

Refugee Children's Consortium

Modern Slavery Bill Report Stage Briefing – House of Lords Amendment to Clause 47 and New Clause after Clause 47: Civil Legal Aid 23rd and 25th February 2015

Purpose of amendments

We support the amendment to Clause 47 tabled by Baroness Kennedy of the Shaws to ensure that legal aid could be provided to a person before an application had been made to the National Referral Mechanism (NRM) competent authority or before the competent authority had reached its decision that there are reasonable grounds to believe that the person is a victim of slavery, servitude forced or compulsory labour. This is provided that the legal representative reasonably believed that the standardised indicators, as set out on the NRM referral form, were met.

The new clause after clause 47 would have an identical effect, but for trafficked persons.

Briefing

With the coming into force of the Legal Aid Sentencing and Punishment of Offenders Act 2012 in April 2013, legal aid was removed from all immigration cases, with only narrow exceptions. No exception was made for children. While there is an exception for trafficked persons, and under clause 47 of this Bill, for enslaved persons, these only apply to those who have received a positive “reasonable grounds” decision under the National Referral Mechanism¹.

It is widely acknowledged and RCC members report that many trafficked children do not present to the National Referral Mechanism.² They are usually frightened, often unable to speak English and often illiterate. In most cases they have no immigration status, papers or passport. Traffickers keep control of the passports of their victims. Children under immigration control subject to forced labour and slavery are in the same situation.

Before presenting to the authorities and saying what has happened to them, including to the statutory services such as the police who are “first responders”, children want some reassurance about what will happen to them. Will they be allowed to stay in the UK? Will they be safe? Without this advice, they are forced to stay in a situation where they are exploited.

It is a crime to give immigration advice if you are not authorised to do so. This is for a good reason: to protect people. But this means that NGOs and others helping these children cannot step in the breach left by the lack of legal aid.

Even when referred to the National Referral Mechanism, trafficked and enslaved children are on their own. They are in a ‘catch 22’ situation. They won’t get a lawyer unless they get a positive decision but they are far less likely to get a positive decision without a lawyer to assist them, both in making disclosures about what has happened to them and in supporting those disclosures with evidence.

Legal aid is available for those who claim asylum. But not every trafficked child is a refugee or has an asylum claim.

It is common ground to want to ensure that children leave situations of trafficking, slavery and exploitation. It is common ground to want to identify them as victims. It is common ground that

¹ See ILPA's evidence to the National Referral Mechanism Review: <http://www.ilpa.org.uk/resource/29120/ilpa-submission-to-the-review-of-the-national-referral-mechanism-endorsed-by-the-anti-trafficking-le>

² Under-reporting is a huge problem. In 2012, around two-thirds of trafficking victims identified by the Serious Organised Crime Agency (SOCA) had not been referred to the National Referral Mechanism: see SOCA, *A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012*, August 2013, p6 (paragraph 8) available at: <http://www.nationalcrimeagency.gov.uk/publications/15-ukhtc-strategic-assessment-on-human-trafficking-in-2012/file>

legal aid has a role to play in protection. It is common ground that it may be necessary to extend legal aid to achieve that, as the Government's insertion of Clause 47 into the Bill, providing legal aid for victims of slavery, demonstrates.

The amendments are also in line with the Home Office review of the National Referral Mechanism which states:

"6.3.11 The proposed changes to the National Referral Mechanism require consideration of provision of legal advice on referral rather than at reasonable grounds decision. Access to legal aid is available for asylum seekers on application for asylum and as a result human trafficking victims may claim asylum as a way of obtaining early legal aid. There is unlikely to be a huge increase in the cost of legal aid because a large majority of non-EEA victims are already claiming it through the asylum process."

Question to the Minister:

- Can the Minister give an assurance that the pilot of the new National Referral Mechanism will include legal aid from the point at which a legal advisor establishes that the indicators of trafficking or slavery are met?

For more information please get in touch with Alison Harvey, Legal Director, Immigration Law Practitioners' Association, 0207 251 8383, Alison Harvey@ILPA.org.uk or Natalie.Williams@childrenssociety.org.uk **RCC Co-Chair** 0207 841 4600.

The Refugee Children's Consortium (RCC) is a group of 50 NGOs. Members of the RCC are: Action for Children, Asphaleia Action, Asylum Aid, Association of Visitors to Immigration Detainees (AVID), Bail for Immigration Detainees, The British Association of Social Workers (BASW), Brighter Futures, British Association for Adoption and Fostering (BAAF), Catch22 National Care Advisory Service, Children and Families Across Borders (CFAB), Coram Children's Legal Centre, Children England, Child Poverty Action Group (CPAG), Children's Rights Alliance for England, The Children's Society, DOST, ECPAT UK, Family Rights Group, The Fostering Network, Family Service Units (FSU), Freedom from Torture, Gatwick Detainees, Kent Refugee Action Network, Klevis Kola, The Immigration Law Practitioners' Association (ILPA), Islington Law Centre, JCORE, Law Centres Network, Medical Justice, NCB, NSPCC, OMID International, Project 17, The Poppy Project, The Prince's Trust, RAMFEL, Refugee Action, Refugee Council, Refugee Support Network, Royal College of Paediatrics and Child Health, Scottish Refugee Council, Student Action for Refugees (STAR), UNICEF UK, Voice, The Who Cares? Trust, and Welsh Refugee Council.

Barnardo's, British Red Cross, Office of the Children's Commissioner (England) & UNHCR all have observer status.
<http://www.refugeechildrensconsortium.org.uk/>

The RCC is happy to have the support of The Anti-Trafficking Monitoring Group on this issue.

Amendments

Civil legal aid (tabled by Baroness Kennedy of the Shaws)

Clause 47

Page 37, line 5, after “grounds” insert “or, where the services are provided before the competent authority has considered or determined that there are such grounds, the legal representative providing those services reasonably believes that the standardised indicators of slavery, servitude or forced or compulsory labour are met”

After Clause 47

Insert the following new Clause —

“Civil legal aid for victims of trafficking

(1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (availability of civil legal services) is amended as follows.

(2) In Part 1 (services), in paragraph 32(6) after “such grounds” insert “or, where the services are provided before the competent authority has considered or determined that there are such grounds, the legal representative providing those services reasonably believes that the standardised indicators of trafficking are met”.