

ADULT MODERN SLAVERY PROTOCOL FOR LOCAL AUTHORITIES



The NRM and a local authority's statutory duties to identify and support victims of human trafficking and modern slavery

Statutory Duties and Powers

THIS GUIDANCE HELPS YOU TO:

**Understand
and refer, with
consent, potential
victims to the
National Referral
Mechanism**

**Understand
your duties and
powers to identify
and safeguard
victims of modern
slavery**

NATIONAL REFERRAL MECHANISM

The National Referral Mechanism (NRM) is the current process in place in the UK for victim identification and support. This came into effect in the UK on 1st April 2009. It is also the mechanism through which the NCA collects [data](#)¹ about victims to build a clearer picture on human trafficking and slavery in the UK. It was introduced to allow the UK to meet its obligations under the Council of European Convention on Action against Trafficking in Human Beings.

Your Council is a first responder (FR) into the NRM process and has a duty to notify the Home Office if anyone working within the council identifies a person with indicators suggesting they may be trafficked/enslaved.

If the potential victim of slavery/trafficking (PV)² consents to go into the NRM, then an NRM referral form must be sent. If the person is an adult and does not give their consent, then you should use a different form, the Duty to Notify form, which should not include identifying details for that individual.

The NRM provides adults who are potential victims of slavery or trafficking (PV) with:



Identification: It is responsible for identifying PVs in a two stage process: Reasonable and Conclusive Grounds decisions.



Short term support: Provides PVs, who receive a reasonable grounds decision, with short-term protection, safeguarding and support including accommodation in a safe house and case work support, regardless of their form of exploitation or current immigration status. Recognition as a PV also entitles an individual to legal aid and to exemption from health care charges.

¹ <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>

² We respect the dignity of all victims of slavery and human trafficking and recognise that each survivor is an individual who requires humanity and a response tailored to their individual needs. However for the sake of brevity we will use the shorthand PV in reference to this cohort.

IDENTIFICATION

FIRST RESPONDERS



First Responders are responsible for identifying and interviewing PVs. All those working in local authorities, alongside Police, UK Border Force, Gangmasters Labour Abuse Authority and several NGOs, including the Salvation Army, Medaille Trust, Unseen and Kalayaan are *first responders*.³

CONSENT



To refer an adult victim into the NRM their written consent is needed. This consent must be informed, i.e. the NRM must have been explained in order that they can understand what they are agreeing to and potential implications. If the PV is under 18 consent is not required.

NON-CONSENT & DUTY TO NOTIFY



If a victim does not wish to enter the NRM, Section 52 of the Act still makes it a duty for public authorities to notify the Secretary of State if they have reasonable grounds to believe that a person may be a PV. This is done by completing an anonymous 'Duty to Notify' form. A copy of the form can be found at the following link: [Duty to Notify](#).⁴ The completed duty to notify form is to be e-mailed to: dutytonotify@homeoffice.gsi.gov.uk

COMPETENT AUTHORITIES (CA)



Only identified First Responders can make referrals to the NRM and to do this the first responder must complete a [referral form](#)⁵ to pass the case onto the UK's Competent Authority - via the e-mail nrm@nca.x.gsi.gov.uk or by fax to 0870 496 5534.

³ Note that the NHS is currently not a first responder.

⁴ <https://www.gov.uk/government/publications/duty-to-notify-the-home-office-of-potential-victims-of-modern-slavery>

⁵ <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>

DECISION MAKING PROCESS



To establish whether a person is a victim of any form of modern slavery (including trafficking), two decisions by the CA are made:

1

A reasonable grounds (RG) decision to establish whether someone is a potential victim.

The threshold at this 'reasonable grounds' stage is low and defined by the principle 'I suspect but cannot prove' that the individual is a potential victim. A reasonable grounds (RG) decision should take up to 5 working days⁶. If the RG decision is positive, they are entitled to support, including the option of gender specific Government-funded safe house accommodation if required, and a 45-day⁷ period of *reflection and recovery* is granted. This is meant to allow the victim to begin to recover from their ordeal and to reflect on what they want to do next, for example, co-operate with police etc.

2

A conclusive grounds (CG) decision on whether they are in fact a victim.

