

Access to benefits for victims of modern slavery

At a glance

Recognised victims of modern slavery can experience difficulties in accessing social security benefits. This causes financial hardship and may make victims more at risk of being re-trafficked. EEA victims are particularly likely to experience hardship because they might be unable to satisfy the requirements of the benefit tests e.g. Habitual Residence test.

In this briefing, Law Centre NI calls on the Department for Communities to take a proactive approach and to take steps to ensure that all victims are able to access the social security system when and where necessary.

Law Centre (NI)

- promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals
- in community care and mental health law, employment law, anti-trafficking law, and social security
- through advice, casework, training, information and policy services
- Member of the Department for Communities Operational Forum and Disability Consultative Forum.
- Working with Advice NI and CAB to deliver the Welfare Changes Advice Service
- Facilitates regular Social Security Practitioner Forums and a Welfare Reform Group, both involving other voluntary and community sector organisations
- Member the Anti Trafficking Monitoring Group, the EU Civil Society Platform Against Trafficking in Human Beings, the Department of Justice (DoJ) NGO Engagement Group and the NI Strategic Migration Partnership.

Our advice line

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Law Centre NI & Modern Slavery work

1. Law Centre has expertise on the issue of tackling modern slavery and human trafficking. Law Centre is a member of the Anti Trafficking Monitoring Group as well as the EU Civil Society Platform Against Trafficking in Human Beings. In Northern Ireland, Law Centre sits on the Department of Justice (DoJ) NGO Engagement Group and the NI Strategic Migration Partnership. Until April 2017, Law Centre had a specific project that provided legal advice to trafficked children and young people 0-25 years and continues to provide legal advice and representation to victims of forced labour. Law Centre has contributed to the legislative process underpinning the Human Trafficking & Exploitation (NI) Act 2015, specifically in relation to securing statutory support for victims and independent guardianship for separated children. A broad range of legal information materials including a Guide to Northern Ireland's Human Trafficking & Exploitation Act 2015; all available on our website.¹

Modern Slavery in Northern Ireland

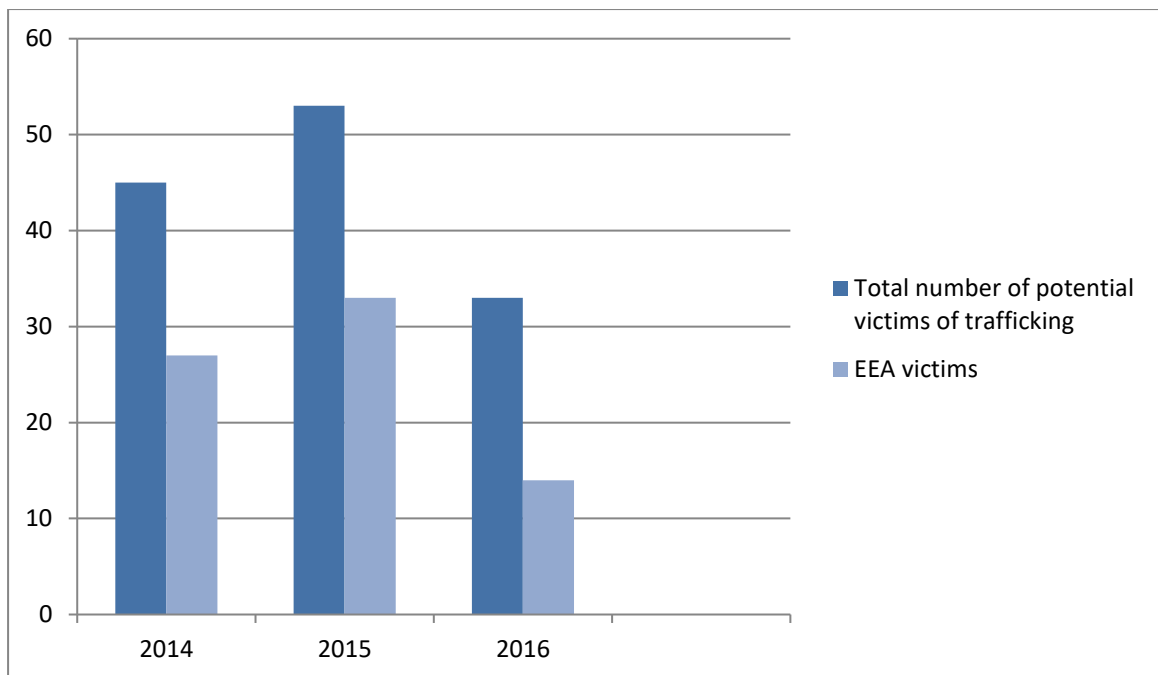
2. The term Modern Slavery is used as an inclusive term to encompass human trafficking and forced labour.
3. The number of potential victims of trafficking in Northern Ireland is relatively small; of the 3805 potential victims identified across the UK in 2016, just 33 were identified in Northern Ireland.² To date, potential victims of trafficking include minors and adults who have been identified or recovered from various situations of exploitation including sexual exploitation, labour exploitation and domestic servitude. The following chart shows the number of victims referred into the National Referral Mechanism (NRM). It should be noted that the NRM statistics reveal only part of the overall trafficking/slavery picture.³ Therefore, the actual number of victims is likely to be significantly higher than represented below.

