

Seeking Refuge? Trafficking and the National Referral Mechanism

Introduction

The UK is a destination, transit and source country for human trafficking. This means that people are trafficked into, through, around and out of the UK. Many women are trafficked into the UK to be exploited every year. Exploitation can take many different forms; one of the most common is sexual exploitation.¹ Women are also trafficked within the UK for this purpose and some victims of human trafficking may be vulnerable British or settled women and girls who are trafficked.

If you have been trafficked there are a number of ways that the law can help you. You may want to remain in the UK for either the short or long term, report violence you have experienced to the police or seek compensation for injuries you have received.

This legal guide explains the immigration and criminal laws relevant to women who have been trafficked into the UK.

It also explains some of the financial and other support options that may be available to you. This legal guide is **not** legal advice. If you think that you or someone you have encountered may have been trafficked it is very important that you get legal advice.

If you are supporting a woman who has been trafficked into the UK it is vital that you assist her to get legal advice. You should not give her immigration law advice unless you are allowed by law to do so. It is a criminal offence under the **Immigration and Asylum Act 1999** for anyone to give immigration advice or services in the UK unless they are regulated by the Office of the Immigration Services Commissioner (the OISC), a regulated solicitor, barrister or legal executive (or European equivalent) or exempted by the OISC or Ministerial Order.



¹ Research carried out by the Association of Chief Police Officers in 2010 found that out of the 30,000 people who are believed to be involved in off-street prostitution in England and Wales, 2,600 are trafficked and a further 9,200 are considered to be vulnerable. The report, *Setting the Record, The trafficking of migrant women in England and Wales off-street prostitution sector* can be accessed here <http://www.acpo.police.uk/documents/crime/2010/201008CRITMW01.pdf>

You can contact one of Rights of Women’s legal advice lines for free, confidential legal advice. Details of our advice lines and their opening times are given at the end of this legal guide.

You can also contact a solicitor or immigration advisor in your area for advice.

Depending on your financial circumstances and the details of your case, you may be entitled to **public funding** (known as **legal aid**).

Legal Aid

Public funding enables some people who cannot afford to pay for legal advice to get legal assistance and representation free of charge. If the Competent Authority (part of the National Referral mechanism, see below) has decided that there are reasonable grounds to consider you a victim of human trafficking and there is no conclusive grounds decision that you are not a victim of human trafficking, then you are entitled to legal aid for an application for leave to enter or remain in the UK.²

Legal aid is also available in the following circumstances:

- If you receive a negative reasonable or conclusive grounds decision then you can receive public funds to challenge the decision.
- If you receive a positive conclusive grounds decision, then you are entitled to legal aid to assist you with a claim for damages, or for an employment law claim against an employer who has exploited you.³

- If you make a claim for asylum at the same time, or after a referral into the National Referral Mechanism (see below), then you are entitled to legal aid for the asylum process. This can include advice and assistance before you claim asylum.⁴
- If you are under 18 but as a result of an age assessment you are thought to be an adult, you are entitled to legal aid to challenge the assessment.⁵

If you want to remain in the UK on the basis of your private and family life here legal aid is not available (even if it is available for other parts of your case, like your application for asylum). You will need to discuss with your lawyer how this is to be dealt with.

You can check your eligibility for legal aid here www.gov.uk/check-legal-aid. For further information about public funding contact Civil Legal Advice on **0345 345 4 345** or online www.gov.uk/civil-legal-advice.

A solicitor should always discuss your payment options with you, including whether you are eligible for public funding.⁶

You should always make sure that the person you see to get immigration law advice is professionally qualified and allowed to help you. You can get immigration advice from a **solicitor** or from an **immigration advisor**.

A **solicitor** is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society

www.lawsociety.org.uk and are regulated by the Solicitors Regulation Authority www.sra.org.uk.

An **immigration advisor** is someone who is not a lawyer but who has the knowledge and skills necessary to give advice on immigration law. For information about immigration advisors contact the Office of the Immigration Services Commissioner www.oisc.gov.uk.

² Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, paragraph 32 (1)

³ Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, paragraph 32(2) & (3)

⁴ Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, paragraph 30

⁵ Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, paragraph 19

⁶ Solicitors’ Code of Conduct 2011, IB (1.16)

What is trafficking?

Article 4 of the **Council of Europe Convention on Action against Trafficking 2005** (the Trafficking Convention) defines trafficking as involving three things:

- recruiting, moving or harbouring a person;
- in particular ways, such as by using force, deception, the abuse of power or the abuse of a position of vulnerability;
- for the purpose of exploitation, like forcing someone to be involved in prostitution, forced labour or domestic servitude⁷

Recruiting involves persuading someone to take part in a particular activity, like a new job. For a particular situation to fall within the legal definition of trafficking, a person's recruitment and movement has to be done in certain 'ways', such as by force or deception.⁸ A woman may be recruited by someone who uses physical or sexual **violence** against her. A woman might be **deceived** into coming into the UK because she is told that she can study or work here when really those who are arranging her travel intend to force her into prostitution. A woman could also be recruited by someone who is in a **position of power over her**; this could be someone who she cannot refuse, like a powerful person in her family or community. A woman may also be recruited by abusing her vulnerable position. A person is **vulnerable** if they are more likely to be physically, emotionally, or mentally harmed or influenced than other people are. A woman may be particularly vulnerable to trafficking because she has a physical or mental health problem, because of her age or education or because she has experienced violence in the past.

Where force, deception or the other 'ways' set out above are present in a particular situation, whether or not a person appears to have 'agreed' to the situation is irrelevant. For example, a woman might be deceived into coming to the UK because she is told that she has been offered a job here when really those who are arranging her travel intend to force her into prostitution.

