and to compensation.

For children, a legal guardian should be provided to act on their behalf.

EU Trafficking Directive 2011 Articles:

EU Directive 2012/29 on establishing minimum standards on the rights, support and protection of victims of crime, under Art 16 provides for the right to compensation and the right to legal advice and assistance to claim compensation provided by the country's internal law.

EU Directive 2014/24 on freezing and confiscating proceeds of crime is the most recent.

When I knew I was coming here I asked some of my colleagues what they thought their role was and their simple response was freeze assets, ask for compensation at court. I have to say that none of them deal with trafficking cases!! Fortunately, those that do deal with cases involving international cooperation know better. I thought I would run through briefly, the different stages at which the prosecutor can ensure that victims can access the compensation to which they are entitled:

1. Duty to investigate: for law enforcement, deciding not to investigate a crime that has been reported by a victim, can itself lead to civil action against State authorities for failing to investigate and prosecute those responsible. *(a number of case judgments in the UK) follows Rantsev and Cyprus & Russia*
2. Determine jurisdiction: whilst investigation is on-going, there are 3 ways:
Through a coordination meeting, determine -
 - Whether there should be a Joint or parallel investigation with the State where the perpetrator resides (JIT)
 - Take primacy for the prosecution and extradite the perpetrator to face charges in your jurisdiction; or
 - Assist the other State in prosecuting the offence (transfer of evidence)
3. Determine the scope of the investigation: how wide, who should be treated as a victim and who should face criminal charges. This will, of course, inform the identification of victims.
4. Need for cooperation between agencies during investigation which can support asset recovery to provide compensation – this could include Tax authorities, those providing State benefits.
5. Importance of financial investigation to trace and freeze assets.
Legal framework – 2014 EU Directive which harmonises the freezing, seizure and confiscation of the proceeds of crime is necessary to: trace proceeds of crime, preserve identified assets pending an order, obtain a confiscation order and enforce it.
6. Ensuring that all sources of evidence which can support / inform compensation are pursued. Medical and psychological evidence of the victim, seizure of material from defendants – money, mobile phones, receipts, banking evidence, PCs, seizure of vehicles, properties. Any assets sent out of the jurisdiction will be subject to MLA.

7. In considering the prosecution strategy in large cases, for example, it will be important to identify who should be treated as a witness and who should be charged and prosecuted. Significant investigations often result in victims, alpha victims and defendants operating at different levels.
8. Charging strategy for prosecutor: the selection of charges by the prosecutor and which perpetrators should be charged with which offence plays an important role in confiscation for the purposes of compensation. For eg. Ensuring that charges of human trafficking are not reduced or changed to other offences which don't protect the rights of the victim; but ensures that confiscation and forfeiture will apply and that assets can be seized for victim compensation.

By way of example, in the UK the number and choice of charges can have a dramatic effect on the value of a confiscation order, for example charging three offences instead of four; charging four offences to a value of under £5,000; or charging handling rather than money laundering may determine whether the defendant is deemed to have a criminal lifestyle.

9. Whilst every person who is a victim of human trafficking has a right to compensation, many victims cannot access it. But does the mere identification of a victim automatically lead to them being eligible for compensation? Do they have to participate in criminal proceedings and is it reliant on the trafficker being identified / arrested / prosecuted? If there are many victims and the prosecutor must restrict the offences on the indictment, will that effect ability to claim compensation?
10. The role of the prosecutor at sentencing – to request the court pay compensation.
11. Role of the prosecutor in confiscation:
 - Advise on the obtaining of investigative and restraint orders and conduct restraint applications;
 - Advise on the confiscation investigation and conduct confiscation proceedings in court;
 - obtain receivership orders (an equitable remedy whereby receivers are appointed by the court to protect real property, eg estate);
 - recover assets to satisfy a confiscation order by way of enforcement action in the country and overseas; recover assets on behalf of overseas jurisdictions in response to requests for Mutual Legal Assistance (MLA).
 - A restraint application may be made at any time following the commencement of the criminal investigation.
 - MLA can be used to obtain banking evidence; restrain and confiscate proceeds of crime.