

# Professional Experiences of the S45 Statutory Defence under the Modern Slavery Act 2015

Research Report

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Research by



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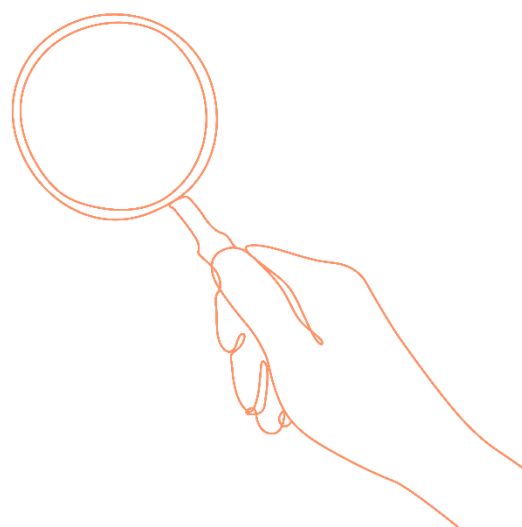
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# 1. Introduction

This report is the third in a series of reports arising from the 'Legal Enforcement of Modern Slavery' research project (2024-2026). Following workshops with policymakers and practitioners to identify research needs and priorities, the researchers focused on:

- Workstream One, Survivor Engagement: working with people with lived experience of modern slavery in the UK to understand their experiences of the criminal justice process and what a successful criminal justice outcome looks like.
- Workstream Two, Civil and Ancillary Orders: investigating the use and impact of Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under the Modern Slavery Act 2015 as alternative or complementary mechanisms to prosecution.
- Workstream Three, The Statutory Defence: analysing how the statutory defence, which is intended to protect victims who have been compelled to commit offences as a consequence of their exploitation, is understood and applied in practice.

This report is for Workstream Three. It draws on: 1) relevant academic and professional literature as it relates to non-punishment principles in general and the statutory defence under the Modern Slavery Act 2015 (s45), 2) key legislation and authorities relating to the s45 defence, and 3) interviews with 15 professionals from the criminal justice system, youth justice and law enforcement who have front line experience in the application of the defence.

Section 45 of the Modern Slavery Act 2015 gives domestic effect to the international non-punishment principle, which recognises that victims of trafficking and modern slavery should not be punished for offending sufficiently connected to their exploitation. Its application has, however, proved contentious. A series of domestic and European judgments between 2019 and 2025 has clarified the statutory tests, evidential requirements and admissibility of evidence, but has provided less insight into how the dynamics of trafficking and criminal exploitation may shape offending behaviour.

The House of Lords Modern Slavery Act 2015 Committee subsequently concluded that the defence was insufficiently understood and utilised. It also identified a significant evidence gap: there is no comprehensive national data on the frequency, circumstances or outcomes of its use, and recommended systematic collection and publication of Section 45 data.

Against this background, Work Stream 3 examined the knowledge and experience of frontline practitioners across law enforcement, criminal justice and youth justice. It sought practice-based insight into how the defence operates in practice, including its perceived strengths and limitations and opportunities for improvement.

Workstream Three set out to ask:

- i. Do interpretations of the statutory defence vary between practitioners from different professional traditions?
- ii. How is the defence applied in practice?
- iii. What strengths, weaknesses, opportunities and threats are identified by professionals?

This report explains the rationale, scope and methods used in undertaking this research. It will then set out the international and domestic legal context for the s45 defence. Findings from a review of literature and appellate law and the data from practitioner interviews are then triangulated, integrated and discussed. The report concludes with a summary of the integrated findings and provides recommendations

## 2. Key Findings

This study has identified multiple gaps in both research and practice relating to how exploitation is understood by professional practice and how it is recognised, evidenced and acted on in legal contexts:

### **Gaps between practitioner knowledge and legal decision-making.**

Our findings challenge the assumption that inconsistency is primarily caused by insufficient professional awareness or knowledge. Practitioners themselves often demonstrate nuanced understandings of exploitation. Continued training remains necessary, particularly around neurodivergence, adultification and parallel Article 4 investigations; however, this alone is unlikely to resolve constraints embedded in doctrine, evidence and procedure. In short, systems must be redesigned to support professionals' knowledge to meaningfully inform legal decisions.

### **Gaps between professional case formulation and legal adjudication**

There remains a distance between a practitioner's contextual understanding of exploitation-related offending and the narrower account capable of satisfying statutory, evidential and procedural requirements. Practitioners typically assess exploitation through a broad contextual lens, reconstructing someone's behaviour over time and within relationships. In contrast, adjudication disaggregates that history into specific statutory elements, evidential burdens and legally admissible propositions. This process may remove precisely the cumulative and relational features that helped to drive the exploitation, making it difficult for courts to fully appreciate its impact on offending behaviour.

### **Gaps between participant experiences and the system**

This study identifies an emergent cumulative process described as epistemic caution hardens into epistemic blindness. At multiple decision-making points, legitimate scepticism narrows and shapes what evidence is sought, how accounts are interpreted, and which forms of exploitation are treated as credible or legally relevant. Over time these decisions reinforce one another, and the system becomes progressively less able to recognise forms of exploitation that fall outside

its established expectations. As a result, caution does not merely test knowledge but begins to constrain what can be known.

This problem does not necessarily originate in ignorance. Instead, it can be produced by institutional structures that divide knowledge between organisations; restrict which professionals may interpret it; separate victim identification from criminal responsibility; treat cumulative formulation as insufficiently proximate; exclude conclusions while retaining the burden of proving their foundations; and return disputed matters to juries presumed to possess adequate ordinary knowledge about the nature of modern slavery, and criminal exploitation to reach a conclusion regarding the defendant's basis for the s45 defence.

The system may therefore fail to recognise the severity of the challenge, even while many of its individual participants can see the problem.

### Gaps between safeguarding and criminal justice imperatives

The tension between safeguarding and criminal justice systems is not merely administrative, but reflects competing epistemologies.

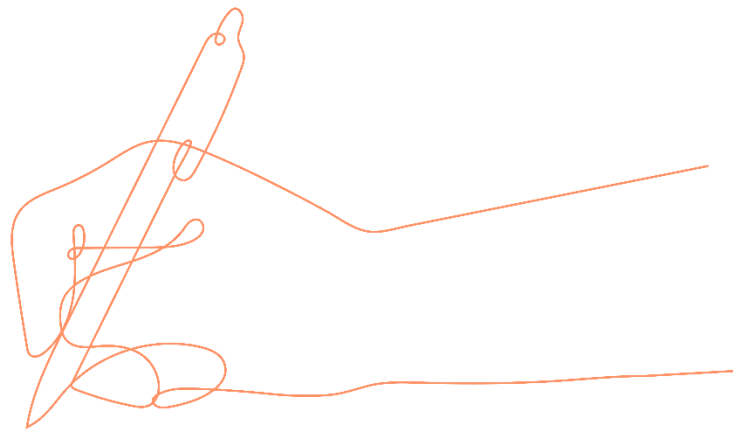
Safeguarding frameworks allow uncertainty to activate investigation and protection measures, whereas criminal adjudication requires uncertainty to be resolved through admissible evidence and defined legal tests. As a result, practitioner knowledge may be sufficient to justify safeguarding intervention but insufficient to prevent prosecution.

S45 currently sits uncomfortably between these two systems, for it requires criminal courts to evaluate the consequences of exploitation while relying upon processes that are not designed to investigate exploitation as a relational and developmental phenomenon.

This research suggests that the inconsistent operation of S45 cannot be explained solely by gaps in professional knowledge or awareness. Practitioners frequently demonstrated sophisticated understanding of exploitation, constrained agency and victim-offender overlap. However, their ability to act **upon that understanding was limited by doctrinal thresholds, evidential** restrictions and procedural divisions between safeguarding and criminal justice. The resulting problem is one of

constrained professional knowing: exploitation is often recognised by those working within the system, but this is not always converted into institutionally authoritative evidence or decisions. The system's failings may therefore lie not in its inability to recognise exploitation, but in its inability to accommodate what its own practitioners already know about it.

The authors hope that through highlighting these gaps, this study may help to encourage the development of new work including explicit integration of practitioner voices and perspectives.



## 3. Background

### 3.1 International Legal Foundations of the Non-Punishment Principle

The Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) reinforces the principles of the Palermo Protocol and provides a more detailed framework for victim protection. Its most direct articulation of the non-punishment principle is found in Article 26, which explicitly states that each Party shall, *"in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so"* (Council of Europe, 2005, Art. 26).