¹ <http://www.lawcentreni.org/component/content/article/47-publications/1404-northern-irelands-human-trafficking-and-exploitation-act-2015.html>

² These statistics relate to the number of potential victims referred into the National Referral Mechanism: 2014, 45 victims of whom 27 EEA; 2015, 53 victims of whom 33 EEA; 2016, 33 victims of whom 14 EEA victims. Note that the number of EEA victims includes British nationals. These statistics are published by the National Crime Agency, 'NRM Statistics End of Year Summary'

<http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>

³ DOJ, 'NI Human Trafficking & Modern Slavery Strategy 2016/2017' accessible here: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/ni-human-trafficking-and-modern-slavery-strategy-2016-17.pdf>



4. The Department of Justice (DOJ) has spearheaded a number of positive developments to support victims of modern slavery in Northern Ireland. The Department has developed a comprehensive strategy which includes a key objective of championing the rights and entitlements of victims and potential victims (Strategic Priority 2). Within this priority, DOJ commits to a coordinated multi-agency support involving a range of stakeholders – including Social Security Agency - to facilitate transition to post NRM arrangements. This policy framework is highlighted to demonstrate that DfC action on this issue would be consistent within the agreed strategic action for this jurisdiction.⁴

Trafficking process

5. If a person is identified / rescued as a potential victim of modern slavery, s/he is referred in to the National Referral Mechanism (NRM). This is a process which determines whether the person is a victim. Recognised victims who are non European nationals are usually granted a one year residence permit (Discretionary Leave to Remain). This residence permit is necessary because many victims are trafficked into the country clandestinely and as a result do not have lawful immigration status. The residence permit is renewable and can lead to settlement and so it provides a secure basis on which victims can rebuild their lives. The residence permit has no restriction on public funds and so a victim is able to apply for benefits with relative ease.

⁴DOJ, 'NI Human Trafficking & Modern Slavery Strategy 2016/2017' accessible here: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/ni-human-trafficking-and-modern-slavery-strategy-2016-17.pdf>

6. In contrast, EEA victims of trafficking are not granted a residence permit. This is because, from an immigration perspective, an EEA national does not need a residence permit in order to stay in the United Kingdom. Unfortunately, however, EEA victims of trafficking can experience difficulties in accessing benefits after receiving a positive Conclusive Grounds decision. In particular, a person exiting a situation of trafficking might not be able to meet the requirements of the Right to Reside test, the Habitual Residence test and the Genuine Prospects of Work test. Perhaps counter intuitively then, EEA victims can find themselves at a disadvantage compared to non EEA victim when it comes to securing social security benefits.
7. There are many reasons why a victim might not be able to meet the requirements. For example, it might be unclear whether the person can be considered a worker under European law – especially if there is no documentation such as pay slips, contract or in situations where the victim was working in illegal activities such as cannabis cultivation. Some victims might be unable to articulate their reasons for coming to the UK, their length of stay or future intentions (factors in the Habitual Residence test), etc. While some victims are able and willing to seek work, the psychological recovery process and the impact of trauma can be long and difficult for some victims and this can hamper the victim’s ability to provide information to meet the benefit requirements such as signing on.
8. As outlined above, the number of EEA victims of trafficking in Northern Ireland is relatively small and the number of victims who claim social security is likely to be smaller still. This is because some victims choose to return to their home country whereas other victims are ready and willing to move straight into (lawful) employment.⁵ However, for those EEA victims who choose to remain in Northern Ireland and who are unable to start work, the benefit process can be difficult. Victims may face a protracted process, which can include a number of interviews whereby the benefit provider seeks to identify the victim’s eligibility to benefits. A local trafficking support organisation has identified that victims may be re-traumatised during this process. It is therefore important that frontline provider staff who work with victims of trafficking are appropriately trained with the view to minimise this risk.

