

Written evidence submitted by the Human Trafficking Foundation et al. (MSA0134)

This evidence has been submitted by the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, Anti-Slavery International, Ashiana, ECPAT UK, ATLEU, Survivor Alliance, Love 146, the Snowdrop Project, Equality Now, CARE, BAWSO, Palm Cove Society, The Voice of Domestic Workers, Hope for Justice, the Sophie Hayes Foundation and Unseen, who have shared concerns as to the rushed development of the statutory guidance on victim support, section 49 of the Modern Slavery Act.

Modern Slavery Act

At the present time, victim support is not on the face of the Modern Slavery Act 2015. When the Modern Slavery Bill was passing through parliament the sector was told that there was no time to include victim support and any serious attempt at to do so could result in the Bill running out of time and ultimately falling. To reassure survivor support specialists that victims would be provided for Section 49 for statutory guidance on victim support and Section 50 for Regulations were included, but have not yet been implemented.

The Modern Slavery Act requires the Home Secretary to ‘issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about –

- a) the sorts of things which indicate that a person may be a victim of slavery or human trafficking;
- b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe may be victims of slavery or human trafficking;
- c) arrangements for determining whether there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking.’

New guidance publication announcement

The organisations submitting this evidence are clear that the existence of statutory guidance on victim support is vital. However, having waited over three years since the enactment of the Modern Slavery Act we are deeply concerned by the Home Office’s proposal to rush out interim or temporary guidance without meaningful consultation, which risks confusing professionals and worsening the situation for victims as it does not clearly state professionals’ obligations and duties.

We wish to state our grave concerns that despite repeated commitments to publish guidance since the enactment of the Modern Slavery Act 2015, in practice there has been no clear and consistent planning and direction of this work which makes use of the wealth of expertise, experience and good will in the wider sector. Instead, following criticism from the High Court judgement in *K and Anor, R (on the application of) v Secretary of State for the Home Department* (2018), the Home Office is rushing out so-called interim or temporary guidance which we do not consider fit for purpose, has not been adequately consulted on or involved the professionals who will need to use the guidance, and which has been drafted in a rushed and unplanned manner.

Background

The Home Office Modern Slavery Unit originally coordinated a drafting group for the guidance which met during 2016. Many stakeholders gifted a significant amount of time and expertise to this process. There was criticism of the process but also concern when it ended in 2016 with no clear plans or timeframe for the production of the guidance. The draft guidance seen by this group in December 2018 bears no resemblance to the most recent draft worked on by the original Home Office coordinated drafting group and does not draw off this work.

Reforms to the NRM which were announced in October 2017 included a commitment to:

‘lay regulations under section 50 of the Modern Slavery Act 2015, and issue statutory guidance under section 49 of the Modern Slavery Act 2015, setting out the support to which victims are entitled’.¹

Stakeholders have repeatedly inquired as to when guidance will be issued and the process for this.²

Interim Guidance

In November 2018, the newly formed Victim Support Task and Finish group within the Modern Slavery Strategy and Implementation Group (MSSIG) were invited by the Modern Slavery Unit (MSU) within the Home Office to comment on draft ‘interim’ guidance. The group was told, during a meeting on the 14th November that in response to the High Court judgement *K and Anor, R (on the application of) v Secretary of State for the Home Department (2018)* the Home Office would be publishing ‘interim’ guidance ‘before Christmas’ (2018). There was unanimous concern from those present at the meeting; while attendees welcomed the prospect of long overdue statutory guidance, attendees could not see that it would be possible to draft and publish guidance which would be fit for purpose within the proposed timeframe. The MSU explained that the interim statutory guidance would cover the following;

- a. indicators,
- b. support entitlements,
- c. decision making process-how victims are identified

Producing statutory guidance is a substantial piece of work which should cover multiple sectors. Many of us were involved in the updating of the Slavery and Trafficking Survivor Care Standards 2018 which only covered one section of the above (support victims receive) which took almost a year to update. These concerns were raised during the MSSIG Victim Support Task and Finish Group meeting and the group agreed that commenting on the guidance could not be a ‘project’ for the group as the group had no control over and had significant concerns regarding the parameters for the work.

We agreed with the MSU that they would share the draft guidance with members of the group any other stakeholders who could decide individually if they wanted to comment. This group has been clear that our involvement in this process and in disseminating information about the guidance to relevant stakeholders does not constitute any endorsement or undermine our objections to the rushed and non-consultative process. We have been clear

¹ <https://www.gov.uk/government/publications/national-referral-mechanism-reform/national-referral-mechanism-reform>

² See for example Parliamentary Questions asked by Vernon Coaker MP 23 November 2018, 16 October 2017 and Alex Norris 23 November 2018.

that there needs to be public consultation and a far greater listening to experts and professionals who work to support victims or who may come into contact with victims.

Consultation

There has not been public consultation on the interim/temporary guidance. The Home Office assert that the MSA 2015 does not oblige them to consult. We disagree that the absence of an obligation in the MSA means there is no obligation to consult at all, and assert that there are international obligations to consult, for example Article 35, Council of Europe Convention for Action Against Trafficking in Human Beings to which the UK is a signatory. In any case, given the importance of the guidance which seeks to identify, protect and support victims of a serious crime and the UK's claim of world leadership in this area it would be sensible to make use of the expertise available and any human rights-based approach should consult with survivors of slavery, those who will be affected by the guidance.

