

# Introduction to Human Trafficking – what it is, immigration, accommodation and support and options for potential victims and victims

# Outline of Workshop

This session will cover:

1. What is human trafficking;
2. Indicators that a person may be a victim of human trafficking;
3. How the authorities should identify potential victims of human trafficking;
4. Options for potential victims and victims of human trafficking in relation to:
  - a. Immigration matters;
  - b. Accommodation; and
  - c. Financial support

# What is human trafficking (1)

## In simple terms

Human trafficking can be understood as at least one person procuring the movement of at least one other person in order to exploit them.

## Legal definition.

With adults, in order to meet the legal definition of a “victim of trafficking” a combination of components must be present:

- 1) an action, as a result of,
- 2) a means, which are done for,
- 3) 3) the purpose of exploitation.

With children only two of the above components just be present:

- 1) an action, done for,
- 2) the purpose of exploitation.

# What is human trafficking (2)

## Actions

One of the following acts must have occurred:

1. Recruitment – by any means including in person, by phone, through the press or via the internet;
2. Transportation – this does not need to be international or illegal;
3. Transfer – exchanging control over persons;
4. Harboring – hide, detain, keep etc another person; or
5. Receipt of persons.

These terms are not defined in law - the definitions given above are examples only.

## Exercise

Which of the following could be “an act”? Which act?

1. A is invited by B to travel abroad with B’s friend;
2. A is invited by B to travel with B to another town within A’s country;
3. A person is offered work in a restaurant in their home town;
4. A parent travels with their child to another country;
5. A travels to another country to live with their spouse, once there A is met by a relative of the spouse who takes A to their house.

# What is human trafficking (3)

## The Means

One or more of the acts must have occurred as a result of one of the following means being used in order to achieve the consent of the trafficker having control over the victim:

1. the threat or use of force;
2. Abduction;
3. Fraud;
4. Deception;
5. Coercion;
6. the abuse of power or of a position of vulnerability; or
7. the giving or receiving of payments or benefits.

## Exercise

Which of the following could be a form of “means”? Which means?

1. A’s traditional family (who believe in arranged marriages) tell A that she is to marry B;
2. B tells A that A will be working in tourism when that is not the case;
3. A is threatened by a local man, she has heard that B can help people leave the country and contacts B to ask for help to travel abroad;
4. A is from a poor family and has no qualifications, B tells A that although B will be arranging for A to work in prostitution it is the only way they will be able to support their family.

# What is human trafficking (4)

## Exploitation

Finally the act and means must have occurred for the purpose of exploitation.

Types of exploitation include:

1. unlawfully obtaining a financial or other material benefit from the prostitution of another person,
2. sexual exploitation,
3. forced labour or services,
4. slavery or practices similar to slavery,
5. servitude,
6. forced criminality,
7. organ harvesting,

## Question

Can you think of any examples of practices or treatment that could fall within one of the above types of exploitation?

# Indicators of Human Trafficking (1)

Victims of trafficking may present in numerous different situations, may exhibit various different behaviours and may disclose many different experiences all of which could be indicators that they are a potential victim.

Misperceptions of who is likely to be a victim, how victims should behave and where they come from can all hinder victim identification.

Common myths about victims

- They do not take opportunities to escape and therefore there was no coercion.
- If they say they have a better life than previously, then they have not been trafficked.
- They are not victims when they reject help.

These myths and false perceptions do not consider that victims may have legitimate reasons for choosing not to escape or to reject assistance (e.g., fear of reprisals, vulnerability, lack of knowledge of the environment). Even if their life in their country of origin might have been worse than their trafficking experience, that still does not mean that they have not been trafficked.

For a full list of indicators of human trafficking see the “Human Trafficking Indicators” list published by the United Nations Office on Drugs and Crime

[https://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf)

# Indicators of Human Trafficking (2)

## Case Study Exercise

Read the separate sheet “Human Trafficking Indicators, Sofia – Case Study”.

