Acting in Isolation: Safeguarding and anti-trafficking officers' evidence and intelligence practices at the border

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Abstract

Internationally, the border has been presented as a site of unique opportunity for the identification and protection of victims of human trafficking. In the UK, the establishment of specialist safeguarding and anti-trafficking (SAT) units within the border force has raised questions about the challenges for border force officers (BFOs) of balancing the enforcement of strict immigration rules with the protection of victims under anti-trafficking legislation. In this paper we draw on data collected from a study of anti-trafficking initiatives at Heathrow airport to consider a particular area of BFO frustration with SAT work: the collection and use of evidence and intelligence to support investigation and pursuit of potential SAT cases at the border. Our findings focus on the use of intelligence and data to inform initiatives and develop a comprehensive understanding of the trafficking problem; and the scope of BFO powers of evidence-collection on the frontline. The experience of BFOs points to a team often working in isolation as they attempt to traverse gaps in data collection and limits to their powers to gather evidence in pursuit of their duty to identify victims of trafficking at the UK border. We conclude by making proposals for how the border force and central government could improve evidence and intelligence practices in ways that translate into both more coherent anti-trafficking policy and better identification and support for victims.

Keywords: human trafficking, border force, intelligence, evidence, United Kingdom

Introduction

As international focus turns ever-more urgently to the need to combat human trafficking, the border has been presented as a site of unique opportunity for the identification and protection of potential victims of trafficking (PVOTs).[1] In the United Kingdom (UK), the establishment of specialist safeguarding and anti-trafficking (SAT) units within the border force has itself raised questions about the challenges for officers of balancing the requirement to keep irregular migrants out of the country with the protection of potential victims under anti-trafficking legislation.[2]

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[1] See, for example, European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*, 19 June 2012, Office for Official Publications of the European Communities, Brussels, pp. 1-20; European Migration Network, *Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures*, March 2014, pp. 1—42, European Commission, Brussels, retrieved 2 December 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_synthesis_identification_victims_trafficking_final_13march2014.pdf; Frontex, *Anti-Trafficking for Border Guards: Trainer's manual*, 2012, provided to the authors by Frontex Anti-Trafficking Unit; International Organization for Migration, *Identification and Protection of Victims of Trafficking: Training of border police and customs officials in identifying and providing assistance to victims of trafficking*, 2005, IOM, Brussels, retrieved 2 December 2015, http://www.vlada.si/fileadmin/dokumenti/si/projekti/IOM_izobrazevanje_policistov_carinikov_EN.pdf

[2] For academic analyses of these tensions, see: K F Aas and H O I Gundhus, 'Policing Humanitarian Borderlines: Frontex, human rights, and the precariousness of life', *British Journal of Criminology*, vol. 55, issue 1, 2015, pp. 1—18; J A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *The American Journal of International Law*, vol. 108, issue 4, 2014, pp. 609—649; L Weber and S Pickering, *Globalization and Borders: Death at the final frontier*, Palgrave Macmillan, London, 2011; J M Chacón, 'Tensions and Trade-offs: Protecting trafficking victims in the era of immigration enforcement', *University of Pennsylvania Law Review*, vol. 158, 2010, pp. 1609—53.

In a recent paper, we explored these challenges, drawing on findings from our study of SAT work at London's Heathrow airport.[3] We argued that border force officers (BFOs) demonstrated a moral and practical commitment to carrying out what they viewed as their 'humanitarian duty' to identify and protect potential victims of trafficking. Nonetheless, BFOs also expressed frustrations with aspects of their anti-trafficking work.

In this paper we direct our focus to a particular area of BFO frustration: the collection and use of evidence and intelligence to support investigation and pursuit of potential SAT cases at the border. As has long been recognised by different anti-trafficking stakeholders, the ability to gather evidence, share information and monitor activity are key components of a successful anti-trafficking programme.[4] Our research sheds light on current anti-trafficking practices at the border and our findings indicate that the gathering and use of intelligence by government personnel is both inadequately systematic and inadequately supported by guidance and regulation by relevant authorities with oversight in anti-trafficking work. They reveal deep dissatisfaction amongst BFOs with the limitations of their evidence-gathering powers, in particular with respect to European Economic Area (EEA) nationals[5] and the search of electronic devices and internet and social media. In addition, they suggest that the monitoring of SAT work and outcomes is insufficiently developed or robust, which in turn prevents the building of an evidence base to understand the impact of this work and to inform future practice. We argue that these shortcomings reflect broader problems with poor use and collection of data on human trafficking from the government and those operating at the border.

