

Trafficking toolkit:  
Specific arrangements  
and advice for  
Competent Authorities

CRIMINAL JUSTICE SYSTEM



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## SPECIFIC ARRANGEMENTS AND ADVICE FOR COMPETENT AUTHORITIES

### Responsibilities of Competent Authorities

The primary aim of the Convention is to offer protection to victims so it is appropriate to consider if the elements of human trafficking continue to apply at the time that the person presents themselves.

To receive assistance under the terms of the Convention, the following conditions must apply:

- > A person must be physically in the United Kingdom in order to be capable of receiving protection and assistance from a Competent Authority in the UK under the Convention;
- > The person must still be experiencing the constituent elements of trafficking, as defined in the Convention, when they present themselves to a Competent Authority.

Therefore, where a person's circumstances do not require protection or assistance at the time of assessment by a Competent Authority, the person is unlikely to be able to obtain the protection and assistance under the terms of the Convention. In making their decision, Competent Authorities should consider all of the person's circumstances in the context of the general purpose of the Convention, and specifically whether:

- > The person was under the influence of traffickers at the point at which they came to the attention of the first responder;
- > The person requires a period to recover from that influence of traffickers;
- > The person has suffered physical or emotional wounds from the trafficking experience and requires time to recover from those wounds; and/or
- > The person requires a period of time in which to decide whether to co-operate with the authorities in respect of a trafficking related criminal investigation.

The Council of Europe Convention on trafficking has a two stage process for identifying victims of trafficking in which the 'reasonable grounds' test acts as an initial filter to a fuller more conclusive decision. Once a positive 'reasonable grounds' decision is made; the individual is granted a 45 day reflection/recovery period. This temporary status provides the conditions for the fuller evaluation to be made, and allows the individual to escape the influence and control of the traffickers. The officer will have the discretion to extend the validity of the temporary admission beyond 45 days where circumstances warrant. Similarly the decision maker can curtail the reflection period and immigration status where the trafficking claim is found to be fraudulent.

On receipt of a referral, a Competent Authority shall apply a 'reasonable grounds to believe' test to decide whether a person has been a victim of trafficking. The 'reasonable grounds' test has a low threshold and is lower than the threshold required for prima facie evidence (which is legally sufficient evidence, that if uncontested, would establish a fact or raise a presumption of a fact).

The test that should be applied is whether the statement "I suspect but cannot prove" would be true and whether a reasonable person would be of the opinion that, having regard to the information in the mind of the decision maker, there were reasonable grounds to suspect the individual concerned had been trafficked. Legally sufficient proof may or may not be present at this stage. Reasonable suspicion can never be supported on the basis of personal factors alone (eg the appearance of the suspected victim) without reliable supporting intelligence or information or some specific behaviour by the person concerned. It should normally be connected to precise and up to date intelligence/information.

However the Competent Authority must take account of the limited information that the first responder may be able to acquire. Other bodies particularly any support agencies are likely to be able to assist in determining whether reasonable grounds to believe are met. A first responder may also be in a position to be able to provide a huge amount of information that goes beyond the required proof. In these circumstances it is the responsibility of the Competent Authority to advise the first responder that reasonable grounds is met and that any further information will go towards the subsequent 'conclusive decision'.

Some of the indicators on the form may not be apparent on the initial encounter but will become clear during subsequent interviews at a safe location (such as a police station) with an interpreter. Competent Authorities should be mindful of any ongoing process which may be able to provide additional information.

The *reasonable grounds* decision has consequences for the person in terms of protection and potential further stay in the UK. It will be subject to external scrutiny and judicial review. The decision should be of the highest possible standard, taking into account the expert views of those surrounding the individual. Where the decision maker is not sure they should seek guidance and assistance from others and commission more information from first responders or support providers.

