

Dr Julia Murasziewicz Prof. Ryszard Piotrowicz Prof. Natalia Szablewska- Written evidence (MSA0033)

Three human trafficking researchers and experts are writing to provide input into the call for evidence into the impact of the Modern Slavery Act 2015 ('**MSA**');

Dr Julia Murasziewicz is the Head of Programme against Exploitation and Violence at Trilateral Research, a London based company developing ethical Artificial Intelligence ('**AI**') solutions and undertaking research to address complex social problems, including modern slavery and human trafficking ('**MSHT**'). Dr Murasziewicz has worked on the issue of MSHT since 2013 in an academic/research, civil society (as a case worker at safe houses), and project management capacity. Her PhD focused on the non-punishment and non-prosecution principle. She has published two books and over 20 peer-reviewed articles on the topic. Moreover, she has written court opinions, delivered training sessions in the UK and EU to defence staff law enforcement, NGOs and advised on NATO policy in the space of human trafficking and modern slavery. Today, with Trilateral, she works on developing ethical Artificial Intelligence (AI) solutions to better understand MSHT and consequently develop evidence-based interventions, policy and protection mechanisms.

Prof. Ryszard Piotrowicz is Professor of Law at Aberystwyth University. He was a member of GRETA from 2013-20, Vice-President from 2017-20. He was a member of the European Commission's Group of Experts on Trafficking in Human Beings from 2008-15. He was a Specialist Adviser to the House of Commons Select Committee for Home Affairs enquiry into Human Trafficking in the UK, which reported in December 2023. He has worked on legal aspects of human trafficking for nearly 25 years, publishing extensively in the area and consulting for international organisations including IOM, UNHCR, the European Commission, Council of Europe, the Organisation for Security and Cooperation in Europe and the International Centre for Migration Policy Development.

Prof. Natalia Szablewska is Professor in Law and Society at The Open University (UK). She serves on the Modern Slavery Leadership Advisory Group to the New Zealand Government advising on the development of modern slavery legislation and is the Chair of Business and Human Rights Committee (100+ members) for Australian Lawyers for Human Rights (*views presented here are not to be associated with any of her affiliate positions*). Prof. Szablewska has worked on issues relating to human trafficking and other modern slavery practices, including in relation to business operations and supply chains, across a number of jurisdictions. Her research and expertise have influenced practice, policy and legal

developments in several countries and informed the work of the UN and OECD in this area.

We wish to address three key issues that require attention and further scrutiny. Namely, s45 of the MSA, the role of the Independent Anti-Slavery Commissioner as well as the uptake of technology to help better understand the problem profile of MSHT and the need for easier data sharing to facilitate this.

Section 45 of the Modern Slavery Act

Section 45 of MSA allows for a defence, in certain circumstances, for people who have been forced to commit offences linked to their status as being victims of modern slavery.

The categories of offences victims are frequently compelled to engage in, like drug-related infractions, carrying a weapon, or immigration violations, typically hold high priority for governmental prosecution. This exacerbates the challenge of acknowledging and implementing the non-punishment principle in such instances.

That provision should be significantly amended to reduce the list of offences, contained in Schedule 4, excluded from the defence, because as it stands, it fails to recognise the range of forms of exploitation to which victims of modern slavery may be and frequently are subjected, including s5 (perverting the course of justice); s13 (on firearms); s14 (on the Theft Act 1968); s15 (on criminal damage); and s16 (relating to the Immigration Act 1971). Under subsection 8, the Secretary of State may do this by regulations.

Furthermore, law enforcement and judicial systems frequently lack awareness of, or are inadequately informed about, the principle of non-punishment for victims of human trafficking and modern slavery who are coerced into committing crimes. This deficiency needs to be addressed through improved training and guidelines for the CPS and the police.

Enforcement of s45 often relies on expert witnesses providing support to the courts to help better understand its applicability. However, since the case of *R v AAD and Ors* [2022] EWCA Crim 106 (03 February 2022), this has been made significantly more difficult. According to the ruling, the expert should not comment on (i) the plausibility and consistency of the defendant's account, (ii) the vulnerability of the defendant and (iii) should not express a view as to whether a given set of facts meets the legal definition of trafficking, thereby acting as an expert on the law of England and Wales. Part ii of that ruling is particularly problematic, as the vulnerability of the defendant is a central element to showing that a

victim has been compelled to commit a crime as a result of their MSHT situation.