Our work contributes to a small but growing body of literature examining border forces' implementation of their newly acquired humanitarian duties from the perspective of those responsible for managing the border on the frontline. It provides an in-depth analysis of the views of officers engaged in anti-trafficking work, which has rarely been analysed before.[6] It also proposes concrete improvements to anti-trafficking evidence and intelligence practices. Finally, it provides specialist focus to more general examinations of the conditions under and the basis on which BFOs make immigration and other decisions at UK ports.[7] While our findings will be of relevance to ongoing debates about the impact of anti-trafficking measures on human rights, we can only touch on those issues here. Similarly, in privileging the perspectives of border force officials in this paper, we do so with the acknowledgement that valuable work in critical border studies has asserted the political nature of border processes, highlighting how the technocratic acts of surveillance and monitoring, and political acts of 'sorting' migrants (through reliance on racialised and gendered assumptions) undoubtedly give considerable discretionary power to border officials in (co-)producing the border with state and non-state actors.[8] Finally, we did not ask BFOs directly about their use of evidence or intelligence. Rather, we asked them what their job involved and how they identified victims. In responding, BFOs referred to their gathering of information about possible trafficking situations—e.g. documents in luggage that resemble a script for individuals to use when questioned by officials—as 'evidence' of trafficking. Intelligence was used to refer to information provided by police or the resident intelligence officer about risky situations, e.g. sponsors with a trafficking-related criminal history.

3   K Hadjimatheou and J K Lynch, '"Once they pass you, They may be gone forever": Humanitarian duties and professional tensions in safeguarding and anti-trafficking at the border', *British Journal of Criminology*, doi:10.1093/bjc/azw027, 2016, pp. 1—19.

4   See, for example, United Nations Inter-Agency Coordination Group Against Trafficking in Persons (ICAT), *Pivoting Toward the Evidence: Building effective counter-trafficking responses using accumulated knowledge and a shared approach to monitoring, evaluation and learning*, 2016, pp. 1—48; A Gallagher and R Surtees, 'Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who decides—and how?', *Anti-Trafficking Review*, issue 4, 2012, pp. 10—30.

5   Under EU legislation citizens of a specified list of countries (EEA) can travel and live within those countries without visas.

6   A notable exception is S Pickering and J Ham, 'Hot Pants at the Border: Sorting sex work from trafficking', *British Journal of Criminology*, vol. 54, issue 1, 2014, pp. 2—19.

7   See also L Weber, 'Down that Wrong Road: Discretion in decisions to detain asylum seekers arriving at UK ports', *The Howard Journal*, vol. 42, issue 3, 2003, pp. 248—262; M McAdam, 'Who's Who at the Border? A rights-based approach to identifying human trafficking at international borders', *Anti-Trafficking Review*, issue 2, 2013, pp. 33—49; J Ham, M Segrave and S Pickering, 'In the Eyes of the Beholder: Border enforcement, suspect travellers, and trafficking victims', *Anti-Trafficking Review*, issue 2, 2013, pp. 51—66.

8   For discussion of these issues, see: K Rygiel, 'Bordering Solidarities: Migrant activism and the politics of movement and camps at Calais', *Citizenship Studies*, vol. 15, issue1, 2011, pp. 1—19; N Laurie *et al.*, 'Post-trafficking Bordering Practices: Perverse co-production, marking and stretching borders', *Political Geography*, vol. 48, 2015, pp. 83—92; K Cote-Boucher, F Infantino and M B Salter, 'Border Security as Practice: An agenda for research', *Security Dialogue*, vol. 45, no. 3, 2014, pp. 195—208.

This article begins by outlining our study methodology and the political and policy context that provides the backdrop to the anti-trafficking practices we examine. We then present our findings in two sections, corresponding to anti-trafficking evidence and intelligence processes. The first examines limits to the scope of BFO powers of evidence-collection for victim identification and assistance on the frontline. The second considers the use of intelligence and data to inform UK Border Force (UKBF) initiatives. We conclude by making proposals for how UKBF and the central government could improve evidence and intelligence practices in ways that translate into both more coherent anti-trafficking policy and better identification and support for victims.

Methodology

Our study of anti-trafficking initiatives was conducted at Heathrow airport, which has been at the forefront of implementing the UK government's Modern Slavery Strategy.[9] It was the first UK airport to establish a SAT team and is considered by other UK ports to be an example of best practice for its work in this area. All Heathrow BFOs receive basic training in SAT measures. In addition, the airport currently has a 15-strong team of specially trained officers to whom all SAT-related concerns must be referred. Our research draws on interviews with members of this team. The work of the team is varied. As well as undertaking enhanced training[10] in identifying potential victims of trafficking (PVOTs),[11] the team liaises regularly with external agencies, such as social service departments and charities. They also direct targeted operations based on information shared by a dedicated Heathrow SAT intelligence officer. SAT duties typically involve walking among incoming passengers to observe behaviour and look out for indicators of vulnerability—referred to amongst BFOs as 'floor-walking'—and SAT case-management, including interviewing potential victims and investigating their claims by making phone calls to sponsors or external agencies. SAT officers' priority is to uphold the welfare of potential victims over and above immigration concerns. As officially-designated trafficking 'first responders' they also refer victims to the National Referral Mechanism (NRM), the UK's system for processing individual applications for formal recognition of victim status.[12]

SAT work at Heathrow involves a range of evidence and intelligence-related activities at nearly every stage of the process, from the selection of individuals for questioning to the closing of a case and the notification of the Home Office—the lead government department for immigration and passports, drugs policy, crime, fire, counter-terrorism and police. For an overview, the stages in the SAT process are represented schematically as a cycle in Figure 1 below. Our analysis sheds light on each of the stages depicted in the cycle.

