

**All-Party Parliamentary Group for Human Trafficking and Modern Slavery Inquiry into the impacts
of Covid-19
Recommendations with Explanatory Notes**

1. Suspension of all asylum and NRM decisions where the decision-maker is ‘minded to refuse’

Why this is needed:

Anti-trafficking legal experts, ATLEU, and clinical experts, the Helen Bamber Foundation, among others, raised that Covid-19 is placing increased barriers to victims of modern slavery in accessing legal advice necessary for quality representation.

Many negative CG decisions are successfully challenged with quality legal support or specialist advocacy. The decisions are frequently wrong due to lack of information or evidence being provided from the outset. The system is not inquisitorial so the burden is on the victim to evidence their case. In addition the decision-maker will often lack understanding of the victim’s vulnerability and misapplication of relevant law and policy is common. Without proper legal representation, victims of human trafficking might not gain formal recognition, jeopardising access to support required to recover, which they would otherwise be entitled to. ATLEU have confirmed they are seeing negative reasonable grounds decisions and where possible are supporting a legal challenge.

Barriers to legal representation as a result of Covid-19:

Victims of human trafficking and modern slavery are not able to meet legal representatives in person due to social distancing measures in place to protect against the spread of Covid-19. Giving instructions to legal representatives remotely is problematic for survivors due to:

- a) Lack of access to internet and necessary technology equipment to sign papers, receive email statements and other communications, etc.
- b) Clients in the early stages of a case need to provide a statement involving recalling their trafficking in detail. This is extremely traumatising and often results in flashbacks, panic attacks and other symptoms of distress. Survivors often need to be supported in these legal appointments by their support worker for emotional support and to risk assess. At a time when in-person support cannot be provided and social distancing measures are in place, this presents a potential safeguarding need, which may go missed while survivors are isolated.
- c) Inability to access a private space as most survivors live in shared, often crowded accommodation
- d) Hope for Justice reported that victims who are provided with technology often need in-person support to use it, especially where they have additional learning needs, something which is not available at this time

This is against the backdrop of depleting legal aid provision across the UK generally and in particular in the context of Covid-19 as legal aid providers are faced with additional costs to move services online and the inevitable pending costs of transferring back to in-person support and representation.

Current situation

The Home Office enacted a welcomed interim policy to prevent victims of modern slavery from being exited from accommodation provided under the victim care contract until the end of June.¹ It

¹ <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/victims-of-modern-slavery-temporary-change-to-the-policy-on-move-on-period>

has also confirmed that asylum seekers will not need to move from their asylum support accommodation until the end of June.²

These welcome steps avoid the increased risk of the virus spreading while victims move between accommodation sites, i.e. from victim care contract accommodation to asylum accommodation, or from asylum accommodation to local authority accommodation.

Why more is needed:

While current policies reduce the immediate health risks of contracting and/or spreading Covid-19, they do not take into account the barriers to accessing justice faced by survivors in the current climate, outlined above, and which directly determine eligibility for support both within the victim care contract and mainstream services. Survivors of human trafficking may still be given negative decisions on either or both their trafficking and asylum claims and barriers to accessing and engaging with legal representation are exacerbated in the context of Covid-19. There are also strict time limits for challenging negative decisions. An appeal of an asylum decision must be made within 14 days and a judicial review of a negative CG decision must be made within 3 months. The reconsideration policy requires that any challenge to the decision on the grounds of policy is also made within 3 months.

Under this proposal, the Single Competent Authority can continue granting positive decisions where they consider there is enough evidence to do so, but negative decisions would be suspended in recognition of the barriers faced by a) individuals b) first responders c) legal representatives. It is suggested that suspended negative decisions are then reviewed when services are able to safely return to normal face-to-face support, using a staggered approach to avoid overwhelming the advice sector, thus undermining the aim of facilitating access to proper legal representation and access to justice.

2. Provide clarity that all victims of modern slavery with positive conclusive grounds decisions who are British nationals and those with leave to remain in the UK priority need for local authority accommodation under Chapter 8(3) of the Homelessness Code of Guidance for Local Authorities

Why this is needed:

Background

Victims of human trafficking and modern slavery are routinely denied housing by local authorities who do not consider them to be in priority need, even where other criterion (i.e. eligibility and homelessness) are met.³ Local authorities will not usually consider victims of modern slavery to be at an increased risk of trafficking than an ordinary homeless person despite a history of exploitation evidenced by a positive CG decision. Most local authorities will not take trafficking identification into account and they typically lack understanding of trauma and how this affects victims of trafficking.

Victims can successfully demonstrate a priority need on the basis of their trafficking but will require quality legal support and advocacy and supply costly expert reports to do so. Challenging a refusal to

² <https://homeofficemedia.blog.gov.uk/2020/04/26/factsheet-asylum-accommodation-and-applications/>

³ Homelessness Code of Guidance for Local Authorities, Chapter 8
<https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-8-priority-need>

accommodate a victim will frequently take over 6 months during which time significant legal costs are incurred, for both local authority and legal representative, as well as being extremely traumatic for the victim, who must wait in limbo, often while homeless, and face no certainty about their future. This significantly undermines their recovery.