Although the woman concerned might agree to come to the UK and travel here voluntarily, her agreement does not mean that she has not been trafficked because the deception means that her 'agreement' is not real agreement. Someone who is trafficked as a child can never have consented. This is because **child victims of trafficking are not able to agree to their treatment**, whether or not they are coerced or deceived is not relevant.

In addition to recruiting a person, for a particular situation to be trafficking there has to be **movement**. This could be between towns in the UK or from one country to another. A number of people could be involved in trafficking a woman. One person may recruit her, another may arrange her travel documents, another may meet her when she arrives in the UK and another may force her into prostitution. A woman may not know all the people involved in trafficking her into the UK, or within the country. She may also be trafficked by someone she is in a relationship with, or by a family member.

Finally, the recruitment and movement of a woman has to be for the purposes of **exploitation**. In this legal guide we are focussing on the legal information that would be useful to a woman who has been trafficked into the UK for the purposes of exploitation, for example, to a woman who has been forced into prostitution.

Forms of exploitation

Exploitation can take many forms, but includes sexual exploitation, forced labour, forced domestic labour, doing something that someone else gets benefit from, and organ harvesting. Trafficking for sexual exploitation includes prostitution and other forms of sexual activity. Enabling others to gain benefit includes any form of profit and may involve forced criminality. For example, where victims are required to beg, steal or commit other criminal offences for the benefit of those who are exploiting them.

⁷ Article 4 of the Council of Europe Convention on Action against Trafficking 2005 states that trafficking is: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

⁸ Where the victim of trafficking is a child (someone who is under 18 years old), their recruitment and movement for the purposes of exploitation is considered trafficking even if this does not involve any of the 'ways' described above.

A woman may consent to being brought to the UK to engage in work, but not to how the work is undertaken, or the conditions under which she is required to participate.⁹

Identifying victims of human trafficking

If your work might bring you into contact with women who have been trafficked it is important that you are aware of what circumstances may indicate this. Not all women and girls will identify themselves as victims of trafficking, or even agree with a professional assessment that this may be what has happened to them.

Asking someone questions about their experiences may give indicators that they are, or have been victims of human trafficking. The following indicators are not determinative and someone may have experienced trafficking without identifying that they have experienced any of the behaviour below. If you are in contact with someone you may believe has been trafficked, or if you are unsure whether you are a victim of trafficking, you can contact the specialist organisations listed at the back of this guide. If you believe someone may be under the control of another person, you can report this to the police on 101, in an emergency, you can contact the police on 999.

Key indicators¹⁰

- Is the person in possession of their own passport, identification or travel documents? Are these documents in possession of someone else?
- Does the person act as if they were instructed or coached by someone else?
- Do they allow others to speak for them when spoken to directly?
- Was the person recruited for one purpose and forced to engage in some other job?
- Have transport costs been paid for by facilitators, whom they must pay back through working or providing services?
- Does the person receive little or no payment for their work? Is someone else in control of their earnings?
- Does the victim have freedom of movement? Are they dropped off and collected from work?
- Is the person withdrawn or do they appear frightened?
- Has the person or their family been threatened with harm if they attempt to escape?
- Is the person under the impression they are bonded by debt, or in a situation of dependence?
- Has the person been physically or emotionally harmed or deprived of food, water, sleep, medical care or other life necessities?
- Can the person freely contact friends or family? Do they have limited social interaction or contact with people outside their immediate environment?



⁹ *EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania [2013] UKUT 00313 (IAC)* the Upper Tribunal held that there was no distinction between a domestic worker who was trafficked by way of forced labour or who came to the UK voluntarily and was then trafficked.

¹⁰ From the Home Office publication: *Trafficking: Practical Guidance* (2013)

Trafficking case study: Mae

Mae was found by police in a brothel; she is very young, from Thailand and the only English words she knows are linked to sexual activity. Mae has bruises on her arm and appears to be very frightened of the police. Mae tells the police through an interpreter that a friend she worked with in Thailand, where she danced in a strip club, arranged for her to come to the UK. She says that she is involved in prostitution as she has to make money for her family who are in debt. She says that she came to the UK voluntarily and that she is not being forced into prostitution, although she has to give the brothel owner most of what she earns.

Mae's age, limited knowledge of English, injuries, fear of the authorities, reference to debt and payment to the brothel owner all indicate that Mae is a victim of trafficking. The fact that Mae might have been involved in the sex industry in Thailand does not mean that she cannot have been trafficked, nor does the fact that she might have known that she would be involved in prostitution when she came to the UK. This is because her reference to her family's debt and the fact that she is paying most of what she earns to the brothel owner indicates that she is not making a meaningful choice about being involved in prostitution.

Many women will only disclose part of their story, and may not always tell the truth. There are a lot of reasons why someone would not disclose what has happened to them, including fear of reprisals in the UK, fear for the safety of family members in their country of origin, feelings of guilt and shame associated with the exploitation. Many trafficking victims are told a story by their traffickers to use when in contact with officials. Some women may not accept that they have been trafficked, because they agreed to come to the UK, or for example, because the trafficking was arranged by a family member.

The World Health Organisation has produced best practice guidance on interviewing trafficked women.¹¹ If you are a woman who has experienced trafficking, then this list sets out what you can expect and ask of an interviewer.

The guidance sets out ten guiding principles for speaking with a woman about her experience:

1. Do no harm: do not undertake an interview that will make a woman's situation worse in the short or long term.
2. Know your subject and assess the risks: there are different risks inherent in every situation, this may vary depending on the situation of the woman, where she has been trafficked from, her relationship with those who have trafficked her.
3. Prepare referral information – do not make promises that you cannot fulfil.
4. Adequately select and prepare interpreters, and co-workers. Be aware that in some circumstances, interpreters have been linked to the nexus of traffickers.
5. Ensure anonymity and confidentiality.
6. Get informed consent – make sure the woman you are interviewing understands the content and purpose of the interview.
7. Listen to and respect each woman's assessment of her situation and risks to her safety.
8. Do not re-traumatize a woman.
9. Be prepared for emergency intervention.
10. Put information collected to good use.

