8th March 2017

Equalities and Human Right Committee – Destitution and asylum in Scotland

Response by the Anti-Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group (ATMG) was founded in 2009 to monitor the UK’s implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) which came into effect in the UK on 1 April 2009. The ATMG now also monitors the implementation of the EU Directive on preventing and combating trafficking in human beings and protecting its victims 2011/36, which entered into force on 5 April 2013. The Group operates according to a human rights-based approach to protect the well-being and best interests of victims of human trafficking.

The thirteen organisations belonging to the ATMG are: AFRUCA, Amnesty International UK, Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), Snowdrop Project, The TARA Service (Trafficking Awareness Raising Alliance, of Community Safety Glasgow), and UNICEF UK.

Victims of human trafficking are being made destitute due to the focus on their immigration status being prioritised over their vulnerability and support needs. Conversely, destitute asylum-seekers are at risk of being trafficked and exploited.

There has been an increasing focus in the trafficking sector of the links between human trafficking (or ‘modern slavery’) and homelessness and destitution1. Victims of trafficking are at risk of being made homeless and destitute as a result of a lack of access to long-term sustainable support, and individuals who are homeless and destitute are at risk of being targeted by traffickers for exploitation.

Victims of human trafficking and forced labour identified in the UK stem from a wide range of nationalities. In 2015, for instance, victims were identified from 103 countries. Some victims of trafficking in the UK will claim asylum and many others will have irregular immigration status. Trafficking victims may enter the country illegally e.g. using forged documents; some will enter the country legally but will be visa-overstayers; and others will have violated restrictions attached to a legal residence permit e.g. by working for an employer other than the one that is stated on their visa. Victims of trafficking trapped in exploitative circumstances will often have limited or no English, and no understanding of the support that is available to them in the UK. Their traffickers will often manufacture their isolation from wider society and use the threat of arrest by the immigration authorities to ensure their compliance.

Victims of trafficking who claim asylum

The National Referral Mechanism (NRM) is the UK-wide system through which victims of human trafficking and other forms of 'modern slavery' are identified and provided access to specialist support services. In Scotland, the TARA service is funded to provide support to female victims of sexual exploitation and Migrant Help are funded to provide support to all other trafficking victims, both men and women. If, following legal advice, it is deemed to be in their best interests, the individual can be supported to make an application for asylum. If a claim for asylum is made whilst in the NRM process s/he is expected to move on from safe house accommodation, if they are being housed at that time, to National Asylum Support Service (NASS) accommodation. If the asylum application is successful and they are granted leave to remain the individual is expected to transition to the mainstream welfare benefits, including housing benefit, to which they are entitled. Although some NGOs will provide a service to support migrants, refugees or survivors of trafficking to complete and submit applications for welfare benefits, the majority of vulnerable victims of modern slavery are expected to navigate this complex process on their own. Access to application forms and guidance is increasingly online which can be a further barrier to this group of marginalised people who do not have routine internet access or the English language skills required to navigate the various processes the processing/access to benefits and subsist

In Scotland, the TARA Service can refer survivors of trafficking to the Scottish Refugee Council which provides a dedicated service to support trafficking survivors in making benefits claims. The TARA service can provide its service users with an 'emergency payment' to support them in the interim if there is a time delay in the processing/access to benefits and subsistence support. This can prevent the limited number of victims of trafficking known to the TARA Service from becoming destitute, however there will be many more who go unidentified across Scotland and elsewhere in the UK who will not benefit from such specialist support.

The TARA Service has developed strong links with the dedicated housing team in Glasgow City Council for supporting service users to access temporary homeless accommodation whilst waiting for access to benefits and/or social housing. This temporary accommodation can range from furnished flats, hostel type accommodation or bed and breakfasts. TARA work with the council to ensure that women are accommodated as appropriately as possible. As the majority of NASS dispersal accommodation is located in Glasgow, TARA service users tend not to be moved far from their initial accommodation arrangement. However, individuals have been known to be dispersed into Glasgow from other areas of the UK. Moving vulnerable individuals away from their established support networks can leave them isolated and can be detrimental to their recovery.

**EEA victims of trafficking at risk of destitution**

EEA nationals who are victims of trafficking are at risk of destitution if they are unable to access welfare assistance following support through the national referral mechanism (NRM). This has increasingly been the case following amendments to the eligibility criteria for Job Seekers Allowance (JSA) and Housing Benefit. To receive JSA, EEA nationals must pass the Habitual Residence Test by demonstrating that they have a ‘Right to Reside’ i.e. are exercising their treaty rights, and ‘Actual Residence’ i.e. that they are currently resident and have been for an ‘appreciable amount of time’ (at least three months in the case of JSA). For victims of trafficking, who may not have had a registered address or bank account or had their wages deducted by their traffickers, this will be difficult to prove.