Automatic recourse to public funds

9. The Law Centre’s view is that all victims of modern slavery - including both EEA and non EEA nationals - should be granted automatic recourse to public funds as a means to safeguard them from destitution. This is important because destitution may increase the victim’s vulnerability to re-trafficking. Therefore, prompt access to the

⁵ The Law Centre has acted in cases where it has been able to secure safe and lawful employment for victims as part of negotiations with previous employers/employment agencies

social security system is an essential part of keeping victims safe. Accordingly, we recommend that the Department for Communities makes legislative change to exempt EEA victims of trafficking from the Right to Reside, Habitual Residence and Genuine Prospects of Work tests. This would require the Department to amend the list of persons not victims of trafficking within the list of persons who are not considered to be a 'person from abroad'.⁶ This would be consistent with the Independent Anti-Slavery Commissioner's call for a 'welfare concession' for EEA victims of slavery.⁷

Work & Pensions Committee Inquiry

10. The issue of access to benefits for victims of slavery was recently examined by a Work and Pensions Committee Inquiry. The Inquiry was launched in response to concerns voiced by the Independent Anti Slavery Commissioner Kevin Hyland. Specifically, Hyland identified that EEA victims were "at high risk of becoming destitute and homeless" because of their limited access to welfare.⁸ The Committee sought clarification from the Secretary of State for Work and Pensions who confirmed that being a victim of modern slavery conferred no additional access to benefits compared to other EEA nationals. The Law Centre submitted evidence to the Inquiry.⁹
11. The Committee issued its report to the inquiry in April 2017. The Committee urged the Department for Work & Pensions to address the disadvantage faced by EEA nationals and to take steps to benefit all victims for modern slavery:
 - a) *We recommend that all confirmed victims of modern slavery be given at least one year's leave to remain with the same recourse to benefits and services as [refugees] are granted. This would allow time for victims to receive advice and support, and give them time to plan their next steps.*
 - b) *We recommend that confirmed victims of modern slavery be exempted from the conditions of the Habitual Residence Test. It is absurd to expect victims of modern slavery to be able to prove they have been living and working in the UK if they have been enslaved.*

⁶ Social Security (Persons from Abroad) (Northern Ireland Regulations as amended

⁷ See correspondence issued by Committee for Work & Pensions 6 June 2016 accessible here: <http://www.parliament.uk/documents/commons-committees/work-and-pensions/Letter-from-Chair-to-Rt-Hon-Stephen-Crabb-re-EUEEA-victims-of-slavery.pdf>

⁸ *ibid*

⁹ Accessible here: <http://www.lawcentreni.org/Publications/Policy-Responses/Modern-slavery-inquiry-and-access-to-social-security-benefits-Dec-16.pdf>

- c) *Frontline staff should be trained on indicators of slavery and how to report potential cases. Front line staff should also be given a checklist of indicators which they should use day-to-day.*
 - d) *The Department should extend the arrangement trialled at the Leeds Jobcentre and include Social Justice Work Coaches for Jobcentres in other areas where victims of modern slavery are prevalent. It should also seek to establish stronger links between Jobcentres and local safe houses. DWP should also exempt confirmed victims of modern slavery from benefit sanctions.*
 - e) *We recommend that all frontline DWP staff are trained in supporting victims of modern slavery.*
 - f) *DWP should introduce a Jobseeker's Allowance easement and a concession for modern slavery victims, similar to those for victims of domestic violence.*
12. Recommendation (a) is addressed at the Home Office and would require the agency to grant EEA victims of trafficking with a residence permit. While in principle this recommendation is supported, in practice, it is of concern that this process would lead to delays for victims in obtaining status. Indeed, the Law Centre has previously written to the Independent Anti Slavery Commissioner to highlight delays experienced by non EEA victims when obtaining their residence permit: despite a clear entitlement outlined in the Council of Europe Trafficking Convention, some victims who are deemed not to be cooperating with the authorities (e.g. in relation to a criminal prosecution) are not granted a residence permit.
13. Rather than waiting for a change of approach by the Home Office, it would be more effective for the Department for Communities to adopt a proactive approach and to take the following actions:
- a) As a matter of priority, make provision to exempt EEA victims of trafficking from the Right to Reside, Habitual Residence and Genuine Prospects of Work tests.
 - b) Adopt the other recommendations issued by the Work & Pensions Committee including: ensuring that frontline staff are appropriately trained to identify victims and to interview claimants in such a way so as to minimise the risk of re-traumatisation; exempting victims from benefit sanctions; establishing links with safe houses (in Northern Ireland this is Migrant Help and Women's Aid).
14. Finally, there are two good practice initiatives in Northern Ireland worthy of mention. First, we understand that there is a Single Point of Contact within the Department for trafficking cases. This has been noted and welcomed by the Independent Anti Slavery Commissioner. Second, we understand that victims of

trafficking can be referred through to the “Make the Call” team which can arrange a Community Outreach Officer to make a home visit.¹⁰ Law Centre NI would welcome a discussion with the Department to further explore these initiatives and to consider whether other categories of vulnerable benefit claimants – such as refugees – might equally benefit.

15. In these respects Law Centre NI is willing to provide assistance.

¹⁰ This service is offered under the Benefit Uptake Programme: <https://www.communities-ni.gov.uk/articles/benefit-uptake-programme>

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