Be aware that it may take many conversations with a woman who has been trafficked before you will have a clear idea of her experiences.

It is important not to confuse people who have been trafficked with people who choose to come to the UK illegally, like those who come to the UK to work but do not have permission to do so from the Home Office (Visas and Immigration). A woman who has been trafficked may be working illegally, but she has not chosen to do so. Even if someone appears to be making a choice to engage in certain activities, it is important to remember that there may be other factors which mean that their "choice" is forced. For the purpose of the Trafficking Convention, it makes no difference if a woman comes to the UK voluntarily and then finds herself in a trafficking situation, or if she is brought here solely for the purpose of exploitation.

¹¹ WHO, Ethical and Safety Recommendations for Interviewing Trafficking Women, 2003

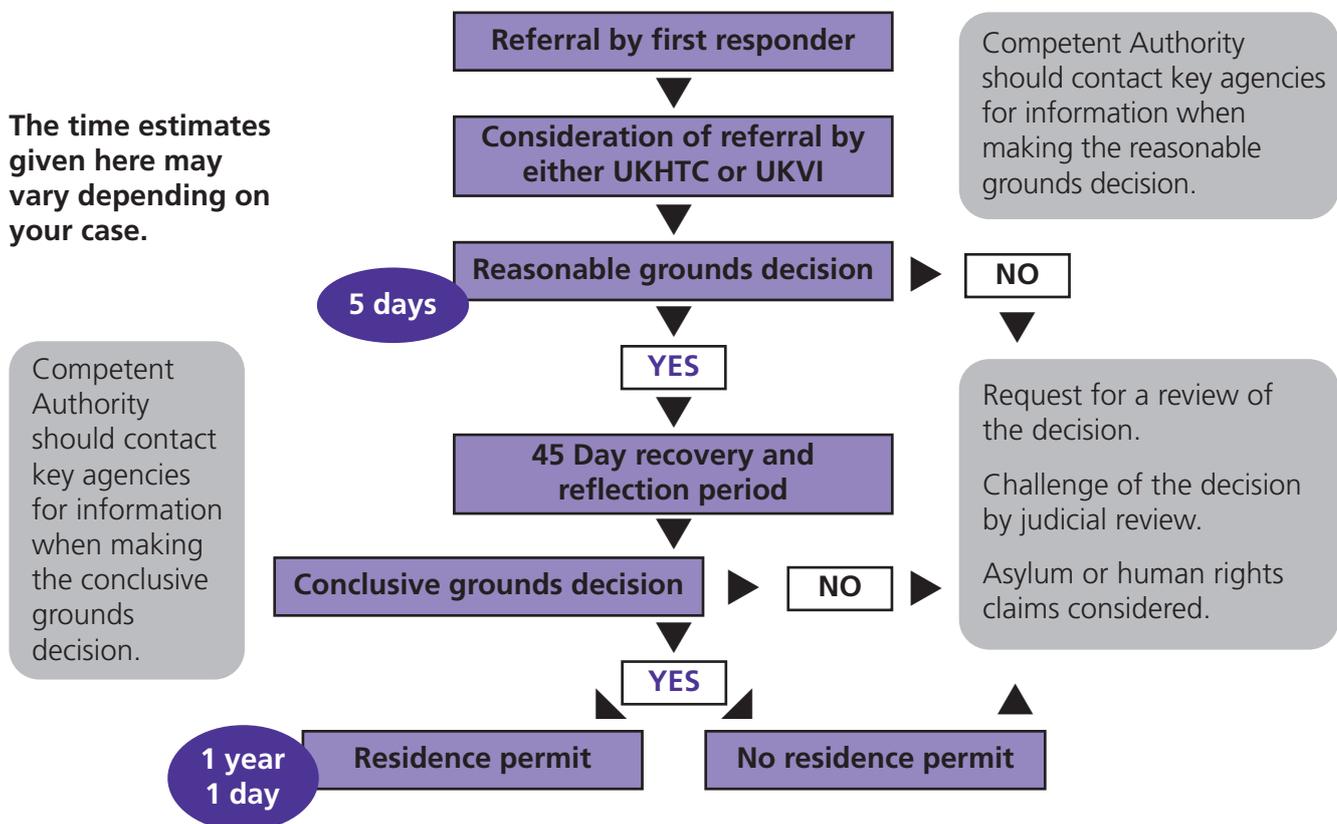
The National Referral Mechanism

Women who have been trafficked may want to remain in the UK for the short or long term, or they may want to return to their country of origin. This legal guide explains the law that enables women who have been trafficked into the UK to seek protection here. You can, at any time, return to your country if you want to and support may be available to help you do this. You should discuss returning to your country voluntarily with your lawyer or support worker, return is not the only option available.

The **National Referral Mechanism** (the NRM) is a framework that should identify and protect victims of trafficking. The NRM was created so that the UK could meet its obligations under the Trafficking Convention. The framework also allows the police to gather evidence through the Human Trafficking Centre which is now part of the National Crime Agency (NCA).

Under the NRM, certain professionals who think that a person may be a victim of trafficking can refer that person to a Competent Authority to have their case assessed. If the Competent Authority recognises that a woman is a victim of trafficking she is given important rights, including rights to accommodation and support.

Flowchart of the National Referral Mechanism



Referring a woman into the NRM

Certain chosen organisations, called **first responders** can refer a woman into the NRM. First responders include the police; local authorities; the Salvation Army and certain organisations who are experts on trafficking (like the POPPY Project, Migrant Helpline and Kalayaan); and certain government bodies like the UK Border Force, UK Immigration and Visas and the Gangmasters Licensing Authority.

