



IOM Submission to the Home Affairs Select Committee (HASC) Call for Written Evidence into Modern Slavery

The International Organization for Migration Country Office for the United Kingdom (IOM UK) responds to this Call for Written Evidence with submissions as to progress made under the Modern Slavery Act 2015 (the Act) and priority areas where more work remains to be done.

IOM UK is pleased to submit its views in the hope that its recommendations will contribute to survivors of trafficking and modern slavery (VoTs)¹ being better protected under the Act but also the National Referral Mechanism (NRM). IOM UK's submission is based on its global² and UK experience³.

Background

IOM is an intergovernmental organization established in 1951 and a related agency to the UN, committed to the principle that humane and orderly migration benefits migrants and society. The Organization acts to help meet the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration and work towards effective respect for the human rights and well-being of migrants⁴. With over 400 offices worldwide engaged in projects and programmes, IOM is in a strong position to offer advice to governments and bring best practices from experiences in other countries.

Summary of IOM's Submission

1. Despite recent positive changes, as well as reform on the horizon, challenges to support for VoTs remain, particularly for recognised VoTs through the NRM who do not automatically receive leave to remain
2. Monitoring and benchmarks should be designed together with VoTs for sustainable outcomes, including in the criminal justice system
3. Children continue to bear the brunt of inconsistent practice. This must be addressed through a commitment to meaningful protection outcomes for all trafficked children, irrespective of immigration status.

¹ The acronym VoT (victim of trafficking) will be used in place of "survivors of trafficking and modern slavery" in order to respect the word limit imposed on submissions.

² IOM has been active in the field of counter-trafficking on a global level for over 20 years. Since 1994, the Organization has assisted over 90,000 trafficked persons across the globe through the provision of direct assistance to victims (in the form of safe accommodation, medical, psychosocial and legal support, and assisted voluntary return and reintegration), as well as support to States with a range of capacity-building initiatives, which include training for immigration and police authorities, prosecutors and judges, as well as health and social services officials. For certain European countries, IOM also provides return and reintegration assistance for survivors of trafficking who would like to return home.

³ Since 2011, IOM UK has been delivering training to First Responders and other frontline professionals on issues associated with human trafficking within the country, including the NRM, the Act, identifying and supporting potential victims. To date, IOM UK has delivered training to over 2000 professionals, including through a train the trainer approach. Since 2017, IOM has been delivering Home Office funded projects under the Modern Slavery Innovation Fund and Child Trafficking Protection Fund, researching vulnerabilities from key countries of origin, and supporting foster carers of trafficked children and those at risk.

⁴ According to Article 1 (c) of the IOM Constitution, one of the purposes and functions of the Organization is "to provide [...] advisory services on migration questions and other assistance as is in accord with the aims of the Organization". The IOM Strategy, adopted by the IOM Council in 2007, further provides that the Organization will focus on inter alia "assisting States in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons, in particular women and children, in a manner consistent with international law".

1) Longer term support for VoTs

1.1 In considering the HASC's inquiry interest in *current levels of support for victims, and how it can be improved*, IOM submits that announcements in October 2017 by the Home Secretary to improve support are welcomed, however without fulfilment of s.49 of the Act, in practice more is required to guarantee VoTs have adequate support and protection.

1.2 Firstly, access to care and protection via a recovery and reflection period is provided within the non-statutory NRM procedure in compliance with EU law, whereas fulfilment of s.50 of the Act, would mean the UK meets its international obligations to provide assistance to VoTs on a statutory basis⁵.

1.2.1 It has been announced that the level of support will increase in two important ways: by providing for places of safety for 3 days pre-NRM, and by extending the period of time for recognised VoTs to move on from the current victim care arrangements from 14 days to 45 days. The latter would effectively double the exit support from the NRM and allow for greater planning and transition time after a person receives their conclusive grounds (CG) decision and IOM supports its swift introduction. IOM welcomes these improvements, however would encourage an earlier adoption of places of safety than March 2020 (with the new Victim Care contract) to allow for effective access to support for potential trafficked persons, considering the benefits a place of safety can provide in terms of supporting their decision to enter the NRM by giving adequate information and advice for eventual informed consent.