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[9]   HM Government, *Modern Slavery Strategy*, Crown, London, 2014.

[10]   Similar training is now undertaken in many other countries. See, for example: European Commission*, Guidelines for the Identification of Victims of Trafficking in Human Beings, Especially for Consular Services and Border Guards*, 2013, retrieved 29 January 2017, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_on_identification_of_victims_1.pdf

[11]   While we are cognizant of the sensitivities around the use of the term 'victim' in this context (see, for example, R Broad, 'A Vile and Violent Thing: Female traffickers and the criminal justice response', *British Journal of Criminology*, vol. 55, issue 6, 2015, pp. 1—18; S Walklate, *Imagining the Victim of Crime*, Open University Press, 2007) the scope of this paper does not permit us to rehearse them here. In line with our participants, consistency with practitioner usage of terminology is maintained throughout, without implying endorsement of it.

[12]   Formal recognition as a victim provides access to rights and benefits including health services, accommodation, protection, and potentially temporary leave to remain in the UK.
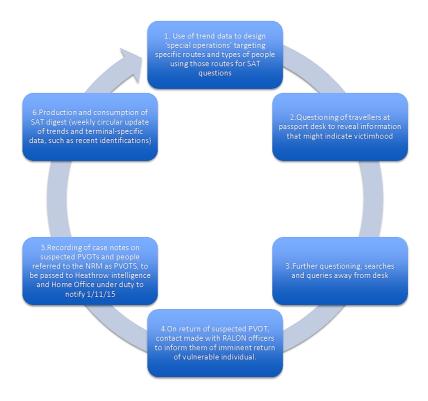
Figure 1 Safeguarding and anti-trafficking processes

We conducted semi-structured interviews with nine of the fifteen officers comprising the SAT team, including those in administrative roles as well as those in senior management.[13] Due to staff rotas and pressures on the team resulting from general staff shortages, we were unable to interview the whole SAT team. As this was an exploratory study, we were particularly interested in participants' own accounts of SAT work—their experiences and attitudes towards this part of their role. To this end, we took a narrative approach to data collection and analysis, keeping questions open-ended and minimal, and focusing on emergent issues. In line with narrative inquiry, analysis became an iterative process of reflexive meaning making, involving some thematic analysis but also ensuring theorising resulted from the narratives 'intact', emphasising the importance of participants' construction of their experiences and sense of professional identity.[14] Participants were asked directly about certain aspects of their evidence and intelligence practices, such as search powers, but many of the findings relating to weaknesses in monitoring and intelligence emerged from narratives about the challenges they faced as SAT officers.

Background: Gathering evidence at the border

The UK's Modern Slavery Strategy highlights the border as a key site for anti-trafficking initiatives. It also stresses UKBF's ability to work collaboratively with multiple agencies 'to intercept traffickers, prevent victims from being trafficked to the UK in the first place and provide enhanced support and protection against re-trafficking'.[15] It is clear that UKBF's role in addressing such a complex challenge can only succeed through co-operation with a number of government agencies and non-governmental organisations. In our own study, officers reported daily interactions with external organisations as a fundamental part of managing potential trafficking cases. Yet the focus on the border as strategically

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[13] We received full ethical approval for conducting fieldwork at Heathrow from the University of Warwick's Research Ethics Committee on 14 November 2014 (ref. 40/14-15). We were required to comply with British Airports Authority conditions for access to Border Force Officers 'airside' at Border Control, which consisted of providing photo ID and adhering to restrictions currently in place for all passengers travelling from the airport.

[14] K Etherington, *Becoming a Reflexive Researcher: Using our selves in research*, Jessica Kingsley, London, 2004; C Riessman, *Narrative Methods for the Human Sciences*, Sage, Los Angeles, 2008.

[15] HM Government, p. 55.

important appears to belie a lack of infrastructure supporting UKBF anti-trafficking activities. A report by the Centre for Social Justice (CSJ), a UK-based research and policy institute, claimed that a lack of information, data and intelligence exchange between agencies is impeding investigations into human trafficking cases. In reference to the border, it claimed that despite the value of the SAT training given to UKBF staff, BFOs are effectively 'acting in isolation' when conducting anti-trafficking operations.[16] The CSJ has called for Anti-Slavery Commissioners to be established in all countries of the European Union to facilitate the sharing of best practice and data. Meanwhile, in a damning report, the All Party Parliamentary Group on Human Trafficking and Modern Slavery has demanded that 'an early task for the Anti-Slavery Commissioner should be to conduct an information audit and establish a national data collection plan' because 'there are disparate sources of information which are currently not brought together anywhere'.[17] In response to these concerns, the post of Anti-Slavery Commissioner was created in 2014, and the first Commissioner made the issue of data collection and sharing a key part of his Strategic Plan 2015—17. However, the information audit requested by the All Party Parliamentary Group has not as yet taken place.