Referring a woman involves finding out about her situation and how she came to the UK and then completing a referral form which will then be assessed by the relevant Competent Authority (see below). If your organisation are not first responders, then the woman will need to be referred to a first responder. She must consent to this.

At the time of publication, a woman has to consent to be referred into the NRM. It is important that she gets legal advice at this stage so that she is able to make an informed decision

about whether or not she wants to consent to referral. Anyone who is thought to be a child is not required to consent to a referral. The referral should be done within **48 hours** of the first responder coming into contact with her.

If you work for an organisation that is not a first responder and you want a woman you are supporting to be referred into the NRM you should contact one of the first responders or the **UK Human Trafficking Centre** (the UKHTC). The information contained in the referral is the basis of someone's claim that they have been trafficked. It is therefore important that the referral form is comprehensively completed by someone with the necessary skills and expertise.

The **Salvation Army** is the central contractor who coordinates services for adult victims of trafficking. They run a 24 hour help-line for victims of trafficking, agencies and first responders on 0300 303 8151.

Other specialist organisations include:

The **POPPY Project** provides support to women who have been trafficked into the UK. You can read about them here www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php or telephone **020 7735 2062** Monday-Friday.

Migrant Helpline supports migrants in the UK, including trafficked women. You can read about them here www.migranthelpline.org.uk or telephone **07766 668 781 24** hours a day.

Kalayaan supports migrant domestic workers. You can read about them here www.kalayaan.org.uk or telephone **0207 243 2942**.

The **UK Human Trafficking Centre** co-ordinates the UK's responses to trafficking, you can read about them here <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre> or telephone **0844 778 2406** 24 hours a day for further information.

The 'reasonable grounds' decision

The First Responder makes a referral to the relevant **Competent Authority**. The Competent Authority is the body that will decide whether or not a person is a victim of trafficking.

There is:

- A Competent Authority in the UK Human Trafficking Centre to assess cases where the victim is British, an EEA national or where there are no immigration issues.

And there is:

- A Competent Authority within UK Visas and Immigration to assess cases where there are linked immigration issues.

If you are trafficked into the UK and agree to be referred into the NRM your referral form and any other supporting evidence that the first responder has on your case will go to the Competent Authority that is able to deal with it, either the UKHTC or the Home Office.

The Competent Authority will read through the referral form and any other evidence that is given to them on your case with it and should decide within **5 working days** (which can be extended if necessary) whether or not there are **reasonable grounds** for believing that you have been trafficked. This test means first applying the statement "I suspect but cannot prove" to the information provided and then considering whether a reasonable person, looking at all the information, would conclude that there were reasonable grounds to believe that the individual was trafficked.

If the Competent Authority finds that there are reasonable grounds for believing that you are a victim of trafficking they will grant you a **45 day recovery and reflection period**. This will involve you being given safe accommodation and support, including support with any medical or other issues that you have. During this period, you cannot be removed from the United Kingdom.

The 45 day recovery and reflection period is not dependent on you reporting your traffickers to the police or co-operating with them. This means that if there are reasonable grounds for believing that you have been trafficked you are entitled to a recovery and reflection period whether or not you choose to report your experiences to the police or help them in their investigations.

The “conclusive grounds” decision

Before the end of your recovery period the Competent Authority should make a ‘conclusive’ decision about whether or not you are a victim of trafficking. The legal test at this stage is higher than that applied at the ‘reasonable grounds’ stage. The question is, whether on the **balance of probabilities**, you are a victim of trafficking. The Competent Authority will look at all the evidence that is available on your case when making this decision. This could include evidence that becomes available during your rest and recovery period. This may be because you reported those who trafficked you to the police or because you received medical treatment for injuries you have received or other support.

If the Competent Authority assessing your case is the Home Office, then your referral is likely to be examined by the same person who makes the decision in respect of any other immigration application. The referral will then be re-assessed by a second person who is not connected to any other immigration or asylum application you have made.

Whether, on the **balance of probabilities** you are a victim of trafficking means that it is **more likely than not** that you are a victim of trafficking.

What if I am found to be a victim of trafficking?

If you are found, on the balance of probabilities, to be a victim of trafficking a decision may be made to extend your recovery period or to grant you a residence permit if you do not have any other right to remain in the UK. In the UK, the residence permit is given in the form of Discretionary Leave to remain (DL). This period of leave is given for at least one year and one day, to allow you a right of appeal against a refusal on any other immigration or asylum application you have made at the same time.

You may also be recognised as a victim of trafficking but not be given a further period of recovery or a residence permit. Article 16 of the Trafficking Convention requires that any return to your country of origin is conducted with due regard to your rights, dignity and safety.¹²

Under the Trafficking Convention, you are entitled to a **residence permit** if you are recognised as a victim of trafficking and your stay in the UK is necessary because:

- of your personal circumstances; and / or,
- because you are co-operating with criminal proceedings against your traffickers.

Your personal circumstances includes things like your health and wellbeing, for example, you may want to remain in the UK for longer to enable you to complete a course of medical treatment or counselling. If you reported your traffickers or other violence that you experienced to the police you may be asked to make a formal statement to the police and tell a criminal court what happened to you. In cases like these you can apply for a residence permit to enable you to remain in the UK while the criminal case proceeds.

A residence permit under the Trafficking Convention is renewable, if the grounds continue.

What if I am found to be an historic victim of trafficking?

On receiving a NRM decision, it may be accepted that you are a victim of trafficking, but that this happened in the past and that there is therefore no link between the trafficking and your current situation. This may occur if you were trafficked to the UK as a child but only sought assistance or identification as an adult.