### **Credibility**

Competent Authorities should utilise published and recognised reports which address the propensity of trafficking in the home country. The decision maker should then move on to assessing whether those facts are credible. If they fit the definition and the account is credible to the required standard of proof (reasonable grounds), the individual should be recognised as being a victim of trafficking.

The nature of trafficking and the trauma it can cause should lead decision makers to be cautious in discounting potential victims due to lack of co-operation or initial

reluctance to disclose the full facts of their case. Moreover, as a result of trauma, victims in some cases might not be able to recall concrete dates, facts and in some cases their initial account might contradict their later statement. This is often connected to their traumatic experience as well as to the psychological coercion that may persist. However, the need to be sensitive does not remove the need to assess all information critically and objectively. This includes considering the credibility of a case.

In assessing the credibility of the case of a potential victim of trafficking, decision makers must assess the credibility of material facts about past and present events that go to the core of the decision that an individual is a victim of trafficking. Credibility findings should be focused upon material facts that are serious and significant in nature. It is generally unnecessary, and sometimes counter-productive, for the decision maker to focus upon minor or peripheral facts that are not material to the claim.

Assessing a claim's credibility inevitably involves an element of subjectivity on the decision maker's part. The danger is that a decision maker's subjective interpretation of a claim can lead to unfounded assumptions based not on objective information but on the individual's own experiences and beliefs, undermining the balance and fairness of an assessment.

The decision maker should assess whether the material factual claim is coherent and consistent with any past written or verbal statements, and consistent with claims made by witnesses and/or dependants and with any documentary evidence submitted in support of the claim. It is for the decision maker to assess how well the evidence submitted fits together and whether or not it contradicts itself.

Where the potential victim is a child, the decision maker will need to decide to what extent it is reasonable to expect the child to explain any discrepancies.

In such cases, consideration must be given as to whether we should be more willing to accept what is said where the applicant is a child, than we would be were the applicant an adult. It may be that the severity of the child's trafficking experience has hindered or prevented their ability to recall details. If there are gaps in the account, this could be due to a number of reasons including fear of imminent risk from the trafficker, fear of future reprisals against family members, coerced scripted stories, or developmental and cultural reasons.

A decision maker should not draw an adverse credibility inference from omissions in the child's knowledge or account if there are justifiable reasons for those omissions. Decision makers must take into account the particular circumstances of each case and the fact that being a victim of trafficking can be a contributory factor in selective or inaccurate disclosure of an individual's experience. But where an assessment of credibility undermines an individual's account to the point that the reasonable grounds threshold can no longer be met the decision maker should conclude that the subject is not a victim of trafficking according to the Convention.

## **UK Human Trafficking Centre**

One part of the UK Competent Authority (CA) is housed within the UK Human Trafficking Centre (UKHTC). The UKHTC CA receives referrals from police, local authorities, and NGOs in respect of potential victims of trafficking irrespective of age, nationality or gender. Where it is agreed that a given case falls within the responsibility of the UK Borders Agency, the CA will refer the case onward accordingly.

### **Acknowledging a referral**

Once the referral is received, the CA will send an acknowledgement letter to the first responder.

### **Reasonable grounds decision**

- > The CA has five working days from the receipt of the referral to reach a decision. Where a case needs to be fast tracked, eg the person may be detained, the CA is expected to treat the case as a priority and reach the decision as soon as possible;
- > The CA must consider the decision in line with the guidance.

### **The conclusive decision**

- > The conclusive decision will normally be made on the 45th calendar day after the reasonable grounds decision. The conclusive decision will be made on the balance of probabilities, and will take into account all new information that has been obtained in the case since the first decision. All non-EU nationals will be passed to UK Border Agency for a conclusive decision, unless that person already has indefinite leave to enter or remain in the UK.

## **Regionalised UK Border Agency case owners**

The Competent Authority in UK Border Agency (UKBA) will only deal with cases where the case is raised by UK Border Agency or where there is a current immigration issue in which case UKHTC will refer the case to UK Border Agency.