The European Convention on Human Rights (ECHR) Article 4, which prohibits slavery and forced labour, has been interpreted by the European Court of Human Rights (ECtHR) to impose positive obligations on states. These obligations require the state not only to criminalise trafficking but to proactively identify potential victims, investigate credible suspicions of trafficking, and provide protection (V.C.L. and A.N. v. THE UNITED KINGDOM, 2021).

The EU Anti-Trafficking Directive (2011/36/EU) further strengthens the non-punishment framework by explicitly including the 'exploitation of criminal activities' as a form of exploitation. It obligates member states to take necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims for criminal activities they were compelled to commit as a direct consequence of being trafficked (ASEAN Secretariat, 2015)

These instruments collectively establish the core tenets of the non-punishment principle. They underscore the state's procedural obligation to identify and investigate potential trafficking cases at the earliest opportunity and create a clear requirement to consider non-prosecution where there is a credible nexus between a person's status as a victim and the offence they are alleged to have committed. These international obligations are given domestic effect in the UK primarily through the Modern Slavery Act 2015.

## 3.2 The Human Rights Context

The non-punishment principle is a cornerstone of international human rights law, designed to protect victims of human trafficking from being criminalised for offences they were compelled to commit as a direct consequence of their exploitation. The principle holds strategic importance not only for ensuring the protection and recovery of vulnerable individuals but also for enabling the effective investigation and prosecution of traffickers, who might otherwise evade justice if their victims are treated solely as offenders.

The principle is formally articulated in key international conventions, including Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which obligates signatory states to *"provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."*

In the United Kingdom, this international obligation is primarily implemented through the statutory defence established in s45 of the Modern Slavery Act 2015 (MSA) (V.C.L. and A.N. v. THE UNITED KINGDOM, 2021).

## 3.3 The UK's Legislative Response: s45 of the Modern Slavery Act 2015

The Modern Slavery Act 2015 (MSA) was a landmark piece of legislation intended to consolidate and strengthen the UK's legal framework for combating modern slavery. Its most direct implementation of the non-punishment principle is the statutory defence articulated in s45. This provision creates a specific legal pathway for victims of modern slavery and trafficking to avoid criminalisation for certain offences committed as a consequence of their exploitation. The defence is structured differently for adults and children, reflecting the heightened vulnerability of minors under international law.

Reflecting the key elements of the Palermo Protocol, the Statutory defence under s45 of the Modern Slavery Act 2015 differentiates between adults and children (those under the age of 18). The table below describes the differences.

| <b>Adults: s45(1)</b>                          | <b>Children: s45(4)</b>                                    |
|------------------------------------------------|------------------------------------------------------------|
| <b>Compulsion required</b>                     | <b>No compulsion requirement</b>                           |
| <b>Compulsion attributable to exploitation</b> | <b>Act must be a direct consequence of exploitation</b>    |
| <b>No realistic alternative</b>                | <b>Comparable reasonable person would do the act</b>       |
| <b>Relevant characteristics considered</b>     | <b>Relevant characteristics, including age, considered</b> |

**Table 1: s45(1) and s45(4) Comparison**

Taken together, the adult and child defences share a common procedural architecture but embody different conceptions of constrained agency. The adult provision asks whether exploitation left the defendant with no realistic alternative. The child provision asks whether offending was a direct consequence of exploitation and whether a reasonable person placed in that child's situation would have acted similarly.

The resulting asymmetry is deliberate and significant. Adults must establish a strong constraining nexus approaching practical inevitability. Children must establish a meaningful causal and situational nexus, without proving that their conduct was compelled. The child defence is consequently broader in legal principle, although its effectiveness remains dependent upon timely identification, informed professional practice and effective coordination between safeguarding and criminal justice agencies.

Summary of Comparison between s45 (1) Adults and s(4) Children: The adult and child comparison shows a shared legal and procedural framework, but markedly different thresholds for accessing the s45 defence. The central distinction is that the child defence is principally concerned with causation and reasonableness, whereas the adult defence requires proof of compulsion, attribution and the absence of any realistic alternative.

### 3.4 Five Key Areas

Previous research into the enforcement of the Modern Slavery Act 2015 (MSA) has concentrated substantially on the following five critical areas, highlighting the tension between the law's protective intent and its practical application.

#### I. Statutory Interpretation:

Research has focused heavily on the specific wording and structural requirements of the s45 statutory defence.

- **The Adult vs. Child Distinction:** Scholars and practitioners emphasise the two distinct legal regimes: for adults (18 or over), the defence requires proof of compulsion and that a reasonable person would have had "no realistic alternative" (HM Crown Prosecution Service Inspectorate, 2023). For children, the test is less onerous, requiring only that the act was a "direct consequence" of their exploitation.
- **Ambiguity of Terms:** Research identifies a profound lack of clarity regarding key statutory terms like "direct consequence" and "compulsion", which are not explicitly defined in the Act (Heys, 2023; Knight, 2023; Simpson, 2019).
- **Schedule 4 Exclusions:** Significant criticism is directed at Schedule 4, which excludes over 100 serious offences (e.g., robbery, firearms) from the defence. Critics argue this ignores the reality that victims are often forced to commit precisely these types of crimes (Heys & Niezna, 2025; Barclay & Heys, 2025; Parpworth, 2024; Schwarz & Williams-Woods, 2022).

#### II. Appellate Case Law:

The development of the S45 defence has been driven primarily by key Court of Appeal rulings that attempt to resolve statutory gaps and procedural errors.

- **(R v MK; R v Gega, 2018)** This seminal case established that once the defence raises an evidential basis, the legal burden shifts to the prosecution to disprove the defence beyond a reasonable doubt.
- **R v Breani [2021] EWCA Crim 731:** In a controversial development, the court ruled that Single Competent Authority (SCA) Conclusive Grounds

(CG) decisions are inadmissible as expert evidence in criminal trials, as caseworkers are not recognised as legal or trafficking experts.

- (V.C.L. and A.N. v. THE UNITED KINGDOM, 2021) The European Court of Human Rights (ECtHR) found that the UK violated the rights of child victims by prosecuting them for cannabis cultivation before a formal trafficking assessment was conducted.
- Judicial Conflation: Research notes a recurring error in appellate cases where trial judges incorrectly applied the adult "compulsion" test to child defendants (Barclay & Heys, 2025; HM Crown Prosecution Service Inspectorate, 2023; Parpworth, 2024).

### III. National Referral Mechanism (NRM) Decision-Making:

The NRM is examined as an administrative hurdle that significantly impacts implementation of non-punishment alongside other criminal justice outcomes.

- Procedural Disconnect: Research highlights that the NRM is a civil process based on the "balance of probabilities", which does not bind criminal courts operating on the "beyond reasonable doubt" standard (Office of the Independent Anti-Slavery Commissioner, 2020; Topolski, 2021).
- Systemic Delays: One of the most cited issues is the backlog in decision-making, with survivors waiting an average of 831 days for a conclusive decision (Schwarz & Williams-Woods, 2022). Significant progress has been made since 2022 and one research participant attributed this in part to the devolved decision-making pilot scheme to selected local authorities.
- Lack of Information Sharing: Prisons and other agencies are often uninformed about a suspect's NRM status, leading to secondary victimisation and missed opportunities for safeguarding (Jovanović, Burland, Topp, & Fluhr, 2023).

### IV. Survivor Criminalisation:

A central theme is the "victim-offender overlap", where individuals are simultaneously victims of modern slavery and perpetrators of crime.

- **Forced Criminality:** Research extensively documents the criminalisation of survivors in "county lines" drug trafficking (Espeute & Lanskey, 2023; Office of the Independent Anti-Slavery Commissioner, 2020) and cannabis cultivation (Simpson, 2019; Heys, 2023; Schwarz & Williams-Woods, 2022).
- **Failure to Apply the Non-Punishment Principle:** Despite international obligations (e.g., ECAT Article 26) to refrain from punishing victims for acts committed under duress, research shows that many survivors are still prosecuted because authorities focus on the offence rather than the underlying exploitation.
- **Secondary Victimisation:** Imprisoning survivors often leads to further trauma, re-trafficking upon release, and a "culture of disbelief" within the justice system (Heys, 2023; Schwarz & Williams-Woods, 2022).

## V. Failures to Identify Trafficking:

Previous research identifies the police as critical "gatekeepers" whose failures often prevent the s45 defence from being used.