During the *reflection and recovery* period, a conclusive grounds decision will be made based on the evidence gathered. The standard of proof is on the balance of probability that a victim is more likely a victim than not. See the NRM Process Guide, Steps 10-12,⁸ for post NRM signposting.

⁶ In practice this may take on average 14 days

⁷ In practice this is on average 150 days

⁸ <http://www.humantraffickingfoundation.org/supporting-london-boroughs-response-modern-slavery>

GOVERNMENT-FUNDED SHORT-TERM SUPPORT (POST RG):

- If a PV receives a Positive Reasonable Grounds (RG) decision, they can enter the NRM.⁹
- The NRM offers access to a range of services for a minimum period of 45 days (the refectation period).
- The support includes safe house accommodation, interpretation/translation services, material assistance, outreach support, legal advice, and access to medical, psychological and counselling treatments.
- PVs can choose to only access part of this support – for example, they may choose to stay in their own or local authority or asylum accommodation and just receive the NRM’s outreach support
- PVs should receive a tailored support plan from the safe house.
- The NRM can also help and provide funds to non-UK PVs, via the Home Office voluntary returns scheme, to go back to their country of origin if they wish to and it is safe for them to do so.
- The NRM can also facilitate access to legal aid solicitors who can provide advice on civil compensation, immigration and/or any other additional legal needs PVs may have.
- Subject to availability, PVs referred into the NRM will be provided with safe house accommodation away from the area(s) of exploitation, however there may also be support available more locally if the victim does not wish to leave the area. This should be requested if needed, giving reasons.
- After a PV leaves the NRM,¹⁰ whether they receive a positive or negative CG decision, they are still likely to have ongoing support and legal needs and potential risk factors that need to be assessed and planned for.
- In assessing long-term needs, please refer to Steps 8 and 11 of the NRM Process Guide.¹¹

⁹. Proposals have been announced that if you identify a PV they will be entitled to three days support prior to deciding if they consent to enter the NRM or an RG decision. However the nature of this support and the date for implementation are yet to be clarified.

¹⁰. Proposals have been announced that there will be 45 days support provided once a conclusive grounds decision is made and up to six months of ‘drop-in’ services support. However the nature of this support and the date for implementation are yet to be clarified.

¹¹. <http://www.humantraffickingfoundation.org/supporting-london-boroughs-response-modern-slavery>

B

STATUTORY DUTIES AND POWERS

1

The 'duty to notify' provision for specified public authorities, including local authorities, is set out in the Modern Slavery Act. Since 1 November 2015, local authorities have a duty to notify the Home Office of any individual encountered in England and Wales who they believe is a possible victim of slavery or human trafficking.

A range of government [resources](#)¹² explain the meaning of 'duty to notify' and what you need to do if you think someone has been a victim of modern slavery. The information that must be provided is set out in the Modern Slavery Act 2015 (Duty to Notify) [Regulations](#) 2015.¹³ This information can be provided by completing a National Referral Mechanism (NRM) form or, if the victim doesn't consent, an MS1 (Notification of a Potential Victim of Modern Slavery) form where the PV remains anonymous.



TRAINING

All local authorities working in the UK should, by implication, provide frontline staff and their supervisors with training and awareness-raising on modern slavery, to ensure that they can fulfil this duty to identify a potential victim of trafficking or modern slavery and know what to do once they have identified a PV.

¹². <https://www.gov.uk/government/publications/modern-slavery-duty-to-notify>

¹³. http://www.legislation.gov.uk/ukxi/2015/1743/pdfs/ukxi_20151743_en.pdf



WHY THE NRM AND MODERN SLAVERY ACT IS USEFUL FOR LOCAL AUTHORITIES, POLICE AND VULNERABLE ADULTS

Knowing how to recognise slavery is now a statutory duty. However, identifying a case as a possible slavery case provides **multiple benefits** for local authorities, police and the potential victims.