1.2.2 Regulations provided for under s.50 of the Act should also be introduced as soon as possible, to fulfil statutory requirements and ensure certainty of provision for VoTs.

1.3 Secondly, a longer term recovery period is advised as part of a truly victim-centred approach. While 45 days is a welcome increase from 14 days in post-NRM support for recognised VoTs, for non-British nationals, IOM strongly recommends the introduction of an automatic trafficking/slavery-specific temporary residence permit to remain in the UK for at least a 12 month period, to enhance the possibility of their recovery, thereby reducing risk of ongoing exploitation or re-trafficking.

1.3.1 At present, once an individual has received a positive CG decision that formally identifies them as a VoT, they are not automatically entitled to a temporary or permanent residency permit. Temporary residence, or Discretionary Leave to Remain (DLR) is conditional and may only be granted in one of the following three scenarios: if a person is co-operating with an ongoing police investigation and their presence in the UK is required to this purpose; if a person has raised a legitimate claim for compensation through the criminal courts and it would be unreasonable for them to be outside the UK to pursue that claim; if a person's personal circumstances, although not meeting the grounds for international protection, are *so compelling* that they justify a grant of leave to remain in the UK.

1.3.2 The low numbers of DLR grants over the years has been for IOM a concerning trend, potentially denying VoTs adequate time and support to favour their recovery and (re)integration. From 2011-2016, it is understood that only 661 individuals recognised as VoTs through a positive CG decision, received DLR⁶. In 2015, the number totalled 123, equating to 12% of all recognised VoTs that year⁷.

1.3.3 Following a court case earlier this year which found that the application of the personal circumstances criteria for grant of DLR to VoTs risked applying a threshold that was higher than the

⁵ http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpgaen_20150030_en.pdf, page 34

⁶ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-10/59379>

⁷ <https://www.parliament.uk/documents/commons/committees/work-and-pensions/Letter-from-Sarah-Newton-MP-to-Chair-re-modern-slavery-session-17-2-2017.pdf>

Council of Europe Convention⁸ due to the need for circumstances to be “compelling”, the Home Office issued revised guidance for consideration of DLR applications⁹. The guidance reinforced the notion that this form of leave dependent on personal circumstances (albeit not for compelling ones) should still be discretionary, and functional where “necessary for the UK to meet its objective under the Trafficking Convention¹⁰ - to provide protection and assistance to that victim, owing to their personal situation”. The guidance emphasises that “the support duty [leading to a grant of DLR] calls for the provision of support, not that the person is supported until they achieve full physical, psychological or social recovery.”

1.3.4 The lack of entitlement to a trafficking-specific temporary residence permit and the as yet unclear application of the new ‘personal circumstances’ criteria to conditionally grant leave to a recognised VoT raises important concerns. Firstly, VoTs may not receive the protection that they need to ensure that they can continue with their recovery and make decisions about the future (as they may be liable to enforced removal when this may not in their best interests). Furthermore, many trafficked persons require significant time and psychological help to overcome their experience and give a coherent account of their experience.¹¹ This may also influence their decision as to whether or not to cooperate with a police investigation or make a claim for compensation.

1.3.5 Secondly, without options for temporary residency, recognised VoTs and their advocates may seek alternative avenues to gain protection, such as through the asylum system, even when this may not be the most appropriate route. It should also be noted that during the asylum-seeking process, individuals are generally subjected to restrictions to rights and entitlements while their case is being considered. Therefore, a trafficked person in the asylum process is denied the enhanced support that should be granted to them during their transition from exploitation to freedom.¹²

1.3.6 IOM supports calls in recent research¹³ that automatic grants of temporary residence be for at least 12 months, which is also the period of time for the leave to remain considered for trafficked persons within Lord McColl’s Modern Slavery (Victim Support) Bill currently before Parliament. This should also grant continued access to the specialised support services that VoTs require. An extension of this period, based on an individual’s ‘personal circumstances’ (if they choose not to cooperate with an investigation or claim compensation) should be reviewed and clarified, taking into account the country of origin situation (including risk factors and fear of reprisals) and the professional views of service providers in the UK or their country of origin.