- **Lack of Professional Curiosity:** Officers frequently prioritise the "quick win" of a drug supply charge over investigating the complex "upstream" networks of exploitation (Office of the Independent Anti-Slavery Commissioner, 2020).
- **The "Ideal Victim" Trope:** Identification is often hindered by stereotypes; if a suspect does not appear "helpless" or "passive" – for instance, if they have expensive clothes or a criminal history – they are often misidentified solely as offenders (Independent Anti-Slavery Commissioner, 2025; Office of the Independent Anti-Slavery Commissioner, 2020).
- **Training and Knowledge Gaps:** Research reveals that frontline understanding is inconsistent; only 9% of frontline officers believe their peers have a sufficient understanding of MSHT (Office of the Independent Anti-Slavery Commissioner, 2020; Independent Anti-Slavery Commissioner, 2025).
- **Late Identification:** The defence is frequently raised late in proceedings (after charge or at trial), which causes significant court disruption and suggests that initial investigations failed to spot the signs of trafficking (HM

Crown Prosecution Service Inspectorate, 2023; ASEAN Secretariat, 2015; Office of the Independent Anti-Slavery Commissioner, 2020).

- This research examines the experiences and insights of practitioners responsible for identifying, investigating, presenting, contesting and deciding cases in which s45 may arise.

The important question is not only whether practitioners understand exploitation, but whether they can act upon that understanding within existing doctrine and process.

### 3.5 Methodology

The research concerns professional knowledge and insights into the institutional operation of the s45 Defence. It does not claim to represent the lived experience of survivors of modern slavery and human trafficking or evaluate the factual accuracy of individual practitioner accounts. Instead, the researchers adopted a qualitative, exploratory socio-legal design to examine how the statutory defence under s45 of the Modern Slavery Act 2015 is interpreted and applied by professionals from different criminal justice and safeguarding traditions.

The research combined a structured thematic literature review with semi-structured interviews to explore variation in professional interpretation; identify areas of consensus and disagreement; and examine perceived strengths, weaknesses, opportunities, and threats associated with the statutory defence. The literature review drew on academic databases, case law, government publications and practitioner reports, with sources selected for their relevance to the legal construction, interpretation and practical application of s45 and the non-punishment principle. A combination of deductive and inductive thematic analysis informed the development of the analytical framework and coding schema, which were subsequently triangulated with leading appellate judgments and policy guidance.

Primary data were collected through semi-structured interviews with 15 practitioners comprising five CPS solicitors and advocates, three defence advocates, five police officers and two youth justice professionals. The

investigator for this workstream is an established researcher in the field of modern slavery and criminal exploitation with a substantial professional background and practice experience within the criminal and civil justice systems. Participants were recruited through a combination of professional networks and snowball sampling, provided with participant information and informed consent documentation, and assured of anonymity and the right to withdraw. Interviews were conducted between April and July 2026, audio-recorded and professionally transcribed for thematic analysis. Ethical approval, including the data management plan, was granted by the University of Hull Ethics Board.

Expertise through practice in this area is concentrated among a relatively limited number of practitioners. Some police officers have specialist knowledge of modern slavery and criminal exploitation and were able to provide insights into the challenges faced by officers in different force areas with more general knowledge and experience. The same was true for both prosecution and defence lawyers. Magistrates were invited but permission was required from the Magistrates Association for their participation and unfortunately this was declined.

Although the number of participants in this work stream was limited, they were diverse in terms of their practice backgrounds and geographical areas. The data they provided was triangulated with the literature review to assess the extent to which the participant experiences and insights might be generalised.

## 4. Findings from the Literature

### 4.1 Victim offender paradox and the "Continuum of Exploitation"

A central theme across the sources is the rejection of "victim" and "offender" as binary concepts, replaced by a "continuum of exploitation" (ASEAN Secretariat, 2015; Espeute & Lanskey, 2023; Heys, 2023). The following sub-themes emerged that describe the complexity of criminal exploitation and biases in victim identification and assessment.

#### Complexity of Roles:

Individuals, particularly children in "county lines" drug trafficking, often occupy simultaneous roles as both victims of exploitation and perpetrators of crime (Espeute & Lanskey, 2023) (HM Crown Prosecution Service Inspectorate, 2023; The Centre for Social Justice, 2020). While they are coerced or groomed, they may also exert agency or even exploit others as they move up the criminal hierarchy (Espeute & Lanskey, 2023).

#### The "Ideal Victim" Trap:

Police and the judiciary often struggle with suspects who do not fit the "ideal victim" trope - those who are not perceived as weak, blameless, or passive. If a suspect appears arrogant, possesses expensive clothing, or has previous convictions, they are frequently misidentified solely as "juvenile drug dealers" rather than victims of modern slavery (Heys, 2023; Espeute & Lanskey, 2023).

#### Subjectivity in Identification:

Identification remains highly subjective, with police officers viewing suspects through different "lenses" (welfare vs. investigator). This leads to a "postcode lottery", where a person might be referred to the NRM in one force area but prosecuted as a criminal in another (Jovanović, Burland, Topp, & Fluhr, 2023; Edgington, 2021).

#### Cultural Disbelief

Frontline officers often exhibit a “culture of disbelief”, particularly in cases of cannabis cultivation or county lines, viewing the s45 defence as a “get out of jail free card” coached by organized crime groups (Barclay & Heys, 2025; Office of the Independent Anti-Slavery Commissioner, 2020; HM Inspectorate of Constabulary and Fire & Rescue Services, College of Policing, & Independent Office for Police Conduct, 2021; Office of the Independent Anti-Slavery Commissioner, 2020).

## 4.2 Developments Affecting the Operation of the Section 45 Defence

The operation of s45 has been shaped by judicial interpretation and growing institutional scepticism. Courts have at times conflated the distinct statutory tests for adults, requiring compulsion and “no realistic alternative”, and children, for whom offending need only be a “direct consequence” of exploitation. Such errors have contributed to unsafe convictions subsequently quashed on appeal (Parpworth, 2024; Field, Butler-Sloss, & Miller, 2019).

Evidential restrictions have further complicated the defence. In *R v Brecani* (2021), the Court of Appeal held that Single Competent Authority Conclusive Grounds decisions were inadmissible as expert evidence. This was criticised as a significant setback for vulnerable defendants unable effectively to evidence their own exploitation (Topolski, 2021).

Alongside these doctrinal developments, a persistent perception that s45 is being “gamed” or “abused” has contributed to a wider “culture of disbelief”, with some practitioners regarding trafficking claims as a “get out of jail free card” (Field, Butler-Sloss, & Miller, 2019; Office of the Independent Anti-Slavery Commissioner, 2020; HM Inspectorate of Constabulary and Fire & Rescue Services, 2020; Barclay & Heys, 2025; HM Crown Prosecution Service Inspectorate, 2023; Espeute & Lanskey, 2023). This scepticism intersects with criticism that courts interpret adult compulsion too narrowly, privileging overt coercion over the subtler psychological pressures recognised within broader causation-based approaches to exploitation (Knight, 2023).

## 4.3 s45 Case Law Analysis

### The Adult Defendant and the s45 Statutory Defence

Adult defendants face a substantially higher s45 threshold than children. Whereas the child defence requires offending to be a direct consequence of exploitation, adults must demonstrate compulsion and that a reasonable person sharing their relevant characteristics would have had no realistic alternative (HM Crown Prosecution Service Inspectorate, 2023; Barclay & Heys, 2025; Gadd & Broad, 2018; Field, Butler-Sloss, & Miller, 2019; Simpson, 2019). Critics argue that this can privilege overt coercion over subtler forms of control, including abuse of vulnerability (ASEAN Secretariat, 2015; Barclay & Heys, 2025; Knight, 2023; Schwarz & Williams-Woods, 2022).

A further tension concerns proof. Following *R v MK and R v Gega*, the defendant bears an initial evidential burden, after which the prosecution must disprove the defence beyond reasonable doubt. Police and prosecutors describe this as particularly difficult where coercion is known primarily to the defendant or disclosed only after interview. Interviewees similarly identified late disclosure, evidential uncertainty, and the interpretation of compulsion as recurring practical difficulties in applying the adult defence.

### The Devaluation of Administrative Status

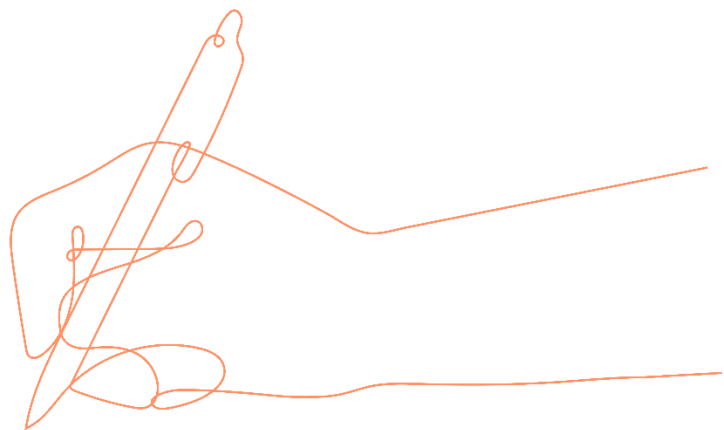
A significant evidential disconnect exists between victim recognition through the NRM and its treatment within criminal proceedings. Following *R v Brecani*, a positive Single Competent Authority Conclusive Grounds decision is not admissible as expert evidence and, as an administrative determination made on the balance of probabilities, does not bind a criminal jury. Consequently, an adult formally recognised as a victim may still require separate admissible evidence to establish exploitation at trial.