### **Acknowledging a referral**

Once the referral is received, the CA will send an acknowledgement letter to the first responder.

### **Reasonable grounds decision**

- > The CA has five working days from the receipt of the referral to reach a decision. Where a case needs to be fast tracked, eg the person may be detained, the CA is expected to treat the case as a priority and reach the decision as soon as possible;
- > The CA must consider the decision in line with the guidance.

**RG outcome-person not accepted as a potential victim**

- > The CA must confer with the police and with the local authorities (in the case of children) to ensure that all information has been gathered;
- > If there is no subsequent information the CA must:
  - » Complete the decision letter and issue to the person concerned,
  - » Notify the first responder, the support provider, UKHTC, the police (where appropriate) and any other interested parties that may be relevant.
- > If the case has any outstanding immigration action that needs to be concluded, it is a local decision as to who should continue with the consideration of the case, eg whether the CA would deal if there were an outstanding asylum application or if it should be sent to the relevant workflow manager to reallocate the case.

**RG outcome-person accepted as a potential victim**

- > The CA must:
  - » Complete the decision letter and issue to person concerned;
  - » Notify the first responder, the support provider, UKHTC, the police (where appropriate) and any other interested parties that may be relevant.
- > If the victim is in detention they will normally need to be released on temporary admission/temporary release, unless due to the particular circumstances of their claim, their detention can be justified under the overall detention policy;
- > The decision letter advises the person that they have been granted 45 days for reflection and recovery on temporary admission/temporary release (TA/TR) to remain in the UK whilst a conclusive decision is made on their case; it does not confer any leave to enter or remain;
- > Along with the decision letter, the CA should issue a revised IS96 (or IS248 if an in time in-country case) granting TA/TR for 45 calendar days from the date of the letter. This should cover where the person will need to report ie the local enforcement office or local immigration team/reporting centre in the area where they are accommodated, how often they will need to report and when;
  - » Each case should be considered on a case by case basis but it is expected that there will be a low frequency reporting regime for these cases, which should be staggered to avoid any traffickers identifying reporting patterns.
- > In order to ensure that the person has sufficient time for reflection and that a decision can be made by day 45, the CA should set a review date for day 30 to monitor progress on the case and check on the target for conclusion;
- > It may be that the person requires a further period of recovery, in which case the CA should consider whether an extension of TA/TR is appropriate. If so, all the relevant parties should be notified, including any asylum case owners where they are not the CA;
- > During the 45 day reflection period the CA should carry out any evidence gathering and further enquiries required. Immigration action such as asylum

interviews may be carried out if the person is able and willing to participate, taking into account any trauma they may be suffering; each case should be considered on its individual merits.

### **Immigration Decision**

If a separate immigration decision concludes that the person should not remain in the UK, no detention or removal action should be taken against the subject before a conclusive decision has been made on the trafficking aspect.

Article 13 (3) of the Council of Europe Convention on Action against Trafficking in Human Beings allows us not to observe the period of reflection if grounds of public order prevent it, or if it is found that victim status is claimed improperly. This provision aims to guarantee that victims' status will not be illegitimately used, as such where an improper claim has been made, a conclusive decision should be completed on the trafficking aspect and the period of reflection curtailed for this reason and then normal immigration procedures continue.

The person may at any point decide that they do not wish to remain in the UK, in which case they should be advised of the assisted voluntary programmes available.

If a positive immigration decision is made prior to day 45 such as the grant of refugee status, Humanitarian Protection, or discretionary leave under normal DL policy, then this should be served immediately along with the trafficking decision and all the relevant parties notified of the outcome, including updating the case information database (CID).

### **Referral from UKHTC where UK Border Agency CA must make the conclusive decision**

Where UKHTC received the original referral and made the reasonable grounds decision they will transfer the case to UK Border Agency to make the conclusive consideration in cases where there is also an immigration issue that needs to be resolved.

The CA will then be responsible for making the conclusive decision, if there are any handover issues they should contact UKHTC to discuss.