Further barriers were put in place in 2015 when the Department for Work and Pensions introduce the DMG Memo 2/15 – Extending Genuine Prospect of Work (GPoW)
Assessments to Stock EEA Nationals\textsuperscript{2} i.e. EEA nationals whose entitlement to JSA started prior to 1\textsuperscript{st} January 2014 had to provide compelling evidence that they still have a genuine prospect of work. If they cannot do so they will no longer be entitled to income-based JSA or housing benefit. If the claimant has dependent children, they will also cease to be entitled to Child Benefit and Child Tax Credits.

The 45 day ‘recovery and reflection’ period coupled with the short (two weeks) timeframe for conclusively identified victims to exit safe house support exacerbates the issue of establishing sustainable move-on support options. If they receive a negative conclusive grounds decision they have a mere two days in which to move on from safe house accommodation. There is currently no formal right of appeal for negative NRM decisions. This is usually a wholly inadequate timeframe in which to secure move-on support and alternative accommodation for these highly vulnerable individuals. Making these individuals exit support at this point can effectively render them homeless, and at risk of further exploitation and re-trafficking.

**Residence permits for recognised victims of trafficking**

Conclusively identified victims of trafficking may, in some circumstances, be entitled to a grant of Discretionary Leave (DL) to remain in the UK, if they are not entitled to leave on any other basis such as asylum or humanitarian protection\textsuperscript{3}. This grant of leave is the UK’s interpretation of the ‘residence permit’ for victims of trafficking, a measure set out in Article 14 of the Council of Europe Convention against Trafficking in Human Beings\textsuperscript{4}. A grant of leave will be considered if they have ‘particularly compelling personal circumstances’, if they are pursuing a claim for compensation against their traffickers and need to remain in the UK to do so, or to assist with police enquiries. If granted DL this opens up access to welfare entitlement and vital support which can prevent homelessness and destitution.

Whilst the option of applying for DL is technically available to victims of trafficking and ‘modern slavery’, there is uncertainty amongst practitioners as to applications should be actively made or not. This uncertainty, in addition to the practical challenges of securing specialist immigration advice, has resulted in low numbers of applications for DL being made. In the period from 2010-2016 there were 661 confirmed victims of trafficking that were issued with a grant of DL\textsuperscript{5}. It is not clear in how many cases the grants of DL were connected to the individual’s cooperation in a police investigation, a compensation claim or their personal situation, but, regardless, approximately only 100 people per year were granted DL as a victim of trafficking.

Too often, in a bid to ensure continuity of support, victims of modern slavery are advised to claim asylum where really a claim for such protection may not have been the most appropriate option in their case. In a recent joint submission to the Work & Pensions Committee Inquiry into Modern Slavery, the ATMG and the Human Trafficking Foundation


\textsuperscript{4} 1 The Council of Europe’s Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197 \url{http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197}

\textsuperscript{5} \url{http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-10/59379}
have recommended that conclusively identified victims of trafficking be automatically entitlement to a grant of leave for a minimum period of one year, together with full access to public funds, to provide them the time and stability in the UK to recover and consider their longer-term options. This stability would significantly reduce the rates of homelessness and destitution experienced by victims of trafficking currently.

Recommendations for change to reduce rates of destitution

The overarching recommendation and ask of the ATMG is that the needs and vulnerabilities of the individual are prioritised over their immigration status. This victim-focused, human rights-based approach must thread through all relevant policy, standards and guidance.

Specific recommendations include:

- **Practical barriers to accessing legal advice and representation must be addressed.** Whilst asylum seekers and victims of trafficking may be entitled to free legal aid there can be delays in accessing appointments with solicitors willing to take on these cases.

- **A positive Conclusive Grounds (CG) decision through the National Referral Mechanism must carry status.** The positive Conclusive Grounds decision should equate to a meaningful rehabilitation period provided through the issuing of a residence permit for a minimum time period of at least 12 months, as in line with current Home Office policy pertaining to discretionary leave. Recognised victims of trafficking must be exempt from benefits testing and have full recourse to public funds.

- **Individuals granted refugee status and/or a positive Conclusive Grounds NRM decision must be entitled to remain in NASS or NRM accommodation whilst waiting for their benefits claim to be processed and until they have received access to welfare support.**

- **A recognised victim of trafficking must be considered priority need by statutory authorities.** A positive Conclusive Grounds decision needs to have real meaning in practice for every victim to whom it is issued, and carry status in terms of access to support and services. The Conclusive Grounds decision should act as a trigger for agencies such as Local Government, Social Services and housing association to understand that this person is both eligible and priority need, and that this should be regardless of localism as victims may have a local connection to the area in which they have been exploited which they need to move from. This would avoid victims having to re-explain their story multiple times which is upsetting and re-traumatising. Victims must be able to access healthcare, legal advice, education and other support services.

- **Public authorities, including the Department for Work & Pensions, should ensure that frontline staff are trained** to identify if someone is a victim of modern slavery and how to refer them for appropriate support.

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