This evidential isolation intersects with established stereotypes of the “ideal victim”. Adults who do not appear weak, passive, or blameless may struggle to have exploitation recognised as relevant to their offending or s45 defence (Topolski, 2021; Simpson, 2019; Knight, 2023; Heys & Niezna, 2025).

## Legislative Regression and Public Order Disqualification

More recent legislative developments indicate a contraction of protection for some adult victims. The Nationality and Borders Act 2022 and Illegal Migration Act 2023 introduced public-order provisions capable of excluding some non-British adults with criminal convictions from NRM protection and support (Jovanović, Burland, Topp, & Fluhr, 2023). Statutory guidance places the burden upon affected adults to demonstrate why their protection needs outweigh the identified public-order threat.

This has been characterised as a regressive development potentially conflicting with the UK's obligations under Article 4 ECHR and ECAT, particularly their requirements concerning victim protection and non-discrimination (Jovanović, Burland, Topp, & Fluhr, 2023).



## 5. Findings from Participant Interviews

This part of the report examines the experiences and insights of practitioners responsible for identifying, investigating, presenting, contesting and deciding cases in which s45 may arise.

### 5.1 Application and Procedural Realities of the s45 Defence

Respondents characterized the application of the s45 defence as a highly technical process frequently reduced to a procedural “tick-box” exercise.

#### CPS Review and the “Let the Jury Decide” Default

Defence practitioners described a systemic tendency for the CPS to defer questions of credibility to the jury rather than discontinue cases at review. This was not necessarily attributed to bad faith, but to an under-resourced system in which limited understanding of modern slavery could make it easier to conclude that “*it’s a matter for the jury*” (Defence Barrister 1). Although the CPS is expected to apply the four-stage test, Defence Barrister 2 suggested that prosecutors frequently “*go through the motions*”, rejecting defendants’ accounts as matters requiring testing by a jury, particularly where serious charges weigh heavily in the public-interest assessment.

This was also characterised as a failure of continuing review and investigation. Defence Barrister 3 observed that evidence supporting exploitation may be located in third-party or social work material obtained by the defence rather than explored by the prosecution. Repeated acquittals where s45 is successfully raised should therefore be understood not as evidence of a “*loophole*” in the defence, but as an “*alarm bell*” indicating that cases which should have been identified earlier are reaching trial.

## London Case Management Panels

Several respondents reported that practice in London benefits from a significant procedural strength: the use of case management panels led by modern slavery specialists. These panels ensure consistent decision-making and have led to instances where the CPS supported applications to vacate guilty pleas upon discovering evidence of exploitation.

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*“... the London practice is probably a really good way of having safeguarding because there’s always consistency in the decision making.” (Prosecuting Barrister 1)*

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## 5.2 Interpretative Friction: The “Impossible” Legal Test

Significant friction exists between the statutory requirements of the Act and the clinical realities of exploitation. Practitioners almost universally agreed that the “reasonable person” test in s45(4) is an “impossible test”. It was argued that 12 strangers cannot realistically adopt the mindset of a traumatized, neurodivergent, or “street-hardened” child to determine whether a reasonable person with the same characteristics would do the act. Defence Barrister 1 argued the test is flawed because “most people that are exploited aren’t your reasonable person” and the standard ignores the clinical reality of how exploitation and vulnerability are targeted. Defence Barrister 2 notes that while judges or prosecutors may simply ask, “Why didn’t you just phone the police?” this simplistic logic fails to account for the subtle and pervasive nature of control. There was agreement from a police officer who said:

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*“I don’t think the s45 defence captures the nuance of the level of pressure and control that people are under, or that you don’t have to be that vulnerable to yield to that sort of pressure. And that ultimately yielding to that pressure is something which might be done, very, very*

*pragmatically. ... Are you [for example] in a position where you don't know if you're kind of truly alone, if you've been moved into a house, how do you know that they haven't got recording devices, how do you know that they're not watching you, how do you know they won't find out?" (Police Officer 1)*

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Intense friction regarding the nexus (causal link) was also highlighted. A senior prosecutor described how the prosecution often looks for an immediate "gun to the head" (temporal nexus), the defence advocates argued that exploitation should be viewed through a "clinical nexus" where long-term trauma embeds itself in the psyche, influencing behaviour years after the initial exploitation. They contend, based on knowledge gained from medico-legal reports and some engagement with professional literature, that long-term exploitation informs an individual's entire neurology and creates an "accumulation of vulnerability" that influences their behaviour years after the initial trauma. This view suggests that yielding to a threat is a "pragmatic survival mechanism" rather than a free choice, as the trauma of exploitation embeds itself in the psyche much like a psychiatric disorder.

### 5.3 The Victim-Offender Paradox

Multiple respondents felt that the criminal justice system struggles with individuals who occupy the roles of both victim and perpetrator.

#### The "Ideal Victim" Stereotype:

Trafficking is often considered synonymous with sexual exploitation (predominantly female), making it harder for the system to recognise boys as victims of criminal exploitation (Defence Barristers 2 & 3).

Boys involved in criminal exploitation often fail to meet the "ideal victim" stereotype because of their outward behaviour.

#### "Alpha Victims"

Several (Prosecution Barrister 1, Police Officers 2 and 3 and the Senior District Crown Prosecutor) described the "alpha victim" as one of the most complex challenges for the criminal justice system. The system finds it "tricky" (Senior

Prosecutor) to determine when an individual groomed or exploited as a child has since ascended the criminal hierarchy to recruit others (the "alpha victim"). Prosecutors may struggle to determine where a defendant sits on the criminal hierarchy and at what point their actions as a "middle manager" or recruiter outweigh their own history of exploitation and breach the threshold at which an individual's status shifts from "genuine credible victim" to a perpetrator whose prosecution is in the public interest. When dealing with children who act as alpha victims, for instance, by directing other youths while holding drug money, prosecutors must balance the individual's maturity and the "credible reasons" for their initial involvement to decide if charging them with Modern Slavery Act offences is proportionate. Even if victimhood is accepted, the level of criminality might be deemed a "step above" the level of compulsion, leading the CPS to argue that prosecution remains in the public interest.

### Perceptions of suspect-first mentality:

A suspect-first mentality was raised in several interviews, with respondents indicating that police often focus on "quick wins" (Defence Barrister 1) for substantive offences (e.g., cannabis cultivation) while missing indicators of exploitation, such as a child being locked in a property.

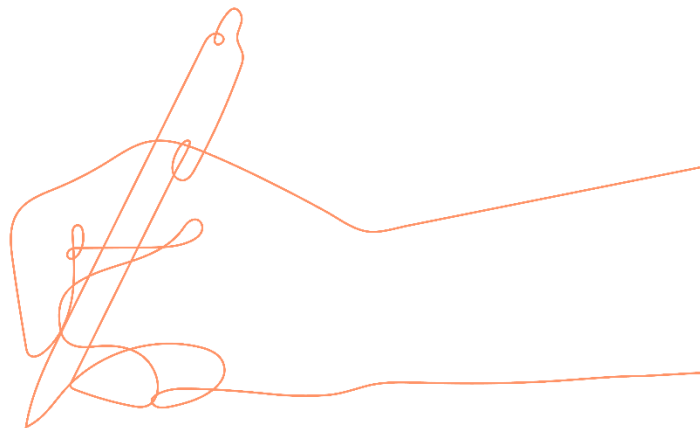
Police Officer 4 discussed how Police investigations are frequently described as being driven by a "*policing by statistics*" culture. They explained that officers often prioritize "low-hanging fruit" (substantive charges such as drug possession with intent to supply or cannabis cultivation) because these offer "*easy charges*," "*easy remands*," and identifiable results for organisational quotas. This narrow focus means that once a crime like a cannabis farm is identified, officers may "*draw a line under the investigation*" rather than looking through an "*exploitation lens*".