Moves towards improvements in data collection are also apparent in the recent guidelines for frontline Home Office staff issued at the beginning of 2016, and in the Modern Slavery Act's duty on public authorities to notify the Home Office of potential victims of trafficking. But there is no indication of how this information will be collated, presented, shared or analysed for policy purposes.[18] The Anti-Slavery Commissioner's strategic plan reflects the concern that a lack of access to data could inhibit the development of best practice in SAT work.

As our analysis will demonstrate, this concern was shared by our UKBF participants, who were keen to learn from their experiences of SAT cases and managed their own data on internal systems but were frustrated by the lack of a joined-up strategic approach to sharing information between stakeholders.

The Use of Evidence and Intelligence: Gathering powers to identify victims of trafficking on the frontline

Under UK customs, excise and immigration law, BFOs have substantial powers to stop, question, and search travellers at the border. While powers to search luggage are authorised under customs and excise law,[19] both immigration and customs and excise law empower officers to search and detain individuals and to ask questions.[20] The distinction between customs and excise and immigration functions has become less pronounced since 2008 when the two were merged within the role of the Border Force Officer. While BFO powers are dwarfed by those afforded to law enforcement officers under terrorism legislation,[21] they are significant compared to the routine stop and search powers of police patrolling the streets because they enable the search of pockets and luggage in the absence of suspicion of a criminal offence.[22]

16   The Centre for Social Justice, *A Modern Response to Modern Slavery*, The Centre for Social Justice, April 2015, p. 56, retrieved 2 December 2015,
      http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJJ3202_Slavery_report_04.15_WEB.pdf

17   All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery, *Inquiry into the Collection, Exchange and Use of Data about Human Trafficking and Modern Slavery*, January 2014, p. 8, retrieved 23 June 2016, http://humantraffickingfoundation.org/sites/default/files/DataInquiry2014.pdf

18   See: Home Office, *Duty to Notify the Home Office of Potential Victims of Modern Slavery: Guidance for specified public authorities*, Version 2.0, 18 March 2016, retrieved 23 June 2016,
      https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508817/Duty_to_Notify_Guidance__Version_2.0_.pdf

19   See UK Customs and Excise Management Act 1979, especially part XI at
      http://www.legislation.gov.uk/ukpga/1979/2/contents

20   See UK Immigration Rules:
      https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423477/20150424_mmigration_rules_app_v_final_v2.pdf

21   For example, Schedule 7 of the Terrorism Act 2000 stipulates (not uncontroversially) that law enforcement officers are authorised even in the absence of reasonable suspicion to stop and search individuals and their property at borders, including their mobile phones, from which information can also be downloaded and copied.

22   Not all immigration offences are criminal offences in the UK. See the following briefing from the Oxford Migration Observatory: *Immigration Offences: Trends in legislation and criminal and civil enforcement*, 12 October 2016, retrieved 20 October 2016, http://www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-offences-trends-in-legislation-and-criminal-and-civil-enforcement/

Customs, excise and immigration powers of question and search are put to use by SAT officers in order to gather evidence of PVOT status, which is then used to inform potential victims of trafficking about their possible exploitation, offer them assistance, and to support their referral to the NRM for further care. We asked SAT Officers to describe their use of questions, queries and searches and talk about the challenges of this work. In this section we highlight three such challenges—European freedom of movement, powers to search electronic devices, and the use of internet and social media searches for intelligence purposes.

Challenge 1: No evidence or intelligence gathering powers with EEA nationals

Unlike asylum seekers, PVOTs do not tend to self-identify as victims of trafficking at borders. The reasons for this include the fact that they are often subjects of deception; controlled by traffickers; or planning to work illegally and as such unwilling to provide honest answers to BFOs about their intentions. The implications of this for SAT work are that BFOs must take proactive measures to uncover indicators and evidence of victimhood and propose referral to the NRM.

Use of questioning was reported as the primary and essential means of revealing initial indicators of vulnerability, which could then be probed further. Yet BFOs revealed that they are prevented from taking such proactive measures with EEA nationals, as a result of political agreements ensuring freedom of movement. All the officers we spoke to felt that restrictions on enacting SAT measures with EEA nationals is a serious challenge to their ability to gather and act on evidence of victimhood, and thus to identify and offer assistance to PVOTs.

Because the freedom of movement, the pressure is these people must go through the borders. So, we have a very small service level agreement in terms of—which is agreed at the highest level—how quickly we will process people through our European desks. And we have to keep to it, and that's 15 minutes. We can't go beyond that. 25 minutes I think it has now been increased to… how do you interact with somebody that you have no conversation with at all? Or if you do, you know, it's very, very cursory. [P8]

Many participants also expressed concern with the increasing use of electronic border gates for European nationals, as these precluded any interaction at all with a BFO, thus removing the opportunity to reveal and respond to evidence of trafficking:

So if somebody wants to use the e-gates, how am I going to know whether or not they're being trafficked? I'm not. They're using a machine to come through, and as long as their face matches that face in the passport and there's no other information on them, then they can leave and go as freely as they want. We don't have any contact with them. And they want more machines as well! [P5]

As one participant pointed out, the limits on BFO interaction with EEA travellers not only constrains their ability to identify victims, it also restricts Border Force's scope for building a picture of the extent of human trafficking in the country, especially in light of the fact that, according to UK government statistics from the last three years, the majority of victims of trafficking identified as such are of EU nationality.[23] According to figures from 2013, this rises to 78% in relation to those identified as trafficked for labour exploitation.[24] Another participant spoke for all when they said:

I think that we should be given more powers to stop and interview European passengers. [P6]

Recent political events in the UK suggest that this wish may indeed be granted: on 23 June 2016 UK citizens voted in a national referendum to leave the European Union.