2) Monitoring and evaluation of support processes for VoTs

2.1 The HASC inquiry asks *what success in tackling modern slavery would look like, and what benchmarks should be used to measure progress*. IOM recommends that beyond the welcome NRM digitalisation process which will improve data gathering and statistical analysis, a victim-centred approach would require that progress is about the VoT’s experience and be guided by them.

⁸ PK (Ghana) v State Secretary for the Home Department - <http://www.bailii.org/ew/cases/EWCA/Civ/2018/98.html>

⁹ Home Office, Discretionary leave considerations for victims of modern slavery, v1 2018 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732594/dl-for-victims-of-modern-slavery-v1.0ext.pdf

¹⁰ Council of Europe Convention on action against Trafficking in Human Beings (2005, CETS 197)

¹¹ IOM, LSHTM, UN GIFT, Caring for Trafficked Persons: Guidance for Health Providers, 2009, (Authors: Zimmerman and Borland) outlines a number of key principles for the care of trafficked persons, including respect for individual recovery needs.

¹² IOM does of course recognise that some VoTs do fall within the scope of the refugee definitions according to the 1951 Convention and are therefore entitled to international protection.

¹³ <https://www.stmarys.ac.uk/research/centres/modern-slavery/docs/2018-jun-a-game-of-chance.pdf>

2.1.1 IOM submits that VoTs be consulted first and foremost on the question of how progress should be measured. Analysis of NRM statistical data has constantly been a challenge due to the current system for data collection (paper) and collation (limited database). This is expected to be addressed by the introduction of a digital NRM referral process. To be sure that focus does not remain on numbers and the information that can be garnered for the purpose of intelligence with a law-enforcement focus, it is essential that VoTs be given a role to play in setting benchmarks to measure progress.

2.1.2 IOM has welcomed the opportunity to contribute to the updated Trafficking Survivor Care Standards, which the government has announced will be referred to in the new victim care contract in 2020, however accountability towards VoTs must start today. IOM recommends that opportunities be provided to VoTs not just in the UK, but also overseas, to feed into the monitoring and evaluation processes which has been strongly recommended by the National Audit Office¹⁴. Their views should be actively sought, and been taken into consideration in future proposals for amendments to the Act or the NRM.

2.2 IOM further submits that monitoring outcomes for VoTs is key. From research into vulnerabilities to trafficking from Albania, Nigeria and Viet Nam together with the University of Bedfordshire, IOM is also seeing how systems may create or exacerbate vulnerability.

2.2.1 Recent court cases¹⁵ have also shown that potential VoTs identified in the criminal justice system are still at risk of being denied the attention and support they are entitled to. In both the short and long term, this can increase the risk of re-trafficking, as these court cases show. It is the consequence of migration issues being conflated with trafficking, and given more importance in dealing with a VoTs' experience.

2.2.2 The statutory defence for offences that a VoT may have been compelled to commit, enshrined in s.45 of the Act, needs greater monitoring not just in terms of numbers, but also through VoT stories. This will support a greater understanding of its use and application, and whether it has led to better outcomes for those persons.

2.3 IOM submits that success in tackling modern slavery should be measured by a longitudinal, qualitative survey into how VoTs fare from all facets of the Act's application, but above all the ability of the system to effectively protect them from further exploitation or re-trafficking, including in their countries of origin should they voluntarily return.

3) Protection and support for trafficked children

3.1 As numbers of potential child VoTs referred into the NRM consistently increase¹⁶, IOM acknowledges that the government's commitment to prioritising counter modern slavery work, and the Act in itself, has been useful in raising awareness. However, depending on where a child's trafficking situation comes to the attention of authorities, differences in treatment will impact a child's experience. Monitoring and evaluation of protection outcomes, with meaningful participation by young VoTs, should be prioritised and good practice shared amongst local authorities to favour more consistent approaches.