A woman who has been subject to trafficking in the past still counts as a victim of trafficking.¹³ However, a decision that you have in the past been subject to trafficking but are no longer may result in a refusal to grant you either a residence permit or asylum. Some women who have left a situation of trafficking may have established links to the community which mean that they are not able or willing to leave the UK (see below).

If you are assisting a woman who has left a trafficking situation in the past, then it is important to remember that she may still suffer from the effects of trafficking, including mental and physical illness which may never have been diagnosed or treated.

¹² Council of Europe Convention on Action against Trafficking in Human Beings, 2005, Article 16(2)

¹³ *R (Atamewan) v Secretary of State for the Home Department* [2013] EWHC 2727 (Admin)

Negative decisions

You may receive a decision from the Competent Authority that you are not a victim of trafficking at either the reasonable grounds stage, or at the conclusive grounds stage.

There is no right of appeal from this refusal, but you can ask for the decision to be reconsidered. When reconsidering the decision, the Competent Authority may look at any additional evidence. If the reconsideration is refused, then the only route to challenge the decision of the Competent Authority is through **judicial review**. It is recommended that you seek specialist legal advice regarding a judicial review.

If you have made another immigration application, for example, an asylum application (see below) then you may be able to appeal to the First Tier Tribunal if that application is refused. On appeal the Tribunal judge can look at the evidence of trafficking again and decide whether the Competent Authority's conclusion about whether or not you are a trafficking victim was open to it.¹⁴

The European Economic Area

Women who come from other countries in the **European Economic Area** have important rights to enter and remain in the UK, to work and to be able to access housing support and other welfare benefits.



The **European Economic Area** is the European Union (EU) (Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, the Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) and three other countries that while not being members of the EU, are treated in a similar way. These countries are Iceland, Norway and Liechtenstein. Switzerland is not a member of the EU or EEA but it is treated as if it is.

The Regulations that bring the Citizens Directive¹⁵ into UK law refer to all of these people as 'EEA nationals' and gives them important rights in the UK.

If you are from another EEA country you have free-movement rights which give you a right of entry to the UK. You also have rights under European law to (among other things) work, seek work, offer or receive services (such as healthcare) and study in the UK. If you have been trafficked into the UK and you are from another EEA country you can remain here by using these rights. You might also be able to apply for welfare benefits and housing support.

For further information about your rights under European law contact the **AIRE Centre**. Visit www.airecentre.org or contact their legal advice line on **020 7831 3850**. The AIRE Centre advice line is open between 2pm- 5pm on Tuesdays and Thursdays.

However, in order to be able to receive certain welfare benefits or housing support you will have to meet the relevant eligibility requirements. For example, in order to be able to receive benefits like income support and housing benefit you have to be habitually resident in the UK and pass something called the (enhanced) habitual residence test.

¹⁴ *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469 (21 November 2013)

¹⁵ The **Immigration (European Economic Area) Regulations 2006** implement the **Citizen's Directive**, *Directive 2004/38/EC*, which came into force in the UK on 30 April 2006.

You must have been in the UK for at least 3 months in order to apply for benefits, and you must be able to show that you have a realistic chance of finding employment, including speaking English. To find out more about your rights to get welfare benefits or housing support you can contact our legal advice line (details are given at the end of this legal guide), a Citizen's Advice Bureau or your local law centre.

If you have been in the UK for longer than 3 months without working, then you can be made to return to your country of origin unless you are economically active, seeking work and have a genuine chance of employment or self-sufficient. If you are self-employed or offering services, you can be considered economically active as long as your business is genuine and effective.

Citizens Advice Bureaux provide people with information and advice on a range of issues, including welfare benefits. Visit www.citizensadvice.org.uk to find your local Bureau.

Law Centres provide people with legal advice and representation on a range of issues. Visit www.lawcentres.org.uk to find your local law centre.

The eligibility rules for getting certain welfare benefits and housing support result in some people from other EEA countries who live in the UK being unable to receive them. Women in this situation may want to apply for a residence permit under the National Referral Mechanism (see above) because a residence permit gives the person who has it the right to receive welfare benefits and housing support.

Refugee law and the European Convention on Human Rights

For many victims of human trafficking, it is not possible to return home. For some women, this will be because they fear harm if they return to their country of origin. You may fear harm from those who were involved in your trafficking, or from your family or community. This is because in some countries or cultures it is considered

shameful to have experienced sexual violence, been exploited for prostitution, or have been trafficked. Women may be at risk for a number of reasons, including because they are women.

If you fear that if you were returned to your own country you would face serious harm you can make an application for **asylum** in the UK. A claim for asylum is a claim for protection under either the **Refugee Convention** or Article 3 of the **European Convention on Human Rights** (the right to be free from torture, inhuman or degrading treatment).

To be recognised as a refugee, a woman must demonstrate that she is at risk of persecution for a Convention reason and that she is unwilling or unable to avail herself of state protection.

Convention reasons

The Refugee Convention sets out reasons why someone may fear persecution, these categories are: race, nationality, religion, political opinion, or membership of a particular social group. For some women, being a victim of human trafficking means that they are part of a particular social group¹⁶ for others, being a woman alone in their country of origin may mean that they are part of a particular social group, or being a woman who has experienced trafficking may make someone particularly vulnerable.

If you claim asylum at the same time as you are referred into the National Referral Mechanism, then a decision may be made about how to treat your asylum claim before it is decided whether you are a victim of trafficking. This means that if your asylum claim is suitable for the Detained Fast Track (DFT) you may be detained until a reasonable grounds decision is made. Victims of trafficking are not considered suitable for detention, and so if there is a decision that there are reasonable grounds to believe you have been trafficked, then you should be released. (For more information about the DFT, see our handbook: **Seeking Refuge?**)

Who will decide my case?