However, if and until immigration restrictions are reinstated, the current situation will continue to be perceived by BFOs as having a detrimental effect on their ability to better understand the scale of trafficking at their terminal and, it follows, to pass on that information to UKBF or the Anti-Slavery Commissioner's office to enable a better-informed national picture.

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[23] National Crime Agency Statistics (2014, 2015, 2016), available at http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics
[24] National Crime Agency, *Strategic Assessment of the Nature and Scale of Human Trafficking in 2013*, 30 September 2014, retrieved 23 June 2016, http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file

Challenge 2: No powers to search mobile phones and electronic devices

While concerns about EU freedom of movement were consistently cited as the primary challenge to BFOs' ability to enact their SAT role, their lack of legal powers to search mobile phones and electronic devices (unlike in the USA, Australia, and Canada) came a close second.

Indeed, the BFOs participating in this study were united in their belief that, given both the amount and obvious relevance of information contained therein, greater powers to search electronic devices would improve their ability to gather evidence leading to identification of victims of trafficking and therefore should be available to them:

Mobile phones is my number one thing… I've got a child who arrives, say, they're 15. They have travelled on a ticket that I know is associated with a travel agent that brings in people that have historically been found to have been exploited; […]. They've got no money, they've got no return ticket, they're just here. 15, they've got a phone, what do I do with that phone? What can I do with that phone? I can't do anything with that phone because I have no power. What if I've got a 20 year old…travelling with this fella that she's known for three months. He's booked the ticket, she's got no money. She's got a little trolley bag that's got lingerie in it. And I say to her, I'm really worried about you. She goes, no, I'm alright. She's got a phone. She gets instructions by phone. I can't do anything with that phone. Why can't I? [P3]

One participant expressed frustration that UKBF is expected to implement immigration, customs, and indeed anti-trafficking laws, but its officers are denied the means that are afforded to police officers:[25]

I do think it's a major issue [that UKBF cannot look at electronic devices] and I do think as an agency— not an agency— as a border <u>force</u> who are concerned with securing the borders, we are a law enforcement operation, that to not be able to access that sort of information is ridiculous, in the same way that the police can, for instance, it's just completely ridiculous. [P8]

Meanwhile, some BFOs contrasted their lack of powers with respect to electronic devices with their almost limitless powers to access material found in luggage. As one BFO described:

Anything that's found in a luggage in a paper format, a readable format, without having to log on and that sort of thing, absolutely, is open to disclosure. We can look at it, we can photocopy it, we can share it with partners, that sort of thing. Anything that involves IT, currently our legislation does not allow us to access that. [P8]

Some BFOs saw the prohibition on searching electronic devices as inconsistent with their ability to access all material found in a suitcase, however intimate or personal that might be:

And like we said, so what's the difference? There is no difference. But we can't. I mean, what was in their phone, we can't use, but what's in their diary, we can. I just don't understand the difference between that. Because at the end of the day, who has a diary? Everybody's stuff is in their phone [laugh]. So yeah, I think they need to allow us permission to use their phone. [P1]

The question of whether BFOs *should* have powers to examine electronic devices for evidence relating to the enforcement of immigration and customs law and/or to safeguard vulnerable individuals is a normative one that cannot be addressed adequately here. However, it is only proper that it is raised and equally that the policy makers, practitioners and academics are invited to address it, especially given that current arrangements arguably hamper the identification of victims of an organised criminal activity that is planned almost entirely through digital devices. Existing studies of BFO decision-making with respect to victims of trafficking suggest that any attempt to reconsider current arrangements should take into account the way in which BFOs interpret and use the evidence available to them. For example, Pickering and Ham's work in an Australian context reveals how BFO preconceptions around gender and race can influence the identification of victims. Women whose phones contained 'sexy messages' suggesting to border officers that they were involved in prostitution, were deemed to have 'too much' agency and not seemingly vulnerable enough to be viewed as potential victims of trafficking.[26]

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[25] Such powers are afforded for counter-terrorism purposes under Schedule 7 of the Terrorism Act 2000, cited in note 16 above.

[26] Pickering and Ham, 2014, p. 11; Ham, Segrave and Pickering, 2013, p. 61. See also A Pratt, 'Between a Hunch and a Hard Place: Making suspicion reasonable at the Canadian Border', *Social & Legal Studies*, vol. 19, issue 4, 2010, pp. 461—480; A Pratt and S K Thomson, 'Chivalry, "Race" and Discretion at the Canadian Border', *British Journal of Criminology*, vol. 48, 2008, pp. 620—40, for discussions about use of 'racialised knowledge' at the border.