Prosecuting Barrister 1 explained how, because of the pressure for "quick hits," police often fail to conduct mandatory parallel investigations. While the Crown Prosecution Service (CPS) theoretically requires an "Article 4 compliant investigation" into the exploitation itself, officers may return with generic responses, showing they do not have the same grasp of the issue as specialist prosecutors. This failure to look "*middle up*" at the exploiters means the system

frequently stops at the person found on the street, missing the opportunity to disrupt the criminal business model.

### **"Street Bravado"**

Several respondents reported that evidence of "*street bravado*" or social media posts from a "bando" is frequently misinterpreted as enthusiastic participation rather than a requirement for survival within gang culture. Defence Barrister 3 extensively discussed this issue of misinterpretation and misunderstanding by professionals on both the prosecution and defence sides. Noting that children on the streets become "street hardened" because that is "how you survive", they highlighted that professionals may dismiss a Modern Slavery claim because the defendant does not present as a "*crying in the corner shrinking violet*," or 'ideal victim', instead viewing their bravado as a sign they are "*not vulnerable*". Prosecutors may particularly latch onto specific messages e.g. a defendant telling a partner they will soon get their "*own pack to sell*", as evidence of an "*expectation of significant financial gain*", failing to recognise the nuanced reality of coercion and desperate circumstances. This "bravado" often leads to a cultural presumption within the criminal justice system that the s45 defence is being used as a "loophole".



## 6. Barriers to the effective use of s45

Respondents highlighted a number of barriers to the effective use of s45 and the following summarises common observations and thoughts:

- **NRM Backlogs and "Limbo":** Massive delays in the NRM - with Conclusive Grounds decisions often taking 18 months to three years - leave defendants in a state of legal and developmental "limbo" (Defence Barrister 1).
- **Schedule 4 Exclusions:** The legal exclusion of serious offences (robbery, firearms, murder) from the s45 defence is criticised as "*absurd*", forcing victims to rely on "public interest" arguments or sentencing mitigation.
- **Expert Evidence Friction:** A common view among defence barristers was that following rulings like *Brecani* and *AAD*, judges have become increasingly hesitant to admit modern slavery experts, fearing they are a "back door" for the defendant's account.
- **Victim Fear:** The code of "snitches get stitches" and a "fervent mistrust" of the police often prevent victims from providing the detail needed to establish a credible defence.

### 6.1 Systemic and Safeguarding Failures

#### Access to Justice

Both prosecution and defence lawyers discussed disparities in local access to timely justice and noted that support is geographically determined; Home Office statistics for October 2024 to September 2025 show that the median time from NRM referral to a conclusive grounds decision was 99 days for children in the devolved decision-making pilot, compared with 331 days for children outside the pilot (Home Office, 2025). Youth Justice Practitioner 1 compared the Magistrates and Crown Courts:

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*“... if I present to a judge, I know that it’s somebody who has to have done that piece of training and will have read that new legislation and will be aware of that and understands risk and won’t be persuaded by someone charming, like a prosecutor or a solicitor who can perhaps be more charming in court than me.*

*When I’m trying to talk about managing a child’s risk in the community, they understand what I mean and don’t get frightened by behaviour. So yeah, so it’s not that I’m down on magistrates but I just feel sometimes children’s lives are in the hands of a lottery sometimes. Whereas, and I’m not saying all judges are great, some can be quite scary but with all the child first principles and stuff, they are having to do that and learn that whereas magistrates, I don’t know if they have to do that.” (Youth Practitioner 1)*

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## Defence-Complaint Disparity

Raising a s45 defence also represents an allegation of modern slavery victimisation yet it rarely triggers an immediate Section 47 safeguarding enquiry or a parallel investigation into the exploiters.

The participants confirmed that while raising a s45 defence is legally and practically a formal complaint of modern slavery, there is a profound disparity in how the system responds to this complaint compared to other forms of abuse (Defence Barrister 1; Youth Justice Practitioner 1; Prosecution Barrister 1).

Agencies work in silos, with crucial safeguarding information held by local authorities (e.g., housing relocation applications due to death threats) often missed by the police and CPS during charging.

Defence Barrister 3 noted there is often a tension where the same police officer is the “*first responder*” making an NRM referral while also acting as the investigator building the criminal case against the same individual, which can lead to a “suspect-first” mindset that ignores welfare intelligence.

Youth Justice Practitioner 1 highlighted how information-sharing is highly variable between local authorities. While some areas have "*all-exploitation*" teams or integrated safeguarding units, others have "*failing children's services*" where the Youth Justice Service may not even be informed of a child's NRM status for months.

Police Officer 5 explained how OCGs often operate male-to-male interactions on a "business-operated" model, which reinforces the system's view of these victims as autonomous "lower-level members" or "entrepreneurial masterminds" rather than exploited subjects.

In cases involving adult (though still young aged 18-20) women, one participant suggested that judges and prosecutors often project a "wife" or "Bonnie and Clyde" trope, assuming the woman is an equal partner in crime with a view to material gain such as luxury goods and clothing. (Youth Justice Practitioner 2).

There is a noted systemic tendency to "adultify" Black children in particular, viewing them as autonomous gang members rather than exploited victims. (Defence Barrister 3 and Youth Justice Practitioner 1).

## 6.2 Training Needs Analysis - Specialised and Mandatory CPD

Across all interviews, participants identified a systemic paucity of specialist knowledge about modern slavery across policing, prosecution, defence, the judiciary, magistracy, and youth justice. Training was described as inconsistent and too often voluntary, leaving the quality of professional recognition and response dependent upon individual experience or interest. Participants therefore advocated mandatory, accredited CPD, beginning at professional qualification and reinforced throughout practice.

Training needs extended beyond knowledge of the Modern Slavery Act to developing an "exploitation lens" through which practitioners can recognise chronic, relational, and psychologically mediated coercion. Particular gaps concerned adultification, apparent "street bravado", neurodivergence, transition beyond age 18, and the continuing effects of exploitation. Legal and procedural training was also required

on the operation of s45, relevant case law, continuing CPS review, ancillary orders, and parallel investigation of suspected exploitation.

Participants consistently favoured multidisciplinary and practice-based training involving police, prosecutors, lawyers, social care and youth justice, rather than passive e-learning. Composite cases and scenario-based exercises were proposed to challenge assumptions and improve cross-agency understanding. Specialist modern slavery training should therefore be subject to clearer accreditation and CPD standards, reducing the present variability in professional knowledge and practice.

## 7. Integrated Findings

The research questions are recapitulated here:

- i. Do interpretations of the statutory defence vary between practitioners from different professional traditions?
- ii. How is the defence applied in practice?
- iii. What strengths, weaknesses, opportunities and threats are identified by professionals?

Triangulation of the data from all of the sources (literature review, review of appellate law and participant interviews) enabled the integration of the findings from each.

### 7.1. Victimhood is recognised conditionally

Across all three evidence streams, victimhood does not operate as a stable status. It is continually reassessed against behaviour, appearance, criminal history, disclosure and perceived agency.

The literature describes this as the ideal-victim problem. The interviews identified some practical manifestations: the “alpha victim”, the boy displaying bravado, the Black child perceived as an autonomous gang member, or the adult woman characterised as a willing “wife” or participant in a “Bonnie and Clyde” partnership. The case law then formalises this conditionality by requiring a separate assessment of nexus, compulsion, alternatives and reasonableness.

A person may therefore be accepted as a trafficking victim but rejected as the kind of victim whose offending merits legal protection.

### 7.2. The central dispute concerns the meaning of constrained agency

The compulsion-causation distinction is the strongest point of convergence in the evidence.

The adult case law requires a defendant to establish not merely that exploitation influenced the offence, but that attributable compulsion left no realistic

alternative. The literature criticises this as insufficiently sensitive to cumulative, psychological and relational control. Practitioners describe precisely the same conflict as one between a temporal nexus and a clinical nexus:

- The temporal model looks for an immediate command, threat or coercive event near the offence.
- The clinical model asks how trauma, grooming, dependency, anticipated violence and previous experience continued to shape the person's conduct.

The interviews consequently provide an empirical explanation for the doctrinal criticism. Conduct that appears to be voluntary choice when viewed at a single moment may represent pragmatic yielding within a longer history of exploitation.

### **7.3. Evidential caution produces epistemic isolation**

The courts are cautious about allowing SCA decisions or expert witnesses to trespass upon the jury's role. Whilst that caution is doctrinally intelligible, the literature and interviews show its cumulative effect:

1. The SCA assessment is not admissible as expert opinion (R v Breani , 2021; Topolski, 2021).
2. Modern-slavery experts are restricted from addressing matters approaching credibility (R v Breani , 2021).
3. Intelligence remains divided between agencies.
4. The victim may be frightened, traumatised, neurodivergent or unable to explain their exploitation coherently.
5. The CPS leaves disputed questions to the jury.
6. The jury is then treated as capable of understanding compulsion and realistic alternatives through their own 'ordinary' experience.

