

4th November 2019

Dear Modern Slavery Unit, Home Office,

Recovery Needs Assessment (RNA) guidance

We are writing to set out our concerns around the Home Office Recovery Needs Assessment (RNA) Guidance Version 1.0.

Process

As we understand it, the RNA Guidance was produced further to settlement of the case of NN and LP vs SSHD whereby the Home Office conceded that the then policy - which allowed identified victims of trafficking to receive support for only 45 days following a conclusive grounds decision – was unlawful and incompatible with the European Convention on Human Trafficking (ECAT). The Home Office also, in the NN and LP settlement, confirmed that Article 12 requires support to vary dependent on the individual's needs, and that it cannot be delimited by time alone.

We are surprised and extremely disappointed that in advance of the product of the Guidance, the Modern Slavery Strategy and Implementation Group's (MSSIG) Victim Support Task and Finish Group were not consulted. The Modern Slavery Unit (MSU) set up this group for the purposes of drawing on expertise amongst stakeholders on victim care and support. The first sight which the group had of the Guidance was when the group's Co- Chairs were emailed an embargoed, PDF of the guidance during the day on the 26th September 2019, the day before publication. We were not invited to feedback or comment. We were simply told that the Guidance would be published at 10am on the 27th September 2019.

This is most extraordinary and unusual given the purpose of the MSSIG Victim Support Group, as we have always understood it, was to provide our experience as stakeholders to support the delivery of key victim support initiatives and projects. We refer you to the Terms of Reference agreed to this effect.

It is plain that the RNA guidance falls squarely within the remit of MSSIG Victim Support Group's expertise. We cannot therefore understand why the MSSIG Victim Support Group was, as a whole, excluded from the consultation process. This contrasts with the involvement of the group in feedback in on the draft Statutory Guidance in April and July 2019, notwithstanding the concerns we had about the rushed and poorly structured nature of this involvement.

The failure to consult the MSSIG group is an unusual step and we are concerned that it contributes to undermining the working relationship between the stakeholders in the group and the MSU which would be detrimental to the objectives of improving victim support.

You will note that many of us have already raised concerns around the drafting of the Statutory Guidance, the content of the current draft guidance and the flaws in the consultation process. We refer you to our letters of 25 April 2019 and 13th August 2019.¹ In the August 2019 letter, we specifically note under point 4 'Care and Support of Victims', subsection (d) that the guidance did not take account of the need to provide support according to individual needs and needed to do so;

¹ Letter to the MSU subject line MSSIG Victim Care Group Feedback on the Draft Statutory Guidance dated 13th August 2019 can be found here <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5d6e3f89be3d8f0001b4f793/1567506313695/Updated+Letter+for+Stat+guidance+-+Final+%28002%29.pdf>

'The section needs to reflect in drafting ongoing NRM reforms such as the provision of safe spaces and also litigation including the recent consent judgement in the case of NN and LP vs SSHD whereby the Home Office conceded that their policy - which allows identified victims of trafficking to receive support for only 45 days following a conclusive grounds decision - is unlawful and incompatible with the European Convention on Human Trafficking (ECAT).'

On 3rd January 2019 the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on trafficking in persons, especially women and children also wrote to express concern "at the reported ineffective and insufficient consultation with civil society organisations and trafficking specialists in the development of the statutory guidance, which in turn might be detrimental to address the needs and the rights of victims of human trafficking."² On 21 May 2019 the Chair of the Home Affairs Select Committee wrote to the Home Secretary highlighting concerns around the process of drafting the Statutory Guidance on Victim Support (section 49 Modern Slavery Act).

Given the concerns raised as to the lack of consultation on the draft Statutory Guidance and the risks of this, we find it all the more extraordinary that no attempts were made to seek the views of the group during the drafting and formulation of the RNA guidance,

We would like an urgent response to the following questions:

- Who was consulted with in the development of the guidance with particular reference to expertise in social care and health as well as legal entitlements of survivors of slavery? How were these consultees identified? Please confirm whether central government and local government social care and health experts were consulted? How long was the consultation process? What were the recommendations made?
- Why was the Victim Support task and finish group not included in any consultation or given any chance to input into such a key piece of guidance on victim support? You will recall that we made repeated inquiries into the MSU's intentions on guidance post NN / LP.
- What is the reason for the RNA guidance being produced as separate to the Statutory Guidance on victim support to the Modern Slavery Act (section 49)? The piecemeal approach to publishing guidance on support risks gaps in support and confusion as to processes and entitlements.
- Has an impact assessment been carried out pursuant to s. 149 of the Equality Act 2010? Please provide us a copy of this assessment as we have been unable to find this in the public domain.
- Has a financial impact assessment been carried out?
- In the case of Overseas Domestic Worker visa holders who are identified and issued with a positive conclusive grounds decision, it remains unclear if they will still be required to demonstrate they can maintain and accommodate themselves within 28 days if they elect to apply for further leave to remain under section 53 of the Modern Slavery Act 2015? Can the

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24281>

MSU please provide some clarification on how the judgment in NN/LP affects this requirement for workers to apply for further leave to remain?