Analysis of the expectations of privacy of passengers is also relevant, and significant work has been done in the US and in Canada not only to ascertain those expectations, but to influence and manage them.[27] Indeed, the issue of privacy at border crossings is a matter of live (and lively) public debate. In the UK, in contrast, such issues have less public resonance. While they have been examined to some degree in relation to the use of biometric passports,[28] searches of electronic devices have only been discussed briefly in the media in relation to the perceived excesses of police exercise of anti-terrorism powers.[29] In the UK and Canada, the consensus appears to be that expectations of privacy are reduced significantly at border crossings, and that searches are therefore justified for routine customs and immigration purposes, not only the prevention and detection of serious crimes. Debate focuses instead on the proper limits to the scope of such search powers. While the lack of public discussion of this issue makes its interpretation less easy to achieve reliably in the UK, one might speculate that the relative lack of search powers of UK border officers relates to the fact that most kinds of irregular immigration are not criminal offences.

Challenge 3: No policy around use of social media and internet searches for intelligence gathering at the border

We asked BFOs about their use of social media and online searches to gather intelligence about the intentions and situation of vulnerable individuals, which could then be used to persuade them to agree to be referred via the NRM. One of our aims in probing such practices was to compare SAT work at UK borders with its Australian counterpart. In a 2014 paper, Pickering and Ham reported that border guards sometimes access passenger lists, check the Facebook profiles of passengers in advance of their arrival in Australia, and then use the intelligence gathered to assess the credibility of passengers.[30] A lack of credibility is considered by BFOs to be an indicator of trafficking, because PVOTs may lie to cover up their intention to work rather than have a holiday, or because they are travelling with a fake passport, or because they are repeating a script given to them by their smugglers or traffickers. Our findings suggest that such searches are being used at Heathrow, both to assess credibility and to assess other aspects of the risk to individuals of potential exploitation in the UK. However, as our findings illustrate, this practice at Heathrow is, unlike in Australia, inconsistent and piecemeal, with a lack of clear guidance from UKBF on how such sources of intelligence should be used.

The value of social media searches in providing intelligence was almost universally recognised by participants, but reported practice varied widely. Access to social media sites is barred on Home Office computers, but this was perceived by participants as being due to misuse by Home Office staff for personal communication rather than because of concerns for the online privacy, data protection, or other rights of passengers. Some BFOs reported using their own devices to undertake these searches, albeit unofficially:

It's not policy. I do it personally because I believe, you know, sometimes people put things—and I have seen it myself—they'll put things up on Facebook that they haven't told us at the desk. But we have no access to that information and we have no access via work, it's something I'll do off my own personal phone. [P7]

Others said they were not able to conduct social media searches unless a passenger agreed in advance. Others still expressed frustration at what they understood as an outdated prohibition on access to social media, appearing unaware of the possibility and practice of using personal devices:

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27   In Canada, which has arguably the most sophisticated privacy oversight system in the world, passengers' rights and border officer powers are laid out in an explanation sheet on the privacy commissioner's website: 'Your Privacy at Airports and Borders', 2016, retrieved 11 October 2016, https://www.priv.gc.ca/en/privacy-topics/public-safety-and-law-enforcement/your-privacy-at-airports-and-borders/. In the USA, the Department of Homeland Security's Chief Privacy Officer carried out a Privacy Impact Assessment of Border Searches of Electronic Devices in 2009 and published a paper setting out the rationale for the sweeping search powers: 'Privacy Issues in Border Searches of Electronic Devices', 2009, retrieved 11 October 2016,
https://www.dhs.gov/sites/default/files/publications/privacy_privacy_issues_border_searches_electronic_devices.pdf

28   J Bustard, 'The Impact of EU Privacy Legislation on Biometric System Deployment: Protecting citizens by constraining applications', *IEEE Signal Processing Magazine*, vol. 32, issue 5, 2015, pp. 101—108.

29   See, for example, T Hardy, 'Welcome to Britain: Border control officers can seize personal data without suspicion', *The New Statesman*, 19 August 2013, retrieved 11 October 2016,
http://www.newstatesman.com/law/2013/08/welcome-britain-border-control-officers-can-seize-personal-data-without-reasonable-suspi

30   Pickering and Ham, 2014, p. 13.

[The inability to access social media sites], to me, seems a real disconnect, given now that for the majority of younger people...it's the only way you communicate. So whereas before you'd get a suitcase with loads of cards saying, go and enjoy your new life in England, all of that's on Facebook now, which we, of course, can't see. For us it would be so useful if we could, because it would help us with our enquiries so much, especially now every single thing is on social media. So that would be a brilliant way forward for us, but at the moment we're not allowed to do it, we don't have the access. [P10]

As this suggests, it seems that there is as yet no developed policy at Heathrow border force on using social media searches for SAT purposes (nor indeed for immigration control). In light of this and the inconsistent reports of practice and understanding of policy that we observed, we recommend that UKBF undertake research assessing the value of such intelligence-gathering tactics in SAT work, and take steps to draft guidelines for the use of such sources of intelligence in the future.