¹⁴ <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>

¹⁵ <http://www.bailii.org/ew/cases/EWHC/Admin/2018/2122.html>. See also 3.1.3 (footnote 19).

¹⁶ There was a 66% increase in potential VoTs exploited as children referred to the NRM, from 1,278 in 2016 to 2,118 in 2017 (National Crime Agency (2018), National Referral Mechanism Statistics – End of year summary 2017)

3.1.1 Some of the key issues needing a more consistent approach are around how and when NRM referrals should be submitted; what specific protection children will receive; differences in British, EEA and non-EEA nationals cases; and long-term planning for trafficked children.

3.1.2 To close the protection gap left open where an NRM referral is not made, and addressing the issue of UASC and trafficked children going missing from care¹⁷, IOM recommends mechanisms to strengthen the foster care arrangements for UASC and trafficked children to build their trust and engagement. Projects supporting foster carers to look after children who have been trafficked through training, for example, are fundamental¹⁸.

3.1.3 In the case of children in the criminal justice system, as seen in this recent court case¹⁹, while systems may not always work, to avoid their criminalisation a referral should trigger considerations around non-prosecution and applicability of the statutory defence²⁰. Particularly with the rise in recognition of exploitation of children in county lines cases, timely referral is all the more important to ensuring their access to protection. However, IOM submits that complete roll-out of Independent Child Trafficking Advocates under s.48 of the Act, as recommended, would ensure consistency in support. IOM recommends that a national Guardianship service which is considered best practice across Europe, would then be best for consistency in treatment across all four nations.

3.1.4 British children have been the most frequently recognised nationality in terms of potential VoTs in recent years, with county lines cases emerging as a worrying trend. In fact, conclusions of the recent interim evaluation report of ICTAs show that British children are more assisted in the criminal justice system and non-British in the immigration system²¹. This again shows the concerning conflation of immigration and trafficking issues and the need to ensure that all children receive an appropriate response to their protection needs.

3.1.5 Trafficked children's protection needs may not end when they become an adult. Part of protecting trafficked children involves ensuring their recovery and finding a durable solution in their best interests. IOM submits that care leavers who are not provided with international protection should also have options to settle in the UK to ensure their recovery²².

IOM UK, September 2018

[2955 words]

¹⁷ ECPAT/Missing People, *Heading Back to Harm - A study on trafficked and unaccompanied children going missing from care in the UK*, 2016, available at: http://www.ecpat.org.uk/sites/default/files/hbth_report2016_final_web_0.pdf - page 10: "from September 2014 to September 2015, 28% of trafficked children (167 children) in care and 13% of unaccompanied children (593 children) in care went missing at least once."

¹⁸ Such as the Department of Education commissioning Refugee Council and ECPAT to deliver training to foster carers across the UK, and IOM and Croydon Council's pilot project to support foster carers looking after Albanian and Vietnamese children who are potential VoTs, funded by the Home Office.

¹⁹ <http://www.bailii.org/ew/cases/EWCA/Civ/2018/1395.html>

²⁰ See UNICEF UK, *Victim, not Criminal: Trafficked Children and the non-punishment principle in the UK*, 2017, available at: https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730098/assessment-of-independent-child-trafficking-advocates-horr101.pdf

²² IOM was one of many organisations to call for a Vietnamese trafficked young person not to be returned against his will to Viet Nam when over 18: <https://www.independent.co.uk/news/uk/home-news/home-office-child-slavery-victim-country-human-trafficking-decision-ecpat-a8187651.html>. Leading a Child Trafficking Protection Fund project to support foster carers looking after Vietnamese unaccompanied asylum-seeking children, IOM has raised awareness of the risks these young people face, including around the age of 18, of being drawn into exploitation due to a lack of certainty about their future.