Split into groups and using the separate sheet headed “Human Trafficking Indicators” which is published by the United Nations Office on Drugs and Crime (also available online [https://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf)) write a list of any Human Trafficking Indicators you can see in Sofia’s case.

If there is anything in Sofia’s case which makes you think she might not be a victim of trafficking then write these down too.

# How potential victims should be identified (1)

The UK has signed up to an international agreement called the Council of Europe Convention on Action Against Trafficking in Human Beings (“the Convention”) on 17 December 2008. The Convention aims to prevent and combat trafficking and provide protection for victims of trafficking and to safeguard their rights. The Convention was brought into UK law on 1 April 2009.

In accordance with its duties under the Convention the UK is required to provide “competent authorities” to identify and help victims of trafficking and prevent and combat trafficking.

There are two competent authorities:

1. the Home Office which is the competent authority appointed to deal with potential victims of trafficking who also have immigration issues (i.e. have no legal basis for being in the UK);
2. The UK Human Trafficking Centre (UKHTC) which is the competent authority for UK nationals or European Economic Area (EEA) nationals (except where there is a live immigration issue).

# How potential victims should be identified (2)

The procedure for identification of victims of trafficking in the UK is called the National Referral Mechanism (“NRM”).

The first stage in the identification process is for a “First Responder” to refer a potential victim into the NRM. The following are First Responders:

| Statutory bodies  | Charities / NGOs   |
|---|--|
| <ol style="list-style-type: none"><li>1. The National Crime Agency</li><li>2. The Police</li><li>3. UK Border Force</li><li>4. Home Office Immigration and Visas</li><li>5. Gangmasters Licensing Authority</li><li>6. Local Authorities (usually social services although technically any local authority department or worker could refer to the NRM)</li><li>7. Health and Social Care Trusts (Northern Ireland)</li></ol> | <ol style="list-style-type: none"><li>1. Salvation Army</li><li>2. Migrant Help</li><li>3. Medaille Trust</li><li>4. Kalayaan (domestic workers only)</li><li>5. Barnardos (children only)</li><li>6. Unseen (Southwest)</li><li>7. TARA Project (Scotland)</li><li>8. NSPCC (children only)</li><li>9. BAWSO (Wales)</li><li>10. New Pathways (Wales)</li><li>11. Refugee Council</li></ol> |

# How potential victims should be identified – Reasonable Grounds Decisions (3)

Once a person has been referred into the NRM the Competent Authority is required to make two separate decisions regarding potential victims of trafficking.

Firstly, the Competent Authority has 5 working days within which to consider whether there are reasonable grounds to consider that the person is a victim of trafficking. Whilst someone is being considered as a potential victim of trafficking they cannot be removed from the UK. When making this decision the Competent Authority should consider whether they suspect but cannot prove that the person is a victim of trafficking, i.e. whether there are “reasonable grounds” to believe that the person may be a victim of trafficking. The Competent Authority should make arrangements to provide the person with temporary accommodation and financial support during this 5 working day period if required.

If after this working 5 day period the Competent Authority concludes that the person is not a potential victim of trafficking then they need take no further action, where the Competent Authority is the Home Office they can then consider the person in accordance with normal immigration procedures.

If the Competent Authority concludes that the person is a potential victim of trafficking then the person should be given a 45 day “recovery and reflection period”. If the person is someone who needs leave to remain in the UK but does not have it then during this period they cannot be removed from the UK and the person cannot work or claim benefits. All potential victims who receive positive “reasonable grounds” decisions are entitled to receive accommodation, financial support, medical services, support services, maintenance and free legal advice.

# How potential victims should be identified – Conclusive Grounds Decisions (4)

By the end of the 45 day reflective period the Competent Authority should make a Conclusive Decision, i.e. decide whether the person has been trafficked.

In order to make a positive Conclusive Decision the Competent Authority must be satisfied to “the balance of probabilities” that the person is a victim of trafficking. This is a much more difficult test to meet than the test at the Reasonable Grounds stage.