The immediacy of Covid-19

While many victims of trafficking are not currently being exited from victim care contract accommodation due to movement restrictions, when restrictions are lifted, there will very likely be a surge in the number of victims of modern slavery at risk of homelessness – whether exiting victim care contract or asylum accommodation - and requiring urgent legal representation from experts in both trafficking and homelessness.

The current lack of legal aid providers and in particular those with trafficking expertise (see recommendation 3), means many simply will not have access to quality legal representation to demonstrate their vulnerability to the local authority. Experience from subcontractors within the victim care contract and charities working with survivors outside the NRM demonstrates that successful applications for homelessness assistance often require substantial frontloaded advocacy. Without this and in some cases even where provided, experience of such organisations is that legal advice from a legally aided specialist housing solicitor is needed. A successful application can take six months or more, in which time the survivor of modern slavery is left in a precarious situation and usually in a state of anxiety, which causes their mental health to deteriorate.

Action Required

Provide clarity that victims of modern slavery fall within the vulnerable persons category within the Homelessness Code of Guidance section 8(3) and are in priority need for accommodation to remove the barrier to accessing accommodation.

Immediate impact:

This would enable all recognised victims of modern slavery, who are British nationals and those with leave to remain in the UK, homelessness assistance at a time when they are most at risk of further abuse, exploitation and trafficking. It will also help to manage the public health risk of this highly vulnerable group, who would otherwise likely to be homeless, from contracting and/or spreading Covid-19.

Short-term impact:

Granting priority need to all victims of modern slavery with a positive conclusive grounds decision and with recourse to public funds would allow smooth transition from victim care contract accommodation to local authority accommodation when restrictions on 'move-on' are lifted (currently end June).

It would also reduce the bottle-neck likely to be created by the number of confirmed victims awaiting exit and who are likely to require significant advocacy to transition to local authority accommodation under existing policy.

Medium-term impact:

Victims of modern slavery would benefit from easier access to longer-term accommodation options. Subcontractors within the victim care contract would be able to move victims on sooner, opening up capacity to take on others, and would need to invest less time into advocacy and sourcing legal advice to demonstrate vulnerability of their clients.

Evidence:

There is no data on the number of victims of modern slavery who are currently or have been homeless, as the Home Office does not collect data on outcomes. However, reports by the Human Trafficking Foundation evidenced many face a 'cliff-edge' following a conclusive grounds decision and end up homeless and/or destitute. The Human Trafficking Foundation's ongoing engagement with stakeholders in recent years indicates very little has changed in this regard.

A 2018-19 post-NRM integration pilot, STEP, also demonstrated challenges in demonstrating victims of trafficking fall within the priority need category. The project, delivered jointly for 15 months by three UK support providers, Ashiana, British Red Cross and Hestia, worked with 72 women and men who had survived trafficking, were identified through the NRM but no longer had access to statutory support as their "recovery and reflection period" had come or was coming to an end. The project reported that even where survivors with a positive conclusive grounds decision and leave to remain were entitled to housing and welfare benefits (Universal Credit) challenges in evidencing priority need for housing was a significant barrier in accessing accommodation.

Additional consideration: the granting of automatic priority need was recently achieved for victims of domestic violence with recourse in light of the risks faced during Covid-19. Victims of modern slavery, like victims of domestic violence, have suffered abuse and are at risk of further abuse should they remain homeless. There are also duties under the European Convention Against Trafficking in Human Beings to protect confirmed victims of trafficking from further exploitation. This would not involve any change to immigration decisions, but grant those already eligible easier access to accommodation taking into account their vulnerability.

3. Immediate change to the way legal aid payments are structured on trafficking cases, with the Ministry of Justice ensuring that the Legal Aid Agency:
(Evidence provided by ATLEU)

- Pay legal aid providers on the basis of the number of hours of advice provided on a trafficking case (and not on a standard fee basis)
- Enable legal aid providers to claim for the hours of advice undertaken every 6 months, during the life of a trafficking case
- Reimburse legal aid providers for any expenses incurred on a trafficking case on a monthly basis (the same time period which a legal aid provider is expected to pay suppliers, such as interpreters or experts, under the terms of a legal aid contract).

These simple changes can be delivered through existing legal aid mechanisms and would not require additional funding. They are an essential step that must be taken during this crisis to safeguard quality advice, and any advice, for victims of trafficking and slavery.

Why this is needed:

- Half of all law centres and not-for-profit legal advice services in England and Wales have closed since 2012
- In 2013-14, there were 94 local areas with law centres or agencies offering free legal services and in 2019-2020, only 47 such law centres/agencies
- Victims of modern slavery are disproportionately affected by the lack of legally-aided advice
 - Trafficking cases are not financially viable – structure of payment system often requires three years of work with no payment, requiring providers to source alternative means of funding for this period. i.e. staff salaries and the costs of running a legal practice

- Very few providers therefore develop trafficking expertise as they lack experience, so where they are taken, victims receive poor advice
- Victims of trafficking can only access legal advice on their identification case from legal aid providers with immigration/asylum legal aid contracts, and are often denied assistance
- The average cost of running a case for a victim of trafficking is significantly higher as the cases are more complex. ATLEU estimate this to be an average of over £3000 per case.