THE NRM AND PROVISIONS CONTAINED WITHIN THE MODERN SLAVERY ACT 2015 INCLUDE:

- The creation of a new statutory defence for slavery or trafficking victims who were or are compelled to commit criminal offences on behalf of their exploiter.
- The introduction of two new civil orders to enable the courts to place restrictions on those convicted of modern slavery offences, or those involved in such offences but not yet convicted.
- The provision of short term Government-funded support (accommodation, material assistance, medical treatment, counselling, advice etc.) for a minimum of 45 days if the victim is an adult and agrees to go into the National Referral Mechanism.¹⁴
- The potential provision of legal aid to victims of human trafficking and slavery for a variety of claims.
- The provision of mechanisms for seizing traffickers' assets and channelling some of that money towards victims for compensation payments.
- The provision of child trafficking advocates for all child victims of trafficking.¹⁵

¹⁴. Proposals have been announced that there will be 3 days support offered prior to entering the NRM and 45 days support provided once a conclusive grounds decision is made and up to six months of 'drop-in' services support. However the nature of this support and the date for implementation are yet to be confirmed.

¹⁵. Yet to be fully rolled out across England.

2

ECAT, the EU Directive, the ECHR, Care Act, Localism Act and Housing Act all provide local authorities with duties or powers to provide support to victims of trafficking and slavery, outside of the Government support provided by the NRM.

Information summarised from Hope for Justice's Overview of local authority duties towards support for adult victims of modern slavery.

INTERNATIONAL LAW

There are specific pieces of international legislation governing the duties, protection and support afforded to victims of modern slavery. This includes the following:

- The Council of Europe Convention on Action Against Trafficking in Human Beings 2005 CETS 197 ("**ECAT**")
- The EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims Directive 2011/36/EU ("**Anti-Trafficking Directive**")
- The European Convention on Human Rights ("**ECHR**")



COUNCIL OF EUROPE'S ANTI-TRAFFICKING CONVENTION (ECAT)

Article 13 sets out that victims of human trafficking should be provided assistance and no maximum period of support is specified.

There is a strong and well-established presumption that the state should act in accordance with its international obligations under ECAT. This can go so far as the courts changing domestic law if it stops a victim enjoying the protection of ECAT. This was confirmed by the Supreme Court in the case of *Hounga v Allen* [2014] UKSC 47.



ANTI-TRAFFICKING EU DIRECTIVE

The Anti-Trafficking Directive sets out detailed requirements, including those for the identification, assistance and support to victims of human trafficking regardless of cooperation with a police investigation (see, in particular, Article 11). The Directive has 'direct effect', that is, providing the provision is clear, precise and unconditional and the deadline has passed, it directly applies in national law.



THE EUROPEAN CONVENTION ON HUMAN RIGHTS (“ECHR”)

The rights in the Convention (ECHR) can be applied in national courts in the UK by virtue of the Human Rights Act 1998 (HRA). The HRA imposes positive obligations on public authorities to act in a way which is compatible with the Convention. Not to do so would be considered unlawful (see Section 6 HRA). Invariably this includes obligations set out in the ECHR Article 3 (prohibition on torture including degrading and inhumane treatment) and Article 4 (prohibition on slavery and forced labour). Failure of the state, which includes a local authority, to identify and protect victims, including from re-trafficking in the UK or return to another country, can result in a breach of these rights (see *Ranstev v Cyprus* (2010) 51 EHRR 1).

In the recent case of *Chowdury v Greece* [2017] ECHR 300, the court examined how the positive obligations under Article 4 included an appropriate legal and regulatory framework to identify victims and to assist in their physical, psychological and social recovery.

These principles, coupled with the requirements pursuant to the Anti-Trafficking Directive and Convention, are being applied in domestic cases. In the case of *R (AK) v Bristol City Council* (CO/1574/2015), Bristol City Council consented to a High Court judgement ensuring that an EEA National victim of human trafficking was provided with accommodation and subsistence to avoid a breach of Article 3 and 4 ECHR, and/or comply with Article 11 of the Directive. Bristol City Council conceded that as a local authority, it is not prevented by section 2 of the Localism Act 2011, nor by Schedule 3 of the Nationality Immigration and Asylum Act 2002, from providing this support.



COUNCIL OF EUROPE CONVENTION ON VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (CAHVIO)

CAHVIO is sometimes referred to as the Istanbul Convention – and has been ratified by the UK government. It is a victim-centred piece of legislation and urges appropriate and proportionate investment in specialist and gender specific services.