The Use of Evidence and Intelligence: Developing an intelligence-led response to trafficking

The Border Force Business Plan 2015—18 states that UKBF intends to become a wholly 'intelligence led' organisation but progress on this in the area of anti-trafficking measures has been piecemeal.[31] In this section we highlight current strengths and weaknesses in SAT intelligence practices at the border.

There are clear examples of where intelligence gathering has worked well. For example, the Modern Slavery Strategy emphasised the value of partnership working between UKBF and Nigerian authorities that led to a successful operation targeting a number of flights based on shared intelligence.[32] One intelligence officer in our study spoke passionately about how the border force had gathered and acted on data by tracking a Nigerian travel agent, leading to the 'rescue' of two girls at risk of sexual exploitation— describing the outcome as 'the best day of my life' [P3]. Such operations were portrayed to us as transforming anti-trafficking activities, with the intelligence team becoming integral to the work and regularly involved in cross-checking information held about potential human trafficking cases:

We will run operations as a result of intel that we've got…We didn't do that before because if we'd gathered any intel, it went off into a big, black hole and we never saw it again. But that's not the case now…people from intel will badger and say what are you doing about this? This is happening or we think this is happening, what's going on? And we didn't have that kind of connection before, we didn't have that interface with them. [P8]

Furthermore, this reciprocal relationship of gathering and sharing intelligence between officers at Heathrow was seen as empowering for BFOs managing trafficking cases that otherwise often culminated in a frustrating end result:

So what we're trying to do with our teams and our officers is say okay, ultimately, you may not be able to do anything at all to safeguard this person, but if you can gather the intel, we can build a bigger picture, not just for us but for…you know, when the police knock on the door of Joe Blogs and they find ten women there, when they run their checks, they will see that Joe Blogs has been raised as a concern issue at the port. So it's all about feeding information in that may or may not, in the future, influence legislation. [P8]

Targeted operations were also considered a useful way of overcoming the challenge of interacting with EEA citizens without coming into conflict with their right to freedom of movement. Being able to act on trend data disseminated by the intelligence team provided a crucial power to BFOs that was not afforded through other means:

European nationals…are the highest number of people that are identified as trafficked victims when they're picked up by the police in brothels or on farms, and that sort of thing. But at the border, it's almost impossible, unless you have a targeted operation… [P8]

However, such operations are currently not the norm at Heathrow, largely due to a shortage of resources invested in intelligence gathering (at present, just two part-time posts). And while locally-gathered intelligence appears to have had an impact on practice at Heathrow, it did not seem to be effectively scaled up in a way that would allow it to shed light on the broader nature of human trafficking in the UK. For

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[31] Cited in Independent Chief Inspector of Borders and Immigration, *An Inspection of Border Force Operations at Manchester Airport*, July to October 2015, Crown, London, p. 9.
[32] HM Government, p. 23.

example, while key resources for tackling human trafficking have been ploughed into strategically significant airports, such as Heathrow, Gatwick and Manchester, the CSJ has stressed the limited nature of information on trafficking routes, warning of a complex picture due to the variety of entry points open to organised crime groups and citing anecdotal evidence from the police as the best available estimate.[33] One step forward may be the European Council's decision to adopt a directive on the use of passenger name record (PNR) data by member states, for which the CSJ lobbied. Such data will give authorities real-time information on the movement of traffickers and goes some way to mitigating the unintended consequences of free movement.

Participants in our study reported that data on their interactions with PVOTs were routinely gathered and held on a database that was accessed daily by intelligence officers. However, while they were confident that the local picture was well understood, they were less certain about if and how that information was being used by the Home Office and other stakeholders. A common problem reported to us was managing data on individuals about whom BFOs had concerns but could not record as potential trafficking cases:

[There was a case] that would never have been flagged up as a trafficking issue because [the person] was not willing to be put on the NRM. Now, it was passed on to Intel, so they would have the details logged as a statistic for them. But in terms of being processed to the Human Trafficking Centre, they wouldn't have known that. [P5]

This statement points to glaring missed opportunities to gain a deeper understanding of the crime. The UK government has sought to address the problem of incomplete knowledge by introducing a duty on certain public authorities to notify the Home Office of any individual they suspect of being a potential victim of trafficking.[34] Nevertheless, concerns must be raised about the insistence that, should the said individual refuse help through the NRM, the data must be anonymised unless he/she consents to being identified. As this effectively closes the case, it means that future opportunities to safeguard the person are likely to be lost.