A decision as to whether you are a victim of trafficking is made by a caseworker within the Competent Authority (UK Visas and Immigration); a decision about whether you require protection under the Refugee Convention of the European Convention on Human Rights is also made within UK Visas and Immigration which means that the

¹⁶ *PO (Nigeria) v SSHD* [2011] EWCA Civ 132

decision maker for both may be the same person. A second person will have looked at the trafficking decision.

If you are refused asylum or humanitarian protection, then you can usually appeal this decision. This appeal will take place in the First Tier Tribunal and there are strict time limits. You must appeal within 10 working days of receiving the reasons for refusal letter, which tells you why the decision has been made not to grant you asylum. If you are detained, the time limit is shorter.

Asylum-seekers are entitled to receive financial and other support while their claim is decided. Women who make successful claims for asylum may be given either Refugee Leave or Humanitarian Protection for 5 years, depending on their case. For further information about asylum law and making a claim for protection in the UK see Rights of Women's **Seeking Refuge? A handbook for asylum seeking women.**

Where you are refused asylum on the grounds that you are not a victim of trafficking, then you may be able to challenge this as part of your appeal. Although there is no right of appeal from a trafficking decision, an immigration tribunal can decide whether to accept the decision of the NRM that someone is not a victim of human trafficking. If there is sufficient further evidence, then the tribunal may decide whether the facts show that an individual was in fact the victim of human trafficking.¹⁷

Re-trafficking

One reason why you may not be able to return home is the risk of re-trafficking. This means that you would be forced into another situation of trafficking, either because those responsible for the exploitation would seek you out again, you owe money as a result of the transit to the UK, or there are no other opportunities in your country of origin, so you would be forced to travel to seek work.

If you are concerned that you might be trafficked if you were to be returned to your country of origin you can say this in your asylum claim. You may need expert evidence on this and / or other risks that you might face if you were to be returned to your country of origin. In some countries there are resources available for women who are identified as victims of trafficking and return home, but these are not always suitable for all women.

Family and private life in the UK

Many women and girls spend a long time in the UK as a result of trafficking. Some are able to attend school or college during their time in the UK and some women and girls may have children while in the UK. Many victims of trafficking are able to leave their situation and to continue with their lives, although others may find themselves in situations of further abuse and exploitation.

A woman who has been in the UK may be able to make an application to remain here on the basis of Article 8 of the **European Convention on Human Rights**. This is a right not to face disproportionate interference with your family and private life, for example by being required to leave the UK and be separated from your children.

In Article 8 cases the decision-maker in your case has to balance your rights to respect for your privacy and family life against the needs of the UK to exercise immigration control. This means that they have to look at the effects on you and any family that you have of a decision to remove you. Each woman's case is different, but the courts are unlikely to agree with decisions which have the effect of separating parents from their children or breaking up other significant relationships.¹⁸

Women can make applications under Article 8, where their case fits the Immigration Rules. However, whenever a decision is taken on your case (either by the Home Office or on appeal, by an Immigration Judge), the decision-maker should look more broadly at all the circumstances and whether there are any Article 8 considerations.



¹⁷ *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469 (21 November 2013)

¹⁸ See the comments of Baroness Hale at paragraph 50 in *R v. SSHD ex parte Razgar* [2004] UKHL 27

Joy came to the UK from Ghana when she was twelve years old, she was sent to stay with her Aunt somewhere in the UK. She was going to help her Aunt look after her children and go to school here. From the time of arrival until she was fifteen, Joy did not go to school but worked long hours caring for her Aunt, her children and doing all the domestic work in the house. At 15, Joy was sent to stay with a friend of her aunt. She had to do the same work, but this friend would slap her when she did something wrong, and the friend's husband would sometimes touch her sexually. At seventeen, Joy left the house when everyone was at work. She was not able to find her passport. Joy was able to get a bus to London where she found some support through a homeless shelter. For some time she was street homeless and living on free meals through community groups. At 18 years old Joy made an application based on spending 7 years in the UK and included information about her circumstances if she had to return to Ghana, and her friendships and life in the UK. She was given 2 ½ years leave to remain and must complete ten years leave before she is eligible to apply for ILR.

For more information about Article 8 see Rights of Women's legal guide on Article 8 and family life. This is a complex area of law and you are advised to seek legal advice.

Domestic workers

People who enter the UK to work in someone's home are known as domestic workers. You are allowed to come to the UK with your overseas employer if you have been working for them for at least a year. Domestic workers may be exploited by: not having days off, having no personal space or separate room, being expected to be available at all times, having their documents withheld, not being paid or being assaulted by their employers. If this is happening to you, then you can seek assistance through Kalayaan (see useful contacts at the end of this guide) If you experience any form of violence from your employer, then this may be a criminal offence and you can report your employer to the police.

If you or your employer have applied for you to come to the UK as a domestic worker after 5 April 2012 then you can only stay in the UK for 6 months, and renew your visa in the UK only up to a total of 6 months. If you are on a post-5 April 2012 visa, then you are not allowed to change employers while you are in the UK and you are expected to leave once your visa expires. If your employer requires you to stay for longer, then you and they are breaking the law. In order to make the application for a domestic worker visa, you must show a completed and signed copy of your terms and conditions of employment. This will set out your working hours, holiday entitlement and living and sleeping conditions.¹⁹

If you come to the UK as a domestic worker you are entitled to receive information about your rights from UK Visas and Immigration when you enter the UK. A failure to give you this information may mean that the UK has breached their obligations to you.²⁰ If your working conditions are not the same as the terms and conditions you were given to make the application for your visa, then you may be able to bring a case for compensation against your employers.

If you experience exploitation once you are in the UK as a migrant domestic worker, then you may be referred into the NRM (see above) if you are a victim of trafficking. If you are accepted as a victim of trafficking, then you may be given discretionary leave to remain to allow for your recovery. Some domestic workers may be able to remain in the UK on the basis of their family and private lives (see Rights of Women's legal guide on Article 8) If you are afraid to return to your country of origin because you are at risk of harm there, then you may be able to claim asylum. You are strongly advised to seek advice if you wish to leave your employer.

