



SUPPORTING VICTIMS OF TRAFFICKING: WHOSE RESPONSIBILITY?

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Topics to cover

- Legal duties to support victims of trafficking
- Supporting child victims
- Supporting adult victims:
 - NRM support
 - Post-NRM Support under Housing Act 1996 (to be dealt with by Victoria Marks, ATLEU)
 - Post-NRM Support under the Care Act
 - Post-NRM Support under Localism Act
 - Access to welfare benefits (to be dealt with by Phillipa Roberts)

Legal obligations to support VoTs

- **CoE Convention on Action against Trafficking in Human Beings (ECAT):**
 - Preambles: protection of victims is a paramount objective and is to be provided on a non-discriminatory basis
 - **Article 12(1):** *Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least: a standard of living capable of ensuring their subsistence, through such measures as appropriate and secure accommodation, psychological and material assistance.*
 - **Purpose?:** Victims who break free of their traffickers' control generally find themselves in a position of great insecurity and vulnerability. Article 12(1) applies to all victims irrespective of whether have residence permit.

Legal obligations to support (2)

- **EU Anti-Trafficking Directive (2011/36/EC)**

- **Recital 18:** requires MS to provide resources for victim support and recovery to include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. Support to be based on **an individual assessment** carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned
- **Recitals 22 / 23:** MS to ensure specific support / protective measures are available to child victims provided on an individualised assessment of durable solutions made in child's best interests and consistent with UNCRC
- **Article 11:** MS to take “*necessary measures*” to “*ensure*” assistance / support for VoTs
- **Articles 13 / 14:** child-specific obligations for short and long-term

Legal obligations to support (3)

- **Article 5, CFR:** prohibition against slavery, forced labour, servitude and specifically, human trafficking
- **Article 4, ECHR:** prohibition against slavery, forced labour, servitude
- ***Rantsev v Cyprus and Russia* (2010) 51 EHRR 1:** MS required to take operational measures to protect victims, or potential victims, of trafficking
- ***J and Ors v Austria* [2017] ECHR 37:** MS required to put in place legislative and administrative framework not only to prohibit and punish trafficking, but also to protect victims and potential victims.
- ***Chowdury v Greece* [2017] ECHR 300:** MS must adopt “*concrete measures*” in a legal and regulatory framework to assist physical, psychological and social recovery of VoTs. ECAT is “*aid to interpretation*” of content of Art 4.

Supporting Child VoTs: General

- **Main framework?: Children Act 1989**
- **What does it do?:**
 - **Section 20:** accommodation to child in need because: (a) lost / abandoned; (b) no one with PR; (c) carer unable to provide suitable care or accommodation; or (d) necessary to safeguard welfare
 - **Section 31:** care order if likely significant harm
 - **Section 1, Children and Social Work Act 2017:** corporate parenting duty
 - **Looked after child regime:**
 - Accommodation: sections 22A, 22C
 - Maintenance: section 22B
 - Education: section 22(3A)
 - **Leaving care (Transition to adulthood)**
 - Accommodation and support: sections 23C(4) / 23CA
 - Advice and assistance: new section 23CZB CA 89

Private Arrangements for Fostering

- Privately fostered child is (a) under 16; (b) cared for / provided with accommodation in their own home by someone other than a parent, someone with PR or a relative: **s66 CA 89**.
- Local authority must satisfy themselves that welfare of privately fostered child is ‘satisfactorily safeguarded and promoted’: **s67 CA 89 & Children (Private Arrangements for Fostering) Regulations 2005**.
- Local authority power to prohibit private fostering if: (a) not suitable; (b) premises not suitable; (c) would be prejudicial to welfare of child: **s69 CA 89**
- Local authority power to impose restrictions on private fostering: **para 6, sched 8 CA 89**

Care planning for separated and trafficked children

- **Status** as unaccompanied or trafficked child including:
 - description of how child's needs in relation to being unaccompanied or trafficked will be met. This is to ensure that everyone involved in providing child's care is aware of their circumstance and enable them to provide for any needs resulting from it.
 - key stages relevant to child's evolving asylum / immigration status
- **Legal support:** identify specialist quality immigration advice, and support around accompanying child to meetings with legal professionals.
- **Health:** how emotional / psychological / mental health will be addressed, including referrals for specialist MH assessment / treatment
- **Education:** ESOL, priority in school admissions, identify special needs.
- **Accommodation:** plan for risks of child going missing / re-trafficking / steps for recovering child if they do go missing. See further §§41-47 of Care of Unaccompanied and Trafficked Children Statutory Guidance.

Issues facing separated and trafficked children & young adults

- **Lack of independent child advocate**
 - Scheme for trafficked children (s48 Modern Slavery Act 2015) still in pilot and not rolled out in E&W (comparison with Scotland).
- **Disputing age of child**
 - Presumption of age: s51 MSA 2015. No statutory presumption about other children but should not age disputed unless significant doubt: ADCS guidance, Care of Unaccompanied and Trafficked Children stat guidance
- **Access to quality immigration advice**
- **Prompt identification of child victims of trafficking**
- **Adequacy / safety of placement & Preventing children going missing**
- **National Transfer Scheme for unaccompanied asylum seeking children**
- **Bright line of 18: Treating care leavers as migrant first**
- **Forthcoming changes in Immigration Act 2016**

Supporting Adult VoTs

- **Pending NRM investigation:**

- Pre RG:

- (in theory) discretion to support under *Victims of Modern Slavery: Competent Authority Guidance* but rarely exercised. No clear protocol or criteria for when provided.
- Where also claimed asylum, pushed toward asylum support under s95 IAA 1999 which is not tailored (or capable of being tailored) to VoTs although s96(1)(a) and (b) can provide such power but without clear policy to address how.

- Post-RG:

- safehouse provided via Salvation Army contract. Not clearly based on individualised assessment, subject to dispersal out of London.
- Similar push of those with pending asylum claims to s95 asylum support

Supporting Adult VoTs (2)

- **Post-NRM:** difference of treatment dependent on grant of residence permit
- **Housing Act 1996** social housing (to be dealt with by Victoria Marks)
- **Care Act 2014** care and support / safeguarding
- **Localism Act 2011**
- **Accessing welfare benefits** (to be dealt with by Phillipa Roberts)