Content

We would also like to set out our initial concerns with the Recovery Needs Assessment Guidance (Version 1.0). These are as follows;

- The whole approach of the RNA removes agency for the person it concerns; there seems to be no room in the process for the individual and their needs or space for them to contribute.
- We are further concerned that victims who have support needs but do not have a support worker will have no way of extending support as the whole process is based on the support worker making the request for further support.
- The guidance repeatedly uses the phrase ‘recovery needs arising from their modern slavery experiences’. This suggests the guidance will not consider any pre-existing issues which made people vulnerable to exploitation in the first place to count as ‘recovery needs’ with the risk that highly vulnerable people with ongoing complex needs will be excluded from support into destitution or re-exploitation.³ We fear this does not comply with Article 4 obligations to protect victims and to prevent re-trafficking.
- We are concerned that temporary housing is listed as suitable move on accommodation which suggests that being in unstable accommodation does not seem to be sufficient need to have an extension granted. This means that survivors at risk of becoming destitute in the short term may still be exited.
- It is worrying that ‘It will generally be sufficient for the victim to be placed on a waiting list for counselling or CBT to treat ongoing mental health conditions.’ This places victims of trauma at severe risk, as it appears to suggest that the SCA could within guidelines exit someone without any support in place. Survivors in the majority of cases need support to engage with counselling from a trusted support provider. Moreover, once in counselling, a survivor may for some time be at increased risk due to unearthing trauma.⁴
- The RNA guidance incorrectly assumes that services across the UK which tend to operate outside of modern slavery provision will know how to manage such patients who don’t have specialist support in place. There is also the issue of short timelines, overloaded NHS services and clients who find disclosure with new professionals extremely difficult. This means that healthcare needs are often not apparent at assessments and evidence may not be available.

³ For example Oram et al 2016 report that 29% men and 58% women had experienced physical violence prior to having been trafficked and 4% men and 31% women had experienced sexual violence prior to having been trafficked

⁴ Two separate papers (Westwood et al 2016 and Williamson et al 2019) reporting on the same sample highlight the difficulties trafficked people have accessing healthcare services even when in contact with support services. Westwood et al reports survivor perspectives. Williamson et al reports from the perspectives of support workers and healthcare and other professionals. Both point to the high level of assistance needed from support workers to register with GPs, book and attend appointments, arrange interpretation, and access specialist care. Access to mental healthcare was highlighted as a particular challenge.

- According to a Senior Medical Advisor at the Helen Bamber Foundation it may be problematic to require medical reports/evidence to demonstrate needs. This will maintain a 'tiered' system by which those victims fortunate enough to be represented well when in the NRM system with access to appropriate services and therefore documentation will be prioritized whereas so many victims of trafficking are without appropriate documentation, including those who have positive CG decisions.
- There are insufficient reconsideration options; all reconsiderations will be only permitted if they are channelled through the prime contractor and subcontractors. This is most unusual given in any other context where care and needs assessments are challenged, the individual service user has been able to pursue the challenge in his or her own right. This is a barrier to justice. It also appears to exclude First Responders who are not a prime contractor or subcontractor from making reconsiderations to the RNA.
- We are unclear how the prime contractor reviewing reconsideration requests will better inform the decision maker on individual survivor's needs. There is no transparency in the process. Given the RNA is currently not part of the Victim Care Contract, we are also concerned how this will be applied across the different providers, and whether and how there will be quality assurance across the board that the approach will be consistent?
- In practice, if an individual is to be supported beyond 45 days following a positive conclusive grounds decision they will effectively need to use the RNA guidance to apply for this support. This rather contradicts the concession made by the Home Office in the NN/ LP litigation that there is no time limit under ECAT on when support is to cease in respect of a recognised victim. Please confirm the basis on which the default time provision for support of 45 days was decided.
- The Single Competent Authority has the final say on whether the needs demonstrated by the support worker in the assessment are sufficient to justify extending support. We have concerns as to the SCA's competence to adequately assess individual needs or their framework for assessing these, given that the SCA is the Home Office and not the usual central government body with expertise on social care and health matters. There is no reference to following the Helen Bamber Foundation's Trauma Informed Code of Conduct, which is embedded in the Human Trafficking Foundation's Slavery and Trafficking Survivor Care Standards 2018 and which government have committed to adopt.
- The timeframe to extend support, limited to 6 months at a time is far too short and arbitrary given the needs of victims vary. Victims need certainty to assist their recovery and a series of short extensions undermines this.
- The RNA puts unrealistic additional duties on support workers, without corresponding funding, training and support. We do not understand there to be currently any mandatory minimum level of qualification to be a support worker and thus no mandatory minimum skill set to deliver the needs that are identified in the RNA process. It is also unclear why support workers would be expected to estimate a service exit date, as this would be dependent on many unpredictable factors outside of their contract. The requirement to provide information which the SCA already has access to including 'immigration applications' is also concerning. Any correspondence about these applications should be with the individual's legal representative, not their caseworker, and may contain privileged legal advice so should not be required for an extension of support. We would like to know what training and support has been made available to enable support workers to complete the RNA and to

understand what support is available to survivors outside of the NRM. Will there be any additional funding provided to support organisations to deliver this extra work? We would also like to know if an easier solution to check for immigration applications that the SCA cannot ascertain from Home Office systems could be introduced to ensure victims' confidential documents are not inadvertently disclosed during the RNA. For example, instituting a drop down menu to select different immigration applications and including an "other/not sure" box if the applicant and caseworker do not have the legal expertise or training to answer this question.

- The RNA guidance doesn't appear to recognise that recovery is not linear. It is unclear how people who have exited NRM support but have regained a need for it can request further assistance. Will this be through the RNA process or simply by approaching the Prime Contractor to reinstate support? The recovery needs of victims can reappear, particularly when they have not been assisted to secure appropriate housing and benefits, medical care, safe and legal employment and secure immigration status.

Overall we find the RNA overly simplistic. We believe that it should have had a wider consultation process, particularly with stakeholders including specialist anti-trafficking support services, healthcare services and clinicians for mental and physical health who have a current working knowledge of modern slavery and practical understanding of NHS services.

Yours sincerely,

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Anna Sereni, Anti-Slavery International- Co- Chairs MSSIG Victim Support Task and Finish Group

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Copy sent to:

The Independent Anti Slavery Commissioner; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on trafficking in persons, especially women and children