This leads to knowledge being fragmented, procedurally filtered or ruled beyond the permissible boundaries of expertise. In practice, therefore, failing to admit SCA decisions and similar expertise as evidence in practice restricts or even removes knowledge that might enable the jury to exercise their authority accurately.

## 7.4. The safeguarding and prosecution systems proceed on separate tracks

The child case law and international framework require proactive identification and protection. The literature documents institutional fragmentation. The interviews show the practical contradiction: raising s45 amounts, in substance, to an allegation of modern slavery, yet it does not reliably initiate a parallel safeguarding enquiry or investigation of those responsible.

This creates a marked asymmetry:

- the alleged victim's offence is investigated and prosecuted;
- the alleged exploitation may remain uninvestigated;
- the absence of corroborating evidence is then used to weaken the defence.

The prosecution of the visible offence therefore advances more rapidly than investigation of the hidden exploitation that may explain it.

## 7.5. Procedural correctness may conceal substantive failure

The case law clarifies evidential burdens and statutory tests, but the interviews indicate that these protections may be proceduralised. The four-stage test can become a tick-box exercise, while "let the jury decide" appears neutral but transfers responsibility without resolving earlier failures of identification or evidence gathering.

This suggests a distinction between:

- **formal availability**, meaning that s45 exists and can be raised; and
- **substantive accessibility**, meaning that exploitation has been identified, investigated and evidenced sufficiently for the defence to operate meaningfully.

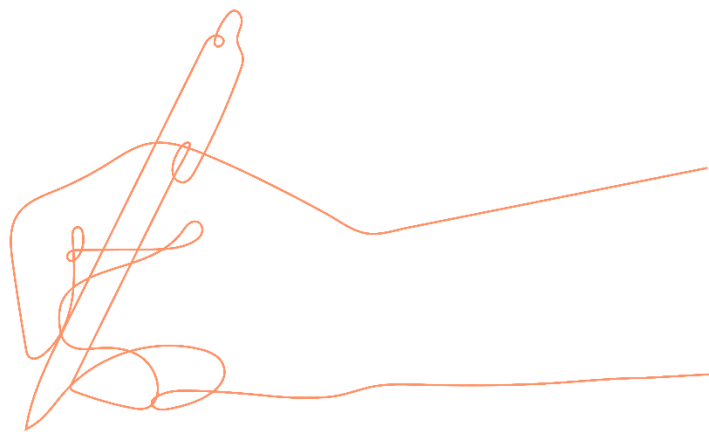
The three datasets converge on the conclusion that formal availability does not ensure substantive accessibility.

## 7.6 The system generates secondary victimisation

The literature describes NRM limbo, withdrawal of support, imprisonment, immigration fear and re-trafficking. The cases demonstrate delayed correction

through appeal. The practitioners describe guilty pleas, prolonged uncertainty, unmet safeguarding needs and support disappearing at 18.

Secondary victimisation is therefore not an incidental consequence of delay but is produced through the interaction of delayed identification; cultures of disbelief; fragmented information; narrow nexus interpretation; evidential exclusion; prosecution before resolution; inadequate support; and geographical inconsistency.



## 8. Discussion

### 8.1 Divergence and negative cases

Current adult and child legal regimes significantly diverge. Adult law deliberately retains the principles of compulsion and no realistic alternative; child law adopts direct consequence and a different reasonable-person formulation. The adult case law therefore does not merely reflect poor implementation of the non-punishment principle. It embodies a more restrictive legislative settlement.

The wider literature emphasises early identification as an international and human-rights obligation. The case-law analyses show that identification does not automatically translate into legal protection. The combined process can be represented as follows:



Image 1: Non-punishment-decision-pathway Pathway

Image 2: The Non-Punishment Decision

There are examples of effective practice. The London case-management panels were identified as promoting consistency and enabling corrective intervention, including CPS support for vacating guilty pleas. Devolved NRM pilots were also associated with substantially quicker decisions. These are important negative cases because they demonstrate that inconsistency is not inevitable.

Some cases may be discontinued prematurely, or trafficking claims may be misused, while other genuine victims are over-prosecuted. These findings are not necessarily contradictory. They indicate uneven professional calibration: the system may be simultaneously over-responsive in some cases and insufficiently responsive in others.

The interviews introduce issues not strongly represented in the other datasets, particularly adultification, neurodivergence, ancillary orders and reparation.

## 8.2 An integrated explanatory model

The evidence supports a sequence of progressively narrowing protection:

At each stage, a different form of friction operates:

| Stage          | Principal friction                                                     |
|----------------|------------------------------------------------------------------------|
| Recognition    | Ideal-victim assumptions, suspect-first policing and adultification    |
| Classification | Victim-offender binary and “alpha victim” difficulty                   |
| Nexus          | Temporal compulsion versus cumulative or clinical causation            |
| Evidence       | SCA inadmissibility, restricted expertise and siloed intelligence      |
| Procedure      | Tick-box application, delay and “let the jury decide”                  |
| Outcome        | Guilty pleas, Schedule 4 exclusion, appeal and secondary victimisation |

**Table 2: Stages of Judicial Friction**

## 8.3 Convergent Complementarity

The case law identifies where the legal boundaries are drawn. The literature shows why those boundaries may be conceptually and institutionally problematic. The practitioner interviews then reveal how these problems are reproduced, negotiated or occasionally corrected in practice.

The potential weakness within s45 lies not in its wording or in isolated professional error, but in the cumulative narrowing of protection as victimhood passes through successive systems of recognition, interpretation, evidence and decision-making.

For adults, narrowing is most visible in compulsion, attributable nexus and the absence of realistic alternatives. For children, the statutory threshold is broader, but access is weakened through misidentification, adultification, conflation with the adult test and unrealistic assumptions about choice. Across both regimes, the

system repeatedly returns authority to the ordinary criminal trial while restricting the specialist and contextual knowledge necessary to understand exploitation.

The same friction appears at three distinct levels: doctrine, systemic critique and lived professional operation.

The convergence is not simply the independent discovery of the same problem by three different evidence sources. It also reveals a recursive institutional process in which appellate authority shapes professional practice, that practice determines which cases and evidence reach the courts, and the resulting cases reinforce the original doctrinal framework.

The circularity might be represented as:

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*Appellate authority → prosecutorial interpretation → investigative and evidential practice → cases presented at trial → further appellate authority*

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This is not inherently problematic: precedent is intended to generate consistency. The difficulty arises where the originating legal framework is narrower than the safeguarding understanding of exploitation.

| Safeguarding process                                       | Criminal justice process                                                 |
|------------------------------------------------------------|--------------------------------------------------------------------------|
| What may have happened to this person?                     | Can this offence be proved?                                              |
| What indicators require further enquiry?                   | Is the available evidence admissible and sufficiently reliable?          |
| What risks, vulnerabilities and relationships are present? | Are the statutory elements of the defence satisfied?                     |
| How has the person's behaviour developed over time?        | What was the connection between exploitation and the particular offence? |
| What protection and investigation are now required?        | Should the prosecution continue, or should the jury decide?              |
| Uncertainty justifies further enquiry and protection.      | Uncertainty may justify leaving disputed facts to the trial process.     |

**Table 3: Safeguarding and criminal justice processes begin from different questions**

The safeguarding process is therefore expansive and precautionary. It uses indicators to open an enquiry. The criminal process is selective and adjudicative. It uses evidential rules to narrow the enquiry towards legally determinative facts.

This difference becomes especially consequential around nexus. Safeguarding professionals may understand apparently voluntary offending as the product of grooming, dependency, trauma, anticipated violence and continuing relational control. Criminal justice decisionmakers, guided by appellate authority, may instead search for a more temporally proximate connection between compulsion and the offence.

The same information can consequently perform different functions:

- In safeguarding, bravado, non-disclosure or continued association with exploiters may indicate adaptation, fear or constrained survival.
- In criminal proceedings, the same features may be treated as evidence of autonomy, credibility problems or the existence of realistic alternatives.
- In an NRM assessment, cumulative information may support a finding of trafficking.
- At trial, the resulting SCA conclusion may be excluded as expert opinion, while its component evidence remains dispersed between agencies.

This helps to explain why the disconnect persists despite formal commitments to multi-agency working. The problem is not simply that agencies fail to communicate. They operate through different epistemological frameworks: they ask different questions, tolerate different levels of uncertainty and attach different meanings to the same behaviour.