We are also worried by various calls we have heard in meetings with Government officials that s45 is being abused by criminals. However, there is scant knowledge regarding the practical application of s45, as there is a lack of quantitative data collected on its utilisation. There exists no reporting on its frequency of use. We recommend that this be addressed. Even if s45 is open to abuse (as may be any legal defence), that should not detract from the purpose of the provision, which is to avoid penalisation of trafficked people for offences they have been compelled to commit.

As noted by the House of Commons Select Committee for Home Affairs in its report on human trafficking in the UK, published in December 2023, “the non-punishment principle needs to be better understood and consistently applied to all trafficked persons who have been compelled to commit offences” (para 160). As noted by GRETA, the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings, “[c]riminalisation of victims of THB not only contravenes the State’s obligation to provide services and assistance to victims, but also discourages victims from coming forward and cooperating with law enforcement agencies, thereby also interfering with the state’s obligation to investigate and prosecute those responsible for THB.” (Evaluation, Report United Kingdom, GRETA (2021)12, 20 October 2021, para 159).

The role of the Independent Anti-Slavery Commissioner

The office of the Independent Anti-Slavery Commissioner (**IASC**), established under Part 4 of the MSA, plays a critical role in ensuring that the Government can implement an effective strategy to combat modern slavery and human trafficking, safeguarding the rights of vulnerable individuals and holding perpetrators accountable for their crimes. There are, however, several measures that should be considered to strengthen the role.

We consider it to be critical to increase resources as the current budget, and the scheduled further cuts to it, are not sufficient to effectively carry out the IASC’s duties, including conducting thorough monitoring and producing high-quality reports.

The streamlining and facilitating of the processes by which the IASC can appoint their staff should also be considered, to minimise the burden and time delays on the Commissioner being able to appoint members of staff with diverse expertise to deliver services within the role’s remit.

The independence of the IASC requires further strengthening to be able to provide the Government with reliable and impartial advice. Such enhanced powers should include:

being able to compel evidence;

initiate own motion enquiries, in particular in relation to s54—setting out the minimum standards of disclosure and transparency for commercial organisations—when identifying systemic issues e.g. in relation to specific sectors or industries;

being able to direct authorities to act, and

have further enforcement powers to facilitate the overall implementation of anti-trafficking policy and measures in the UK.

The expanded powers should cover the assessment of the impact of immigration and social policies on the prevention of (re-)trafficking and their potential for increasing migrants' vulnerability to modern slavery. Being independent implies that the IASC has the full capacity to hold the Government and relevant authorities accountable for addressing MSHT.

The use of technology and data sharing

The call to share data and utilise technology is as old as the fight against MSHT itself, and yet it has not been actioned.

Whilst the sector agrees that data-driven approaches provide hard evidence to make impactful decisions, we are still missing out on these, and other key benefits that can make significant strides in the fight against traffickers. By way of an example, through sharing data on trafficking stories, law enforcement agencies and non-governmental organisations ('**NGOs**') can identify areas where trafficking is most prevalent. This information can be used to target prevention and intervention efforts in those areas. Sharing data on trafficking routes and patterns, often captured in survivor's stories, can help law enforcement agencies and NGOs to identify and disrupt trafficking networks. This information can be particularly important in cases where victims are moved across borders or between different regions.

Ethical AI solutions and related data analytical tools, underpinned by shared data, can aid in ascertaining better ways of allocating scarce public sector resources, discovering potentially useful patterns in data, and predicting future trends that inform future strategy. While it stands to reason that MSHT is an area ripe for the use of innovation, including AI, we are aware of only a few isolated studies in which innovative tools have been applied to prevent modern slavery and human trafficking and protect survivors. This absence of innovative technology is particularly

worrying when we note the cost and efficiency benefits that AI can bring. Indeed, low costs and the ability to conduct rapid assessments on a range of data enable more effective interventions in real time.

We thus ask for:

Better policy guidance on the possibility of data sharing, including making it easier for the sector to share data within the confines of personal data protection, including across different stakeholders (e.g., NGOs with Local Authorities). This also includes national referral mechanism/NRM data.

Increased awareness and communication around the possibility of data sharing.

Increased resources to maintain and enhance data-sharing cooperation among law enforcement, local authorities, NGOs and other relevant stakeholders.

Consideration of whether there is a gap in the current legislation as it regards the use of technology to fight MSHT.

Policy embracement of technology as a means to prevent MSHT and protect (potential) survivors.

Increased funding opportunities to develop ethical technology solutions to address MSHT.

Increased budgets for law enforcement and public authorities to run proof of concepts on the use of technology to address MSHT, and procure once validated operationally.

Please do not hesitate to contact us should you require further information.

26 March 2024