DOMESTIC LAW



CARE ACT 2014

Duties under the Care Act include but are not limited to:



A duty to promote well-being (Section 1), including a person's personal dignity, physical and mental health emotional well-being and their participation in work, education, training or recreation, and to have regard to the need to protect a person from abuse and neglect



General duty to provide services to prevent, or delay, the development of needs for care and support



Duty to assess regardless of the authorities' view of the level of an adult's need for care and support; and regardless of the level of the adult's financial resources (Section 9)



Regulation 5 of the Care Act Regulations notes that "A local authority must ensure that any person carrying out an assessment...is appropriately trained [and]...must consult a person who has expertise in relation to the...circumstances of the individual...being assessed [where required].



Providing eligibility criteria are met, a duty to meet the adult's needs for care and support (Section 18)



There is a duty under the eligibility criteria to provide care and support when the adult's needs arise from or are related to a physical or mental impairment or illness, and as a result of the adult's needs the adult is unable to achieve two or more specified outcomes. Outcomes of particular importance to PVs might include "being able to make use of the adult's home safely", "developing and maintaining family or other personal relationships" and "accessing and engaging in work, training, education or volunteering". These are all domains where a PV might face abuse or exploitation unless provided with appropriate care and support.



Providing a general discretion to meet needs for care and support, even if criteria under section 18 is not met (Section 19)



A duty to make enquiries and safeguard adults at risk of abuse or neglect (Section 42-47)



A duty to provide independent advocacy (Section 67-68 and Independent Advocacy Regulations 2014)

PVs are often initially targeted by exploiters due to being in a position of vulnerability – for example, having a mild learning disability, an addiction or a diagnosed or undiagnosed mental health condition. It is not uncommon to find that victims have not received a formal diagnosis in their country of origin which can make it difficult for their needs to be recognised in the UK. Many victims of modern slavery additionally have symptoms of mental health conditions related to their exploitation, including but not limited to Post Traumatic Stress Disorder and/or can have physical disabilities - e.g. back injuries as a result of extensive work and poor work conditions.

However victims of modern slavery do not always neatly meet the eligibility criteria pursuant to the Care and Support (Eligibility Criteria) Regulations 2015 to receive support under Section 18.

It should be noted that Section 19 of the Care Act **provides a power to meet needs for care and support in relation to which no duty arises** (within the limits stated in Sections 21-23; as well as Schedule 3 of the Nationality, Immigration and Asylum Act). This power should be considered in light of the international obligations towards victims as detailed above.



S. 42(1) states that a safeguarding enquiry should be carried out when a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):



- A** has needs for care and support (whether or not the authority is meeting any of those needs),
- B** is experiencing, or is at risk of, abuse or neglect, and
- C** as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

SEE ALSO THE CARE ACT [GUIDANCE](#).¹⁶

Paragraph 6.54 of the guidance clearly states:

“Where a person is at risk of abuse or neglect, it is important that local authorities act swiftly and put in place an effective response. When carrying out an assessment local authorities must consider the impact of the adult’s needs on their wellbeing. If it appears to local authorities that the person is experiencing, or at risk of, abuse or neglect, they must carry out a safeguarding enquiry and decide with the adult in question what action, if any, is necessary and by whom.”

Paragraphs 6.55 of the guidance clearly states:

*“The **decision to carry out a safeguarding enquiry does not depend on the person’s eligibility, but should be taken wherever there is reasonable cause to think that the person is experiencing, or is at risk of, abuse or neglect.** Where this is the case, a local authority must carry out (or request others to carry out) whatever enquiries it thinks are necessary in order to decide whether any further action is necessary.”*

Paragraph 14.6 of the guidance clearly states:

“Abuse and neglect can take many forms. Local authorities should not be constrained in their view of what constitutes abuse or neglect, and should always consider the circumstances of the individual case. Abuse includes:... Exploitation – either opportunistically or premeditated, unfairly manipulating someone for profit or personal gain....Financial or material abuse – including theft, fraud, exploitation, coercion in relation to an adult’s financial affairs or arrangements...”

¹⁶. <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>



LOCALISM ACT 2011

The Localism Act, Section 1, gives local authorities a broad residual power to “do anything that individuals may generally do.” This includes for the benefit of persons resident or present in its area.

This may be of particular relevance where a PV does not meet the eligibility criteria under the Care Act. Best practice would be for a Human Rights Assessment to be undertaken with a view to providing the PV with support or assistance under this provision in order to avoid a breach of his or her human rights or, in the case of EEA nationals, EU rights. See [NRPf guidance](#).¹⁷ at paragraphs 5.1 and 5.3.