There is also a deeper feedback problem. If police initially investigate the substantive offence rather than the exploitation, the prosecution file will contain stronger evidence of offending than of victimisation. The CPS then assesses s45 against that uneven evidential record. If the matter is left to the jury, the resulting decision is made upon evidence already shaped by the original suspect-first investigation. Any subsequent appellate authority is therefore developed from cases produced through that process.

The loop becomes:

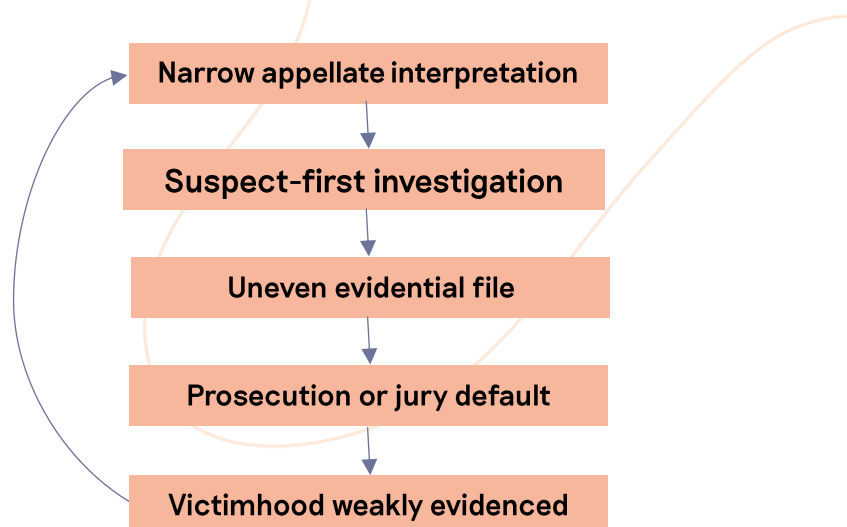


**Image 3: Appellate Interpretation Feedback Loop**

Raising s45 is effectively an allegation that a person has been subjected to slavery or exploitation. Yet that allegation does not consistently trigger a parallel safeguarding response or Article 4 investigation. The criminal allegation against the defendant is treated as an investigative fact; the trafficking allegation is treated primarily as a defence claim requiring substantiation.

The criminal justice system asks the defendant to evidence exploitation through a process that may never have adequately investigated the exploitation in the first place.

The “let the jury decide” position then *appears* neutral, but it is not necessarily epistemically neutral. It transfers the decision to the jury after earlier institutional choices have determined what was investigated, what was recorded, what was shared and what evidence is admissible.

What may begin as epistemic caution can harden into epistemic blindness which develops recursively across the system:

1. Safeguarding knowledge is separated from criminal investigation.
2. Criminal investigation produces an offence-dominant evidential record.

3. Prosecutors apply appellate tests to that record.
4. Courts restrict external or administrative expertise.
5. Juries decide upon the remaining evidence.
6. Judicial outcomes reinforce the authority of the ordinary trial process.
7. Policy, training and procedure are adjusted around those authorities.

The safeguarding-criminal justice disconnect is therefore not simply a gap between two services. It is an emergent property of two systems repeatedly interacting while applying different purposes, standards and conceptions of knowledge.

Much of the existing scholarship understandably examines whether survivors are recognised, believed and protected. This research reframes the problem as the findings do not support a simple account in which poor outcomes arise because professionals lack knowledge or require more awareness training. The practitioners often demonstrate sophisticated understandings of:

- cumulative and psychological coercion;
- trauma and delayed disclosure;
- pragmatic yielding as a survival response;
- neurodivergence and masked vulnerability;
- victim-offender overlap;
- adultification and gendered assumptions;
- the difference between temporal and clinical nexus;
- the evidential consequences of fragmented information; and
- the limitations of expecting juries to reconstruct an exploited person's circumstances through ordinary experience.

The central problem is therefore not necessarily an absence of professional knowledge. It is the restricted convertibility of that knowledge into legally recognised evidence, decisions and interventions.

## 8.4 Constrained professional knowing

Practitioners may possess sufficient experiential and specialist knowledge to formulate offending as a consequence of exploitation, but remain constrained by

doctrinal tests, evidential rules, organisational procedures and institutional divisions that prevent that formulation from determining the response.

This produces a form of epistemic dissonance. The practitioner may simultaneously hold two incompatible formulations:

- Professional formulation: the person's offending is intelligible as an adaptive response to grooming, trauma, dependency and anticipated harm.
- Institutional formulation: the evidence may not establish attributable compulsion, an absence of realistic alternatives or a sufficiently proximate nexus to satisfy s45.

The practitioner does not necessarily abandon the first formulation. They may simply be required to act upon the second.

That distinction is crucial. It explains how knowledgeable, reflective professionals can participate in outcomes they privately regard as incomplete, unjust or insufficiently protective. Their expertise has not disappeared, but its institutional authority is limited.

### **Doctrine and process as constraining structures:**

The findings suggest two related forms of constraint.

- a) Doctrinal constraint: Doctrine determines which aspects of exploitation have legal significance. For adults, it privileges attributable compulsion and the absence of realistic alternatives. For children, although the threshold is formally broader, the reasonable-person test may still reintroduce assumptions about choice and avoidability.

A practitioner's formulation may therefore be psychologically, developmentally and criminologically persuasive while remaining legally insufficient.

- b) Procedural constraint: Process determines whether the available knowledge can reach the decisionmaker in a usable form. This includes:
- the initial suspect-first investigation;
  - failure to initiate a parallel safeguarding or trafficking investigation;
  - dispersed multi-agency intelligence;

- NRM delay;
- SCA decisions excluded as expert opinion;
- restrictions upon modern-slavery expertise;
- pressure towards guilty pleas;
- Schedule 4 exclusions; and
- the default position that disputed matters should be left to the jury.

Doctrine defines what must be proved. Process shapes whether it can be proved. Together, they create a translation failure:

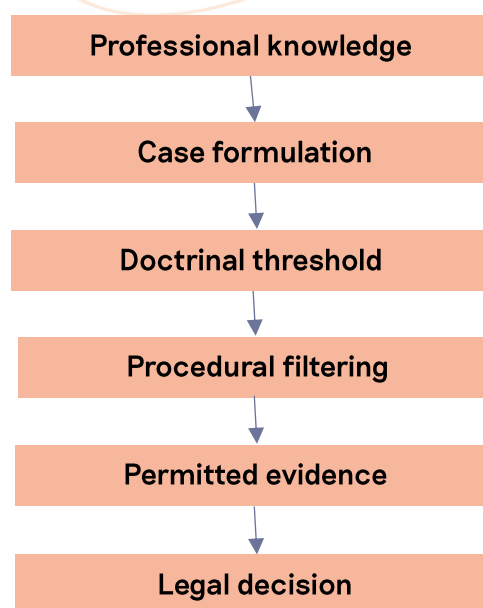


**Image 4: Professional knowledge to legal decision**

Knowledge is progressively filtered as it moves towards adjudication. The final legal decision may therefore bear only a partial relationship to the practitioner's original understanding of the case.

The practitioner as an epistemically constrained actor: This also shifts how practitioners are represented in the research. They are neither simply gatekeepers who fail to recognise victims nor autonomous experts free to apply their professional judgement. They are epistemically constrained actors working within systems that authorise some forms of knowledge and subordinate others.

That constraint operates differently across professional groups:

- Police may recognise exploitation but remain driven by readily provable offences, performance expectations or evidential routines.
- CPS lawyers may appreciate the context but conclude that credibility, nexus or reasonableness must be left to a jury.
- Defence lawyers may construct a clinical and developmental formulation but struggle to convert it into admissible evidence.
- Youth justice and social-work practitioners may hold rich safeguarding knowledge that does not enter the prosecution file.
- Experts may understand the control mechanisms but be prevented from approaching credibility or the ultimate legal question.
- Judges may recognise the relevance of expertise but remain constrained by appellate authority concerning admissibility and the jury's proper territory.

No single practitioner necessarily controls the outcome. The result emerges from the interaction of partially knowledgeable actors, each operating within different institutional permissions.

### Why the practitioner experience matters:

The absence of survivor interviews is a limitation in relation to survivor experience, but it is not a deficiency in the design of this particular enquiry. This research addresses a different object of analysis: the institutional production of legal and professional decisions.

Survivor research can establish how exploitation is experienced and how criminalisation affects victims. Practitioner research can identify why systems fail to act upon knowledge that may already exist.