### **Conclusive Outcome-Not Trafficked**

Where the outcome is that the person is not considered to be a victim of trafficking, the CA must liaise with the police and with local authorities (in the case of children) to ensure that all information has been gathered. If there are no other circumstances that would lead to the grant of leave then the CA must issue the conclusive decision to the person and notify all relevant parties, including UKHTC. This letter will ask if there are any other reasons why the person should remain in the UK and if there are none, offer assistance in making a voluntary return.

Normal immigration procedures will then apply as there will no longer be a barrier to removal on the grounds of trafficking but any other reasons that are raised will require consideration in line with existing procedures for handling further representations.

The CA should then arrange for any outstanding immigration activities to be completed in line with normal procedures and the case can be allocated to an appropriate case owner to conclude any immigration action.

**Conclusive Outcome-Trafficked: assisting with police enquiries from UK**

Where the outcome is that the person is recognised as a victim of trafficking and has agreed to assist with police enquiries the police need to apply for the person to be granted leave to remain on this basis. For example, this could be providing witness evidence against the trafficker.

Where discretionary leave is appropriate, it should be granted for exactly 12 months, which does not offer a right of appeal, on a UK Residence Permit (UKRP) in their passport or on an Immigration Status Document. This should be reviewed a month before it is due to expire to consider whether any further applications have been lodged by the subject which might lead to an extension of stay or whether voluntary return assistance etc is required). The CA must issue the conclusive decision along with the immigration decision, to the person and notify all relevant parties, including UKHTC.

**Conclusive Outcome-Trafficked: assisting with police enquiries from abroad**

Where the outcome is that the person is considered a victim of trafficking and has agreed to assist with police enquiries but does not wish to remain in the UK, the CA must issue the conclusive decision to the person and notify all relevant parties, including UKHTC. The CA should then arrange for any outstanding immigration activities to be completed in line with existing immigration procedures and the person should be given advice on assistance with voluntary returns.

**Conclusive Outcome-Trafficked: not assisting with police enquiries leave to be granted**

Where the outcome is that the person is considered a victim of trafficking but has not agreed to assist with police enquiries, the CA should consider whether the person qualifies for leave in view of their personal circumstances, taking account that victims of trafficking may have different personal circumstances such as family and health needs and grant in line with current discretionary leave (DL) policy. DL in trafficking cases should not be considered in a manner that would be more discriminatory than general cases where DL applies.

Where DL is appropriate it should be issued on a UK Residence Permit (UKRP) in their passport or on an Immigration Status Document. This should be reviewed a month before it is due to expire to consider whether any further applications have

been lodged by the subject which might lead to an extension of stay or whether voluntary return assistance etc is required). The CA must issue the conclusive decision along with the immigration decision, to the person and notify all relevant parties, including UKHTC.

**Conclusive Outcome-Trafficked: not assisting with police enquiries no leave to be granted**

If there are no circumstances that would lead to the grant of leave or the person expresses that they wish to return home, then the CA must issue the conclusive decision to the person, explaining the reasons why they do not qualify for leave. The CA must notify UKHTC, the police, and the support provider. This letter will ask if there are any other reasons why the person should remain in the UK and if there are none, offer assistance in making a voluntary return. Normal immigration procedures will then apply and the case can be allocated to an appropriate case owner to conclude any immigration action.

## **What support/advice can be offered by Competent Authorities?**

Competent Authorities will work with partners in the public and voluntary sector to identify victims of human trafficking and arrange access to support. The intention is to alleviate the pressure on victims to fully disclose and self identify at first point of contact. Through a multi-agency approach and with the emphasis on information sharing, the Competent Authorities should be able to access all relevant information without having to approach the individual.

Relevant Competent Authorities can be accessed through the following numbers:

- > UK Border Agency - Public enquiry office tel: 0870 606 7766.
- > UKHTC - tel: 0114 252 3891.