For instance in the case of *R (AK) v Bristol City Council* (CO/1574/2015), it was accepted by the local authority in a consent judgement that they were not prevented from providing assistance to victims of Modern Slavery under this provision. These principles are also reflected in a contested case of *R (GS) v Camden* [2016] EWHC 1762.



HOUSING ACT 1996

The Housing Act 1996 provides for local authorities to make enquiries of a person who is homeless or at risk of homelessness pursuant to Section 184 Housing Act 1996.

PVs experience many barriers to accessing accommodation under homelessness provisions. For example, PVs can be told that they are not considered to be in priority need. However when assessing priority need local authorities should consider the unique vulnerabilities of victims of modern slavery, especially the risk of further exploitation and trafficking noting Article 4 of the European Convention on Human Rights prohibits slavery. This should be taken into account by decision makers when considering whether they are significantly more vulnerable than an ordinary person facing homelessness.

PVs who are EEA Nationals are often told that they are not eligible as they are not considered to have a qualifying “right to reside”, either because they do not have worker status or retained worker status. This is often wrong as many victims of modern slavery who have been in exploitative conditions will still meet the definition of a worker. They may require legal support to demonstrate this if there is no clear paper trail of work.

There may be situations where EEA nationals in the case of labour, domestic or sex trafficking have entered the UK and worked in the UK and may meet eligibility criteria but are unable to easily demonstrate this with documentation - e.g. tenancy, utility bills, travel documentation, wage slips - because of the nature of their exploitation. There should be a flexible approach taken around this and a positive reasonable or conclusive grounds decision should be accepted as evidence that another agency has concluded that they have entered the UK and worked. Enquiries should also be made of other agencies that may hold details of a person's work history, e.g. HMRC, as some work conducted may be legal work. Additionally, in assessing housing criteria, including eligibility, the wider rights as detailed in the Trafficking Convention, Trafficking Directive and ECHR should be taken into account.

Under s206 of the Act, any accommodation provided must be 'suitable'. This can present particular difficulties for trafficking victims who may have very specific accommodation needs arising from their experiences including 'gender specific' issues. The public sector equality duty under s149 Equality Act 2010 requires public bodies to have due regard to the need to 'advance equality of opportunity' including to the need 'take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it'. See s149(3)(b). Hence they may need to be treated more favourably in terms of the provision of accommodation than other persons not suffering from this protected characteristic.

THE HOMELESSNESS CODE OF GUIDANCE FOR LOCAL AUTHORITIES 2018 (THE CODE) NOTES THAT:



25.20 There will be a number of accommodation options for victims of modern slavery. Housing authorities should consider which are most appropriate for each person on a case by case basis taking into account their specific circumstances and needs.



25.21 Account will need to be taken of any special considerations relating to the applicant and their household or their experiences that might affect the suitability of accommodation. Where there is no other option for applicants who have suffered modern slavery but to be accommodated in an emergency hostel or bed and breakfast accommodation, the accommodation may need to be gender-specific as well as have appropriate security measures depending on their needs and circumstances. Any risk of violence or racial harassment in a particular locality should also be taken into account, and housing authorities should be mindful that individuals who have left their traffickers remain at risk of being re-trafficked

THE CODE ALSO UNDERLINES THE NEED FOR TRAINING AND GETTING ADVICE, AND AN AWARENESS OF THE RISKS AROUND RE-TRAFFICKING AND POSSIBLE PRIORITY NEED:



In many cases involving modern slavery or trafficking, the applicant may be in considerable distress and officers would benefit from appropriate training to enable them to conduct such interviews. Applicants should be given the option of being interviewed by an officer of the same sex if they wish.’ (para 25.15)



A person who has been a victim of trafficking or modern slavery may have a priority need for accommodation if they are assessed as being vulnerable according to section 189(1)(c) of the 1996 Act. In assessing whether they are vulnerable a housing authority should take into account advice from specialist agencies providing services to the applicant, such as their assigned support provider under the NRM.



Many victims of modern slavery suffer from poor mental health and often lack support structures in the area they are residing. If a victim of modern slavery is threatened with homelessness or is homeless this significantly increases their risk to being re-trafficked or exposed to further exploitation.’ (25.17)



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