The two perspectives answer different questions, set out in Table 4 below.

| Survivor-focused enquiry                      | Practitioner-focused enquiry                                 |
|-----------------------------------------------|--------------------------------------------------------------|
| How was coercion experienced?                 | How was coercion interpreted professionally?                 |
| Why did the person offend or remain involved? | Which explanation of offending was institutionally accepted? |

|                                                     |                                                                          |
|-----------------------------------------------------|--------------------------------------------------------------------------|
| <b>How did criminalisation affect the survivor?</b> | <b>How did professional decisions produce or resist criminalisation?</b> |
| <b>What protection was needed?</b>                  | <b>Why was that protection activated, delayed or withheld?</b>           |
| <b>Was the person heard and believed?</b>           | <b>What prevented professional knowledge from becoming authoritative</b> |

**Table 4: Survivor-Focused -v- Practitioner-Focused Inquiry**

## 9. Recommendations

This study does not describe a criminal justice system devoid of knowledge about modern slavery. It has found substantial expertise, established procedures and thoughtful professional practice across the system. The primary challenge is that this knowledge is unevenly connected and interpreted differently across institutional boundaries. What one agency knows about a defendant's exploitation frequently does not reach, or is not credited by, the professional making decisions about their prosecution. The recommendations below therefore do not seek to replace existing arrangements. They aim to strengthen the interfaces through which knowledge of exploitation is identified, tested, communicated and converted into decisions, so that the operation of s45 depends less on which professionals happen to be involved in any particular case.

Together, these reforms should be developed jointly with practitioners and people with lived experience. As the research highlights, the policy priority is not to teach professionals more about exploitation, but to build institutional arrangements capable of acting on what they already know.

**Recommendation 1:** Through statutory guidance, the Home Office should provide that a credible indication that the s45 defence may apply is treated as a potential report of modern slavery, and not solely as a defence to be tested. Furthermore, actions should be taken to ensure:

- i. Responding police should undertake a parallel investigation of the alleged exploitation
- ii. The relevant local authority should initiate child or adult safeguarding enquiries on the same trigger.
- iii. Coordination of information concerning the offence, the alleged exploitation, any NRM referral, continuing risk and suspected exploiters should be allocated to a named individual through existing multi-agency safeguarding arrangements and recorded on the case file.

Adopting these actions addresses the asymmetry identified in this report, whereby the visible offence is investigated thoroughly while the exploitation said to explain it is not investigated at all.

**Recommendation 2:** The Crown Prosecution Service should require a recorded specialist review in any case where s45 may apply, completed before charge and again before a guilty plea is accepted or a trial begins. The review should:

- i. Record which statutory test applies, the trafficking indicators present, the enquiries completed, whether relevant information is held by other agencies, and how the nexus between exploitation and offending has been assessed.
- ii. Address whether the evidential stage of the Code is met, given that the prosecution must disprove the defence to the criminal standard, and whether prosecution is in the public interest where the suspect may be a victim.
- iii. The specialist panel arrangements described positively by practitioners in London should be evaluated for national adoption.

Review at the plea stage is essential. Where the defence is never raised because a plea has been accepted, the only remaining remedy is an out-of-time appeal.

Recording the review at both stages would also reduce reliance on leaving unresolved questions of exploitation to the jury as a default.

**Recommendation 3:** The Crown Prosecution Service, the College of Policing and the Judicial College should ensure that operational guidance consistently distinguishes the adult and child defences. Adults must raise evidence of compulsion attributable to exploitation and the absence of a realistic alternative. Children need establish neither: the questions are whether the offence was a direct consequence of exploitation, and whether a reasonable person in the same situation and with the child's relevant characteristics would have acted in the same way. Police, prosecutors and courts should identify and record the applicable test at each decision point, determined by the defendant's age at the time of the

offence. Where age is disputed and unresolved, the child test should be applied until the person is determined to be an adult.

**Recommendation 4:** The Home Office, in statutory guidance, and the Crown Prosecution Service, in legal guidance, should support a more contextual assessment of nexus consistent with existing case law. This does not displace the statutory adult test of compulsion. It requires decisionmakers to recognise that compulsion and constrained agency may be produced cumulatively and relationally, rather than only through an immediate threat close in time to the offence. Assessment should take account of the history of the relationship with the exploiter, including grooming, dependency, previous violence, anticipated consequences, isolation, trauma, neurodivergence, developmental stage, network position and pragmatic survival responses. Guidance should state expressly that an alternative is not realistic merely because it can be identified retrospectively from outside the exploitative system.

**Recommendation 5:** The Home Office, Crown Prosecution Service, and other relevant bodies should establish a national protocol for information sharing where s45 may arise. This protocol should:

- i. Cover NRM, police, local authority, youth justice, education, health and custodial information, including safeguarding assessments, missing-person reports, relocation requests, records of threats, intelligence concerning exploiters and evidence of previous or continuing exploitation.
- ii. Specify defined timeframes and lawful parameters for identifying, requesting and sharing that material.
- iii. Establish named contacts, clear responsibilities and an auditable record, held on the case file, of what information was requested and what was considered.

This is the mechanism through which the coordination required by Recommendation 1 and the review required by Recommendation 2 are made possible. Without it, decisions continue to be taken in evidential isolation.

**Recommendation 6:** The Home Office should amend the NRM referral process so that, where consent to referral is sought from an adult, consent to disclosure of relevant social care, health and mental health records is sought at the same time, with the request and the response recorded on the referral form. Guidance should make clear that such disclosure assists the competent authority in reaching its decisions and assists prosecutors in applying the Code.

**Recommendation 7:** The Bar Standards Board, the Solicitors Regulation Authority and Judicial College should make training on modern slavery, child criminal exploitation and the operation of s45 a mandatory element of qualification and continuing accreditation rather than voluntary continuing professional development. It should have the following elements:

- i. An s45 advocacy accreditation, modelled on the existing vulnerable witness ticket, should be required of advocates appearing in the Youth and Crown Courts.
- ii. Compulsory standardised modules should be introduced on the Bar Course and the Solicitors Qualification Examination, covering both statutory tests and the limits on expert evidence.
- iii. Training for lay magistrates and legal advisers should be structured and compulsory, on the same basis as that provided to District Judges.
- iv. Provision should be scenario-based and require sequential procedural decision-making, and should be delivered only by providers subject to independent accreditation and quality assurance.

Compulsory accreditation would reduce the variation in court outcomes attributable to which bench or advocate the defendant happens to appear before, and would displace the unregulated short-course market on which professionals currently rely.

**Recommendation 8:** The Ministry of Justice should commission a focused review of contextual and expert evidence in s45 cases. The objective is not to permit experts of competent authority decisionmakers to determine credibility or the ultimate legal question, which the courts have held to be impermissible. It is to examine whether juries receive sufficient assistance to understand grooming,

cumulative coercion, trauma, neurodivergence and delayed disclosure. The review should consider the permissible scope of contextual expertise, the treatment of the material underlying competent authority decisions, and the adequacy of existing directions. The Jury's role must be protected but exercised on informed rather than assumed understanding. Separately, and without awaiting the review, the Judicial College should consider whether the Crown Court Compendium provides adequate guidance on directing juries about exploitation-related behaviour.

**Recommendation 9:** The Home Office should introduce a priority flag within the National Referral Mechanism for cases where criminal proceedings are active, with a defined service standard where the defendant is a child, approaching adulthood, remanded in custody, or facing an imminent plea or trial. Where a decision cannot be made before a critical stage of proceedings, the competent authority should notify the court and the parties of the referral's status and expected timescale, so that listing and plea decisions are informed by the position rather than taken in ignorance of it.

**Recommendation 10:** The Independent Anti-Slavery Commissioner should conduct an independent review of the Schedule 4 exclusions and the adequacy of the residual safeguards. The purpose would not be to create blanket immunity for serious offending. It would assess whether the exclusions are proportionate where severe exploitation has generated serious criminal conduct, and whether duress, abuse of process, prosecutorial discretion and mitigation provide adequate and consistent alternatives.

**Recommendation 11:** The Crown Prosecution Service and Ministry of Justice should establish national monitoring of s45, recorded through a flag in existing case management systems.

- i. Data should cover when the defence is raised, the applicable test, offence type, Schedule 4 status, NRM decision and timing, charging outcome, plea, trial outcome, appeals and geographical variation.

- ii. Data should be analysed for disparities by age, sex, ethnicity, disability and neurodivergence.
- iii. Quantitative monitoring should be supplemented by periodic qualitative case-file audit.

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The Centre funds and co-produces high quality research with a focus on policy impact, and brings together academics, policymakers, businesses, civil society and survivors to collaborate on solving this global challenge.

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