The Home Office claim to have consulted key stakeholders on the guidance. However members of the original statutory guidance drafting group have told the Human Trafficking Foundation (HTF) that they have not been consulted and were only informed of the new process and timeframe by the HTF. Subcontractors working within the Victim Care Contract have told the HTF that they were not aware of plans until HTF told them and it appears that no individual councils or frontline police, who act as first responders, were involved in any way.

Concerns

On the 7th December 2018 MSSIG Task and Finish Group members and other organisations who had expressed an interest were sent a draft of the statutory guidance with an invitation to comment either directly to a staff member at the MSU by the 14th December 2018 or to attend a meeting with the MSU (hosted in the Independent Anti- Slavery Commissioner's Office) on this date. We were surprised and our concerns were compounded when we read the draft guidance which was 8 pages in length (with only 6 pages of this being substantive text). The MSU explained that they 'listened to our concerns' about the scope and timing and so decided to only publish temporary guidance focusing on part 'b' of the guidance described above: 'support entitlements'. However even with this in mind the guidance was not fit for purpose. We consider the draft of the guidance shared with us to be so sparse as to add nothing in terms of informing or directing professionals. However, as we have explained to the MSU, to issue such sparse and insufficient guidance is not benign, it is actually worse than delaying and producing adequate guidance for the following reasons:

- **The guidance will confuse professionals who should be supporting victims but who are not specialists in slavery and do not know what they should be doing and where their responsibilities start and end.** There is a strong risk that professionals who consult the guidance will be either confused or will incorrectly believe they have no duty as this is not explained in the guidance. For example, the Human Trafficking Foundation has previously been contacted by a local authority who had referred a child into the NRM and therefore incorrectly believed they had discharged their child safeguarding responsibilities and the child would be correctly supported (see attached safeguarding risks).

- **The guidance does not make clear that it is temporary or give a timeframe for the development of adequate guidance.** In any case, any guidance once published will be the statutory guidance s.49 of the MSA and as such must be fit for purpose and safeguard victims. We object strongly to rushed out guidance which is likely to lead to confusion among professionals and delay the publication of adequate guidance.
- **Responsibility for safeguarding victims crosses a large number of sectors.** It is inefficient and unhelpful to train professionals on one set of temporary guidance which is planned to change shortly.

It is our interpretation of the judgement in *K and Anor, R (on the application of) v Secretary of State for the Home Department (2018)* that the publication of this rushed guidance which is not fit for purpose does not comply with the judge's direction at paragraph 8 that;

"It is the Home Secretary's absolute duty immediately to issue the guidance that Parliament has required of him. Any further delay would be completely unacceptable."³

While the judge is clear that guidance must be issued without delay we are certain that the intention was for the guidance to be fit for purpose and developed in consultation with a range of experts to ensure it meets the needs of survivors of trafficking who are victims of a serious crime.

In fact we consider that the current draft guidance would do nothing to prevent a similar case coming to court, or prevent the misunderstandings and consequent denial of rights which led to cases such as *K and Anor, R (on the application of) v Secretary of State for the Home Department (2018)*, *LL-* in which a victim had to challenge the legal aid agency to assert their right to legal representation⁴ and *PK(Ghana) v Secretary of State for the Home Department [2018]*⁵ which found the Home Office policy on grants of Residence Permits (discretionary leave to remain) to confirmed victims of trafficking to be unlawful.

The Human Trafficking Foundation does not work directly with victims or survivors of trafficking and is dependent on stakeholders to understand what is happening on the ground, in turn HTF needs to keep members informed of the policy work it does using this information. Having received the draft guidance HTF sent out a message to members. All those who have contacted HTF in response, have expressed extreme concern as to the speed of the development of the guidance and the lack of meaningful consultation, including from those in statutory organisations and those contracted by government to deliver services.

17 organisations were able to attend the meeting on the 14th December 2018 with the MSU to discuss the draft guidance which had been circulated on the 7th December. Two more organisations were able to dial in. Such high attendance at such short notice is indicative of the high levels of commitment to the development of the guidance and concerns at this rushed process. Many attendees had met in advance and collectively agreed that we could not, in the time frame given by the MSU, begin to meaningfully comment on this draft guidance as it is so far from what is needed. We didn't want to risk enabling draft guidance

³ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/2951.html>

⁴ <https://atleu.org.uk/news/legalaidimmigrationadvice>

⁵ <https://www.wilsonlp.co.uk/pkghana-v-secretary-state-home-department-2018-ewca-civ-98/>

which ultimately left vulnerable people at risk. Kate Roberts of HTF had emailed the MSU to this effect ahead of the meeting. At the start of the meeting the group told the Home Office of our concerns and that we were using the meeting to highlight these risks, to highlight their international obligation to consult and to appeal to them to give the process a reasonable amount of time. Notes to the meeting are attached to this evidence.

It was made clear to us during this meeting that the publication of guidance covering part b is being proceeded with for January 2019. The officials in the meeting made clear this was not a decision made at their level.

We have since the meeting (21st December 2018) sent the officials the attached list of safeguarding concerns and our notes of the meeting of the 14th December. We have reiterated our request for **more time and a planned and timely consultation and process for developing statutory guidance on victim care, as would be expected for guidance on support for victims of such a serious concern and to ensure we meet our legal and moral obligations to victims.**

The Home Office have responded by telling us that these concerns have been taken seriously and the plans for the Guidance are being reviewed with this in mind.

January 2019