If you hold a domestic worker visa from before 05 April 2012 then you will have a visa for one year. You can renew this every year and you are allowed to change employers while you hold the visa. If you are experiencing exploitation and you are on this form of visa, then you may be able to change employer. You may also be able to bring an employment law case against your employer for compensation. You can bring your partner and children with you if they are dependent on you and you may apply to settle in the UK after 5 years.

¹⁹ <https://www.gov.uk/domestic-workers-in-a-private-household-visa/documents-you-must-provide>

²⁰ EK (Article 4 ECHR: Trafficking Convention) [2013] UKUT 00313 IAC

Criminal offences

Although there is currently no specific criminal offence of trafficking in the UK, there are a number of criminal offences that someone involved in trafficking may commit. This includes but is not limited to: false imprisonment, assault,²¹ sexual offences²² (including bringing someone into the UK, travelling around the UK or leaving the UK for the purposes of sexual exploitation), facilitating someone's arrival into the UK for the purpose of exploitation²³ and forced labour and slavery.²⁴

If the people responsible for trafficking you are charged with an offence, then you may be asked to give evidence against them. If you have to give evidence at court, then you can ask for special measures to protect you. Special measures are available where you may be scared to give evidence. The measures include, but are not limited to: providing screens at court when you give evidence so you cannot be seen, giving evidence via video-link so you are not in court, or pre-recording your evidence in chief. If the perpetrators are also charged with sexual offences, you will receive these measures automatically. For more information see the Rights of Women publication **From Report to Court: a handbook for adult survivors of sexual violence**.

Frequently, victims of trafficking are obliged as part of their trafficking to take part in criminal offences. Some victims are not identified by the police who investigate the crimes and may be arrested and charged with criminal offences as a result.

Women who have been trafficked may commit the following immigration offences while they are being controlled by their trafficker:

- using a false instrument (such as a false passport or identity card) under section 3 of the **Forgery and Counterfeiting Act 1981**;
- having a forged passport or other documents under section 5 of the **Forgery and Counterfeiting Act 1981**; or,
- Failing to have a travel document at an immigration or asylum interview under section 2 **Asylum and Immigration (Treatment of Claimants) Act 2004**.

The police are under an obligation to investigate where they believe someone may be a victim of trafficking,²⁵ and as a first responder, may have a duty to refer someone to the National Referral Mechanism (if they consent). Lawyers and courts may also be under a positive obligation to identify victims of human trafficking who are charged with a criminal offence(s).

The Trafficking Convention states that victims of human trafficking may not be punished for offences that they commit whilst they are in a situation of trafficking.²⁶ The UK has also committed to making sure that the authorities are able to make a decision not to prosecute someone who has been compelled to commit a criminal offence. Someone may be compelled to commit a criminal offence if they are forced to shoplift, beg or engage in prostitution.²⁷

In the UK, this means that if you are a victim of trafficking, the Crown Prosecution Service (CPS) can take a decision not to prosecute you for an offence committed where you had no choice because you were still under the control of your traffickers. The CPS Guidance²⁸ means that where there is credible evidence to believe that you are a victim of trafficking a prosecutor must consider whether you have a defence of duress. If you do, then they must not continue the prosecution.

²¹ [Criminal Justice Act 1988](#), s39

²² [Sexual Offences Act 2003](#), s1, s3 or trafficking people for sexual exploitation under s59A

²³ <http://www.legislation.gov.uk/ukpga/2004/19/section/4>

²⁴ [Coroners and Justice Act 2009](#), s71

²⁵ <http://www.baillii.org/ew/cases/EWHC/QB/2011/1246.html>

²⁶ [Council of Europe Convention on Action against Trafficking in Human Beings](#), 2005, Article 26

²⁷ [EU Directive on Human Trafficking 2011/36/EU](#) Article 8

²⁸ http://www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf

If there is no defence of duress available, then they must consider whether it is in the public interest to prosecute you.

It may be argued that a decision to prosecute you is an abuse of process. This means that where the facts of the offence are linked to the facts of trafficking, then the court can exercise a power to stop the prosecution. This may be argued by your lawyer, but it can also be stopped by the Court itself where there are questions about whether you have been trafficked.²⁹

Duress is a legal defence available to those who commit a crime because they were at risk of violence or some other serious harm. If you raise the defence of duress the court will have to consider whether or not you were threatened or at risk of violence or harm and, if you were, whether it was reasonable for you to believe that the threat would be carried out. If your behaviour was reasonable, in all the circumstances of the case, then you will not be considered to be criminally responsible for your behaviour.

Some women are both victims of human trafficking and are also part of a trafficking enterprise. This includes women who manage brothels, or who control other trafficking victims. These women may be charged with offences in respect of trafficking and should seek specialist criminal defence advice.

Appeal after conviction

Where you either pleaded guilty or were found guilty of a criminal offence as a direct result of your trafficking situation, you may be able to appeal your conviction. You may be able to appeal even if the case took place many months, or even years ago. You can seek specialist advice about appealing a conviction from a criminal solicitor, or from the Criminal Cases Review Commission who have produced information for victims of trafficking and asylum seekers.³⁰

Consequences of a conviction

If you are a victim of human trafficking and you have pleaded guilty or been convicted after trial of a criminal offence, you are likely to face a punishment. In addition to possible imprisonment, a foreign national with a criminal conviction may be either recommended for deportation or automatically deported.

Even where you are not facing deportation, a criminal record may prevent you from being granted Indefinite Leave to Remain (ILR) in the UK. This is because in order to be granted ILR, you must meet strict suitability or eligibility criteria.

