

Support for Victims: the framework and issues

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The National Referral Mechanism (NRM) is not just a framework for identifying and referring potential victims of trafficking. It is also intended to ensure that they obtain the appropriate support which they need, once they have been referred and identified.

2 periods of time when support is provided:

(1) Where a “positive reasonable grounds” decision is made, then this triggers the “Recovery and Reflection” period

- This triggers support for a minimum of 45 days (used to be 14 days) but up to 90 days**

(2) Before, during and after criminal proceedings



No domestic statutory basis for support

- European Convention on Action Against Trafficking (ECAT) – ratified by the UK in December 2008
- Directive 2011/36/ EU on Preventing and Combating Trafficking in Human Beings

So what support is provided in this 45 day period?

- ECAT Article 12 requires that victims are assisted in their “physical, psychological and social recovery”
- In practice this is meant to mean (at least):
 - An appropriate standard of living (providing accommodation, psychological and material assistance)
 - Access to emergency medical treatment
 - Translation and interpretation services
 - Counselling and information
 - Assistance to enable their rights and interests to be presented in criminal proceedings
 - Education for children



What's the purpose of this support?

ECAT Article 13(1)

- Tells us that the period of time granted must be sufficient to enable certain objectives to be achieved
- To allow the person to recover and escape the influence of the traffickers
- To take an informed decision on cooperating with the competent authorities

What's their status during this period?

- A potential victim of trafficking is protected during this time from expulsion from the UK, is authorised to stay in the UK and is normally granted temporary admission or temporary release as necessary.

Is everyone with a positive RG decision entitled to support?



- Yes
- See Article 12 of ECAT
- The right to such support is not dependent on the victim reporting trafficking to the police
- The right does not depend on there being an active investigation
- Or co-operation with the police

How specific can the request for support be?

- Pretty specific
- The decisions taken in providing such support and assistance **MUST** take into account the victim's safety and protection needs
- For example, a person may require a safe house, away from the area where they were found
- They must also be provided with medical assistance, access to the labour market, vocational training and education, see ECAT Articles 12(3) and 12(4).

Support During Criminal Proceedings

- The EU Trafficking Directive [2011/36/EU] also requires assistance and support to be provided to victims as soon as there is a reasonable grounds decision, but also before, during and for an appropriate time after the conclusion of criminal proceedings [Article 11(1)-(2)]
- Such assistance should commence as soon as there is a reasonable grounds indication for believing an individual might have been subject to an offence [Article 11(2)]
- BUT it is not conditional on cooperation with any investigation, prosecution or trial.
- Support must (as before) take into account the individual needs of the victims and be provided on a consensual basis [Article 11(5)]

Any Problems?



- Yes
- In practice, support can be pretty patchy
- There are no “minimum standards” of support
- And there are often problems when, for example, a person receives a positive “reasonable grounds” decision but then a negative conclusive decision, and support simply stops
- In due course, a challenge to the decision may result in a positive conclusive decision, but in the meantime, the person may have been removed from their safe house, or had their counselling stopped
- Once someone is recognised as a victim of trafficking, support simply stops
- There is no statutory duty to provide anything in that time: can change on a political whim

Does none of this have a domestic statutory basis?

- In Scotland and Northern Ireland: yes
- In England and Wales: no
- Section 49 of the Modern Slavery Act 2015 requires guidance to be produced: not yet produced
- Section 50 provides for regulations to be produced relating to the provision of support and assistance to victims: not yet produced
- But there are two Bills pending before Parliament

The Human Trafficking (Child Protection) Bill 2017-19



- This aims to make provision for the creation of safe houses for children who have been subjected to human trafficking
- Its first reading in the House of Commons was on 5 September 2017
- Its second reading is scheduled for 18 January 2019
- It is a Private Members' bill

The Modern Slavery (Victim Support) Bill (HL) 2017-19



- This seeks to amend the Modern Slavery Act 2015 so as to create a statutory duty to provide support and assistance to potential victims of trafficking for 45 days and a further period of 12 months following confirmation of their status as a victim of trafficking
- As such, the Bill aims to ensure:
- Support from identification until conclusion of the identification process (including during any process for reconsideration of the decision)
- A minimum of 45 days' support during the R & R period
- A discretionary power to continue support if necessary
- Temporary admission whilst being considered by NRM

The Modern Slavery (Victim Support) Bill

- It is also a private members' bill
- This Bill started in the House of Lords and completed its HL stages on 10 May 2018
- It had its first reading in the House of Commons on 17 May 2018
- Due second reading on 23 November 2018
- Inserts a new section 48A into the Modern Slavery Act 2015
- [copy of the Bill in your packs]
- But would ensure that providing support would become a statutory duty



Will it actually change anything?

The main change is the fact that *if the person wants it*, specialised advice and support would be provided **as soon as** the person is referred for a determination as to whether they are a victim of trafficking and would RETAIN that support until

- There is a negative “reasonable grounds” determination or
- A conclusive decision that the person is a victim of trafficking
- A conclusive decision that the person is NOT a victim of trafficking and all internal appeals and challenges have been exhausted.
- If a conclusive decision is made that the person is a victim of trafficking during the R & R period, the support would continue until the end of 45 days

There is also a power to extend support for as long as appropriate

ALSO...



If someone has had a conclusive decision that they are a victim of trafficking, the support doesn't end there

- Assistance and support would continue for 12 months from the date when the earlier period of support ends
- But again, there is a power to extend that beyond the 12 months
- And the Bill sets out a series of criteria which the SSHD must consider when determining whether to extend support (individual circumstances, need for protection from harm, medical/psychological need for treatment, participation in criminal proceedings, whether compensation proceedings are being pursued and whether the person's support worker recommends it).



What would “support” mean under the new regime?

The Bill defines it as:

- Appropriate and safe accommodation
- Material assistance, including financial assistance
- Medical advice and treatment
- Counselling
- A support worker
- Appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person
- Translation and interpretation services
- Assistance in obtaining legal advice or representation

Anything Else?



- Yes
- The Bill requires the SSHD to make regulations by statutory instrument to set out **minimum standards** for assistance and support to be provided under the Act
- This is good news for victims, as currently support can be very patchy depending on where they live, the nature of their needs and so on.
- So keep an eye out for the progress of this Bill...
- Will it pass?
- Hard to tell. It will cost money – but it did go through the House of Lords unamended

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