Prior to making a Conclusive Decision, the Competent Authority should gather all available evidence to assist in reaching this decision once they have done this they may, but do not have to if they have enough evidence to decide that the person is a victim of trafficking, interview the potential victim to help them decide whether they think the person is a victim of trafficking.

Where the person has also claimed asylum their asylum claim will also be processed under the Home Office’s normal asylum procedures.

The 45 day period should be reviewed on day 30 and can be extended if necessary. Usually it takes much longer than 45 days for this decision to be made.

# Immigration Options for Potential Victims and Victims of Trafficking (1)

Where a potential victim or victim of trafficking requires leave to remain in the UK but is without leave to remain, then the main options for seeking leave to remain in the UK are:

1. A claim for asylum;
2. A Human Rights Claim;
3. A request that they are considered for a grant of Discretionary Leave to remain (DL) as part of their NRM referral – a decision on this should be made at the same time as the Conclusive Grounds Decision.

For some victims, e.g. EEA nationals or those who have previously had grants of leave to remain in the UK, there may be other options available to them. The full options available to a person will depend on their personal circumstances, it is therefore very important that potential victims and victims of trafficking receive specialist immigration law advice. Free advice funded by legal aid is available for those who have received positive reasonable or conclusive grounds decisions and may be available to some potential victims prior to a referral to the NRM if they can qualify for a type of legal aid called “Exceptional Funding”.

# Immigration Options for Potential Victims and Victims of Trafficking (2)

|                         | Asylum  | Human Rights Claim  | Discretionary Leave   |
|-------------------------|---|---|---|
| Common Grounds          | Fear of reprisals from traffickers or vulnerability to re-trafficking or exploitation | Same as asylum plus, significant obstacles caused to reintegration by trafficking, established life in the UK or negative effect on victim's health or wellbeing of children. | Due to personal circumstances (this can include where it is necessary to assist victims in their physical, psychological and social recovery), to pursue a claim for compensation against the trafficker or to assist the police with enquiries in relation to an investigation concerning the trafficker |
| How made                | In person to Home Office  | Written application to Home Office  | Request to Home Office following positive Reasonable Grounds (ideally in writing)   |
| Length of initial leave | 5 years   | 2 ½ years   | However long leave required, e.g. duration of police investigation, up to 2 ½ years max   |

# Immigration Options for Potential Victims and Victims of Trafficking (3)

|  | Asylum  | Human Rights Claim            | Discretionary Leave           |
|--|---------|-------------------------------|-------------------------------|
| When eligible for indefinite leave to remain (ILR)?        | 5 years | 10 years                      | 10 years                      |
| Right to be joined by pre flight spouse or minor children? | Yes     | No                            | No                            |
| Entitled to a UK travel document?                          | Yes     | Only in limited circumstances | Only in limited circumstances |
| Entitled to benefits and housing?                          | Yes     | Not always                    | Yes                           |
| Able to work   | Yes     | Yes                           | Yes                           |
| Entitled to NHS treatment                                  | Yes     | Yes                           | Yes                           |
| Entitled to university student loan and home fees?         | Yes     | Possibly after 3 years        | Possibly after 3 years        |

# Accommodation and Support Options for Potential Victims and Victims of Trafficking (1)

|                      | Through the NRM  | Social Services   | Home Office   |
|----------------------|--|---|---|
| Nature               | Specialist “safe houses” for potential victims of trafficking with support workers | Varies – usually self contained with shared facilities for families and shared for single people                                      | Varies – usually self contained with shared facilities for families and shared for single people  |
| Eligibility Criteria | Referred to NRM  | 1) Support required to prevent breach of human rights or EEA rights, and, 2) responsible for a child or in need of care and attention | 1) Is an asylum seeker, 2) is a failed asylum seeker who meets one of a number of specified conditions, or, 3) is on “temporary admission” and support required to prevent breach of human rights |
| Location             | Almost always outside London   | Varies – although highest chance of “local” accommodation   | Usually outside London, very difficult to obtain London accommodation but possible if special need to remain in area.   |