Compensation

Criminal injuries compensation

Compensation for victims of trafficking is available through the Criminal Injuries Compensation Authority (CICA). It is also a right guaranteed by the Convention on action against Trafficking in Human Beings.³¹

To make an application for compensation, you must either be ordinarily resident in the UK, a British or an EEA citizen unless certain exceptions apply. If you are from a third country, then you may make an application for compensation if at the time you make the application, you have been referred to the Competent Authority through the NRM, or you have made an application for asylum.³²

The **Criminal Injuries Compensation Scheme 2012** is run by the **Criminal Injuries Compensation Authority** (the CICA). Victims of crime in England and Wales can apply to the CICA for compensation in certain circumstances. For further information visit www.cica.gov.uk or telephone **0300 003 3601**.

²⁹ From R v L, HVN, THN, T [2013] EWCA Crim 99

³⁰ <http://www.justice.gov.uk/downloads/about/criminal-cases-review/policies-and-procedures/ccrc-asylum-seeker-refugee-leaflet.pdf>

³¹ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, Article 15

³² Criminal Injuries Compensation Scheme 2012, regulation 13

In order to be successful, you must show that you received an injury, which includes psychiatric injuries, as a result of a violent crime. You will probably need a medical report to demonstrate the injuries that you have suffered.

You must also have reported the offence to the police within 2 years of leaving the trafficking situation. It does not matter if no one is identified or charged. However, you must cooperate with the police and help them with their enquiries. This may include attending court to give evidence. For more information see the Rights of Women's **A Guide to Criminal Injuries Compensation**.

MM was trafficked into the UK from Romania and forced into prostitution. She was unable to escape from her traffickers for three years. After MM had escaped and was in a place of safety she decided to report her traffickers to the police and help them investigate her case. She later applied for compensation from the CICA. MM received £22,000 for the sexual violence she had experienced over the three years she had been forced into prostitution and £40,000 for the earnings and opportunities she lost as a result of being trafficked.

The amount of money a person who has been trafficked into the UK may receive will depend on the facts of their case.

In addition to compensation from the CICA, a woman who has been trafficked may want to take her traffickers to the civil courts for damages for the harm she has experienced. If she has reported her traffickers to the police and they are being prosecuted, she may want the judge dealing with her case to make an order that her traffickers pay her compensation, in addition to any other punishment that they receive. If a trafficked woman is unlawfully detained or not treated as she should be in detention, or if the police or CPS fails to investigate and prosecute her case properly, she may be entitled to damages under the Human Rights Act 1998.

Compensation from an employer who has exploited you

If you have been trafficked for labour exploitation, you may be able to make a claim against your employer. There are a number of grounds you may be able to rely on, including that your employment was ended unreasonably, you did not

have a written contract, or that the contract was breached. You may also be able to claim if you were treated differently because of a protected characteristic (for example, your race or ethnicity).

If you are working anywhere other than a family home, employers must pay you the National Minimum Wage (NMW) which is currently £6.31 if you are over 21. You are only required to work 48 hours per week unless you choose to work more.

If you are trafficked to work as a domestic worker, then the National Minimum Wage does not apply.

Wherever you work, you are also entitled to rest periods and to days off from work. You should be provided with an employment contract which will set out the hours that you are expected to work. If your employers require you to work more than this, then you may be able to seek compensation for breach of contract.

If your employment contract has been breached, or you have never had one, then you may be able to take a case to the Employment Tribunal (ET) for compensation. You may also be able to take a case to the Employment Tribunal if you were dismissed from a job unfairly, or you had to leave because of the conditions of your employment.

If you have been badly treated or exploited by your employers because of a protected characteristic (discrimination) you can seek compensation in the Employment Tribunal or through the County Courts. You should seek specialist legal advice if you believe this applies to you.

For more information about your rights as an employee, you can contact the Pay and Work Rights Helpline on **0800 917 2368** (telephone) or **0800 121 4042** (text-phone)

You can also contact the Anti-Trafficking Labour & Exploitation Unit (ATLEU) on **020 7700 7311**

The law relating to trafficking is complex; in this legal guide we have only provided a basic overview of the relevant law and procedure. We would strongly advise you to seek legal advice.

The law explained in this legal guide is as it stood at the date of publication. The law may have changed since then so you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

For free, confidential, legal advice on trafficking, immigration and asylum issues call **020 7251 8887 (telephone)** or **020 7490 2562 (textphone)**.

The advice line is open on **Mondays 12pm – 3pm** and **Thursdays 10am – 1pm**.

For further details of Rights of Women's advice lines on family or criminal law see www.rightsofwomen.org.uk.



Other useful contacts

AIRE Centre

020 7831 3850

(the legal advice line is open between 2pm-5pm on Tuesdays and Thursdays)

www.airecentre.org

Criminal Case Review Commission

0121 233 1473

www.justice.gov.uk/about/criminal-cases-review-commission

Salvation Army

(Accommodation for victims of human trafficking)

www.salvationarmy.org.uk/uki/trafficking

24 helpline

0300 303 8151

Immigration Lawyers Practitioners Association

(for information about immigration and asylum law through their 'Info Service' and to find an immigration lawyer)

www.ilpa.org.uk

Kalayaan

(support for migrant domestic workers)

0207 243 2942

www.kalayaan.org.uk

Migrant Helpline

(support for migrants)

01304 203977

www.migranthelpline.org.uk

POPPY Project

(support for trafficked women)

020 7735 2062

www.eavesforwomen.org.uk/about-eaves/our-projects/the-poppy-project

UK Human Trafficking Centre

0114 252 3891

www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre

Rights of Women
52-54 Featherstone Street
London EC1Y 8RT
Office: 020 7251 6575
Email: info@row.org.uk
Website: www.rightsofwomen.org.uk

Charity number: 1147913

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