The lack of available identifiable information just described added to another frustration expressed by BFOs in our study—that they were rarely informed about the outcome of their PVOT cases and were rarely aware of where the data they were collecting was going. Describing the case of a woman who had been identified as a PVOT at the border but refused help through the NRM, one officer told us:

She did say, look, I'm going back to [country of origin] but you can use all my details, you can use it for intel and stuff like that. So we have that information. I don't know what the police are doing with it, because the police were there, they were taking all the details down. [P1]

One consequence of the lack of feedback channels to BFOs on the progress and outcomes of cases they have dealt with is that they have a poor understanding of the effect of their anti-trafficking interventions on the welfare of those they aim to protect. This is reflected in the fact that a significant number of our participants expressed the view that forcibly returning people to their country of origin was an effective safeguarding tactic in the absence of any evidence to support such a view. Indeed, recent research suggests that there is a systematic failure to investigate let alone promote good practice with respect to the post-trafficking experiences of victims, whether they remain in the destination country[35] or not—a fact that can lead in turn to a failure to investigate whether anti-trafficking actions are genuinely protective of victims' rights.[36] It also makes it difficult for SAT officers to learn from the cases they handle and to develop best practice. UKBF and the Home Office should take measures to establish more effective evidence and intelligence practices, and to ensure that the data collected in the context of these is utilised to build a comprehensive overview of trafficking in the UK and, more specifically, of what works in terms of attempts to identify and restore rights to victims. Until that happens, the highly emotive and urgent tone of the political discourse around trafficking remains at odds with how the rights of victims are (as Aas and

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[33] CSJ, p. 56

[34] Home Office, *Duty to Notify*, pp. 1—4.

[35] For recent work that criticises the approach of England and Wales once victims' 45-day 'rest and recovery' period has finished, see Human Trafficking Foundation, 'Day 46: Is there life after the safe house for survivors of modern slavery?', October 2016, retrieved 20 January 2017, http://www.humantraffickingfoundation.org/sites/default/files/Human%20Trafficking%20Foundation%20Report%202016%20Day%2046.PDF. Similar concerns about care of victims who have testified against traffickers in court were identified three years earlier in the UK's Anti-Trafficking Monitoring Group 2013 report, see R Annison, 'In the Dock: Examining the UK's criminal justice response to trafficking', retrieved 20 January 2017, http://www.ecpat.org.uk/sites/default/files/in_the_dock_atmg_2013.pdf

[36] Laurie *et al.*, 2015, pp. 83—92.

Gundhus note with respect to the humanitarian actions at sea crossings of the EU border agency Frontex) 'institutionally anchored in the agency's performance measures and its mechanisms of knowledge production'.[37]

Conclusion

Our analysis gives rise to a number of conclusions and recommendations. First, it has shown that European freedom of movement reduces opportunities to identify victims of trafficking at the border—a fact which is highlighted here not in order to cast critical light on that freedom, but rather to inform political expectations of what SAT work can realistically achieve at the border. Second, it suggests that the UK Home Office would do well to reconsider the prohibition on BFOs' access to electronic devices, if only to clarify the justifying grounds for distinguishing between these objects and luggage. Third, in relation to online intelligence-gathering practices, our analysis suggests that UKBF would add value to SAT investigations by conducting a systematic assessment of the value of internet and social media searches and then drafting a consistent UKBF-wide policy with respect to such practices. Finally, the exchange of information (between agencies) must be a priority. UKBF cannot continue to work in isolation when it comes to managing and acting on data about potential SAT cases. Clear processes for sharing information and providing feedback across key organisations must be put in place to advance good practice and to better understand the opportunities and constraints of conducting SAT work at the border.

More broadly, our research at Heathrow serves to highlight the border as an example of anti-trafficking work that lacks a clear evidence base. The border has become a focus of heightened political and public scrutiny—painted as a site of unique opportunity to control the flow of people and identify and protect potential victims of human trafficking. Yet this strategy has been anything but successful: just 3% of victim referrals to the UK's NRM in the second quarter of 2016 came from the Border Force.[38] Indeed, a joint report of the Independent Chief Inspector of Borders and Immigration and the Independent Anti-Slavery Commissioner delivered to the UK Parliament on 2 February 2017 warned that identification at the border of both victims and perpetrators of human trafficking needs 'urgent improvement'.[39] This lends support to concerns about the disconnect in anti-trafficking initiatives 'between activities and intended outcomes and a reliance on unarticulated assumptions or hypotheses that are not supported by available data'.[40] If the border is to remain central to global anti-trafficking strategies, a more transparent political dialogue is required to ascertain what success should look like and what resources must be made available to achieve it.

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[37] Aas and Gundhus, 2015, p. 10.

[38] National Crime Agency, *Human Trafficking: National Referral Mechanism Statistics—April to June 2016*, National Crime Agency, January 2017, p. 10, retrieved 29 January 2017,
http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/765-human-trafficking-national-referral-mechanism-statistics-april-to-june-2016-v2/file

[39] D Bolt, *An Inspection of Border Force's Identification and Treatment of Potential Victims of Modern Slavery–July to October 2016*, Independent Chief Inspector of Borders and Immigration, February 2017, retrieved 2 February 2017,
http://icinspector.independent.gov.uk/wp-content/uploads/2017/02/Potential-Victims-of-Modern-Slavery-_Inspection-report.pdf

[40] ICAT, 2016, p. vi. See also Davy, 2016 and Gallagher and Surtees, 2012 for more debate on evaluating anti-trafficking initiatives.