# Accommodation and Support Options for Potential Victims and Victims of Trafficking (2)

|                                   | Through the NRM                               | Social Services   | Home Office  |
|-----------------------------------|---|---|--|
| Amount of Financial Support       | £65.00 per week, plus £20.50 per child - cash | Varies – usually collected from SS weekly in cash or via cash card. | <p>Asylum seekers - £36.95 weekly for each person in household via cash card.</p> <p>Failed asylum seekers -£35.39 weekly for each person in household via pre payment card only valid for use in certain shops e.g. supermarkets.</p> <p>Weekly extras of £3.00, £5.00 and £3.00 for pregnant women, those with babies under 1 and those with children under 3.</p> |
| Option for Financial Support only | Yes   | Yes but difficult to get  | Only for asylum seekers.   |

# Accommodation and Support Options for Potential Victims and Victims of Trafficking (2)

|          | Through the NRM  | Social Services   | Home Office  |
|----------|--|---|--|
| Provider | Charities contracting with Salvation Army on behalf of the Home Office, e.g. Hestia  | Social Services usually make arrangements with private landlords, B&Bs and housing providers. | Housing providers with Home Office contracts e.g. Clear Springs.   |
| Duration | Usually up to 2 weeks after conclusive grounds decision whether positive or negative | Pending decision on immigration application   | Pending outcome of asylum claim, for failed asylum seekers whilst one of the conditions for support met, or, for those on temporary admission usually pending a decision on immigration application. |

# Accommodation and Support Options for Potential Victims and Victims of Trafficking (3)

## Exercise – Sofia

Refer back to the “Human Trafficking Indicators, Sofia – Case Study” sheet.

You are now meeting with Sofia for a 2<sup>nd</sup> appointment. Sofia has now been referred into the NRM and has received a positive reasonable grounds decision. She tells you that Julia has asked her to leave before her baby is born because there is not enough room for them all. She says she is extremely fearful about where she is going to live and how she is going to support herself and her baby; she says she thinks her only option is prostitution or returning to Peter. She says she is also worried about her immigration situation as she has received a document from the Home Office saying she is on temporary admission and asking her to report to them in a week’s time.

- 1) What options for accommodation and support do you think Sofia has now?
- 2) What immigration options do you think might be available to Sofia?
- 3) What options for accommodation and support do you think Sofia might have available to her if she takes the immigration options you have identified?
- 4) What could you do to try to help Sofia with her accommodation problem?

# Immigration Advice

The immigration team at Southwark Law Centre delivers free specialist legal advice and assistance including outreach, telephone and email advice to frontline advice agencies and casework including appeals and judicial review.

We do not have the capacity to take on a large number of cases, but we prioritise complex cases involving children, women who are at risk of violence, and individuals and families facing destitution and homelessness for reasons relating to immigration status.

We also provide telephone advice to frontline workers from statutory, charity and voluntary agencies who are working with individuals who have immigration problems; a duty solicitor is usually available for this Mon-Thurs 10.00 am – 1.00 pm and 2.00 pm – 5.00 pm.

See also:

1. “Immigration and Asylum Advice in Southwark and Lewisham” handout – also contains lots of helpful information about seeking immigration and asylum advice generally, and
2. Sheet headed “Immigration Advice” and “Immigration Solicitors”;
3. <http://www.southwarklawcentre.org.uk/>
4. <http://atleu.org.uk/> - charity providing specialist legal on trafficking issues.

# Further Information

For more information on ...

1. how potential victims of trafficking are identified and referred into the NRM see the Home Office Guidance document “Victims of modern slavery – frontline staff guidance” available online:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf)
2. how Competent Authorities assess whether or not a person is a victim of trafficking see the Home Office Guidance document “Victims of modern slavery – Competent Authority guidance” available online:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)