Immediate Covid-19 Impact:

- Significant unforeseen costs for legal aid providers to enable staff to work remotely and the upcoming costs of necessarily returning to face-to-face provision of advice and representation
- Legal aid providers will not be able to take high-risk or unprofitable cases and will avoid cases placing a pressure on cash flow

Without proper legal representation, victims of human trafficking will continue to be denied access to justice and support incumbent upon recognition as a victim of human trafficking.

4. Increase NRM subsistence rates and asylum subsistence in line with increased costs of accessing basic necessities following the Covid-19 outbreak

It is suggested that subsistence rates be increased by £20 per week in line with increases to Universal Credit.

Current subsistence rates received by victims of trafficking:

Service User Type	Value of Subsistence Payment
Service user in catered accommodation provided by the contractor	£35
Service user in self-catering accommodation provided by the contractor	£65
Service user accommodated by the authority and in receipt of subsistence payments through that service	£65 minus the amount of subsistence received by (sic) the authority
Service user not accommodated by the contractor or the authority (e.g. living with friends or family)	£35

⁴ Extracted from judgement <https://www.judiciary.uk/wp-content/uploads/2018/11/approved-judgment-k-am-co-2143-2294-2018.pdf>

£35 per week is not enough to cover essentials and many victims of trafficking ordinarily rely on charities for donations, including foodbanks and baby banks.

Hestia reported in their evidence to the inquiry that these charities are either at reduced capacity or have stopped running altogether. Basic necessities have increased in price as supermarkets are offering fewer special offers and cheaper goods are disappearing from the shelves quicker as many face reduced income. Hestia gave the example of one service user finding there were no nappies in stock while in the supermarket, but did not have the funds to travel to another supermarket to purchase nappies elsewhere.

The Home Office report on 'Review of Cash Allowance Paid to Asylum Seekers: 2017'⁵ confirms the basis on which subsistence for victims of trafficking and modern slavery is determined. The review centred on weekly expenditure by the lowest 10% income group among the UK population on the items that correspond to what the Home Office consider to be essential. Several organisations submitting to the inquiry noted that since March 23rd, a number of retailers victims rely on for food and support listed in the Home Office report are now closed as a result of COVID-19, forcing victims to rely on large supermarkets that are not always accessible because of reduced transport services.

An uplift in the weekly subsistence in line with Universal Credit would also enable those in the NRM to purchase data for phones and or electronic devices, increasing their standard of living and enabling them to access psychological and material assistance; lack of which was reported in most submissions as a primary concern for the safety and wellbeing of trafficking survivors in the Covid-19 pandemic.

The Snowdrop Project reported that people they are supporting are forced to choose between eating and purchasing data order to gain access to services and support online.

Young people aged between 18-25 in NRM or adult asylum accommodation and children of adult victims do not qualify for The Department for Education⁶ provision around digital devices, internet access, and support to provide remote education during the coronavirus (COVID-19) outbreak.

An increase to weekly subsistence would help those aged 18-25-year as well as children of victims' access education services they need online.

5. Expand the embargo on move-on from NRM support to include victims receiving outreach support

The Home Office interim move-on policy protects victims of human trafficking receiving support via the victim care contract from being exited from NRM accommodation (approx. 600 victims) until the end of June, whereas a conclusive grounds decision would usually trigger an end to support (9 days for negative, 45 days for positive).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/673545/Report_on_review_of_cash_allowance_paid_to_asylum_seekers_-_2017_-_final..pdf

⁶ <https://www.gov.uk/guidance/get-help-with-technology-for-remote-education-during-coronavirus-covid-19#who-is-eligible-to-receive-digital-devices-and-internet-access>

There is no such policy to protect victims receiving support in outreach only (estimated at around 4,000 although the Home Office data is lacking). Many are reliant on £35 per week subsistence. This can stop when they receive a conclusive grounds decision. This was confirmed by The Salvation Army and Home Office in the Human Trafficking Foundation virtual Forum on 7th May, when the Voice of Domestic Workers disclosed one of its members had been issued with a Home Office letter advising support would stop 9 days after receiving a negative conclusive grounds decision. **If this person had been in victim care contract accommodation, she would have been guaranteed support until the end of June. Whereas she was abandoned and left destitute.**

Following the judgement of **NN and LP v Secretary of State for the Home Department (June 2019)**, the Home Office conceded its policy of exiting confirmed victims of trafficking after a set time period after receiving a conclusive grounds decision was **unlawful**. It agreed to develop a needs-based system for victims of human trafficking. The system the Home Office developed **continues to limit support to 45 days** following a conclusive grounds decision, **unless** the victim's professional case worker can provide compelling evidence of needs requiring ongoing support. This is not possible because the level of proof demanded by the Home Office is often not available. NRM subcontractors I gather report that victims continue to be exited after 45 days even where there are ongoing support needs. As a result, they are then left destitute, without weekly subsistence, in precarious living situations, and at greater risk of contracting Covid-19.