

**TITLE**

Surviving Trafficking, Seeking Asylum: Waiting, Status and the State

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**JOURNAL**

International Journal of Sociology and Social Policy

**DATE DEPOSITED**

3 June 2020

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# Surviving Trafficking, Seeking Asylum: Waiting, Status and the State

## *Abstract*

**Aim:** The purpose of this study was to examine support available from identification through to recovery for survivors of modern slavery and human trafficking in the United Kingdom (UK) following the introduction of the Modern Slavery Act in 2015.

**Design/methodology:** Twenty-nine semi-structured individual and group interviews were conducted with non-governmental organisations (NGOs) providing direct support to survivors and law enforcement engaged in initial identification, rescue and support.

**Findings:** Thematic analysis identified that survivors' experiences of support and negotiation of state processes is challenging, requiring lengthy periods of waiting. This experience is often compounded by variations in knowledge of processes and systems by frontline staff, resulting in negative impacts on outcomes for survivors.

**Research limitations/implications:** The small number of research participants could be regarded as a limitation but is common in qualitative, exploratory studies. A larger study should be conducted to test these initial findings. The implications propose a revision of policy especially for asylum-seeking survivors.

**Originality/value:** The study was conducted two years after the introduction of the Modern Slavery Act, 2015, during a period in which gaps in processes and support for survivors were beginning to emerge. This study offers a timely assessment of these gaps and argues for a review of policy and its implementation.

**KEYWORDS:** Human trafficking, modern slavery, policy, asylum, status, waiting

## *Introduction*

The aim of this study was to evaluate the processes and practices in place in the UK to support survivors of modern slavery, from identification

through to recovery. Critiques of the failures of state processes to adequately support survivors in the UK have been addressed in numerous publications (for example see The Centre for Social Justice, 2013; Independent Anti-Slavery Commissioner Reports, (IASC) 2016, 2017; Elliot and Garbers, 2016; Anti-Trafficking Monitoring Group, (ATMG) 2010; Haughey, C, 2016; Her Majesties Inspectorate of Constabulary and Fire and Rescue Services, (MHICFRS) 2018; Field, Miller and Butler-Schloss, 2019; Focus on Labour Exploitation (FLEX) 2019); Sobik, J. Anti-Slavery International, 2020).

These reviews and critiques addressed issues such as non-compliance with EU legislation (ATMG, 2010); the challenges within the criminal justice system (Haughey, 2016); the National Referral Mechanism and training (Elliot and Garbers, 2016); gaps in knowledge within policing, (MHICFRS, 2017); unequal outcomes for non-UK residents (IASC, 2017), supply chains, legal applications, child advocates and the role of the IASC (Field et al, 2019); a critique of the government response to the MSA review (FLEX 2019) and most recently, a recognition that the flaws identified will be exacerbated during the COVID-19 crisis. However, whilst many of these reviews and reports touched on the impact of poor knowledge and practice on survivors, none specifically and solely focused on asylum seekers as a vulnerable group.

At the time of researching for this study, two years after the introduction of the Modern Slavery Act, it had become clear that the legislation and its processes had many flaws that affected asylum seeking survivors from the moment of identification through to longer term recovery. Additionally, although the ATMG report was based on a similar demographic of respondent (Anti-trafficking professionals), the data for that study was collected in 2009-

2010. This paper therefore offers a unique and current perspective on emerging gaps in the application of the MSA in practice.

To contextualise the study, three key areas of literature are discussed. First, the paper outlines key commitments of the MSA and the Modern Slavery Strategy, 2014, (MSS) and the challenges to implementation within the context of Immigration Acts that increased hostility towards immigrants over the same period (2014-2016). Second, the concept of status is discussed with reference to the construction of irregular migrants, refugees and asylum seekers and their treatment when engaging with bureaucratic processes. Third, the sociology of waiting is utilised as a theoretical framework to contextualise the experiences of negotiating barriers to achieving asylum in the UK. Following this, the methodology is outlined and the approach to analysis explained. Themes identified in the data include: The Referral Process; Inconsistent Responses; UKVI: Waiting for a Decision. These themes illustrate the extensive barriers faced by asylum seeking survivors, and the impact of lengthy waiting times for a decision on the survivors' long-term outcomes, which contradicts assertions made in the MSA and MSS to support survivors. The paper concludes by proposing that policy, processes and practices are reviewed to ensure equality of access to support for all survivors regardless of their nationality.

### *The Modern Slavery Strategy 2014 and the Modern Slavery Act 2015*

The Modern Slavery Strategy (MSS, 2014) outlined the commitment by the Government of the United Kingdom to protect vulnerable people from exploitation and support the reintegration of victims into society. The strategy

also specified a commitment to work with organisations to ensure access to 'financial, social and psychological support' for survivors thereby improving reintegration. Victim support was acknowledged as potentially 'long and complex', a process that would require 'appropriate support and guidance' so that victims would be able to increase their 'resilience and minimise their risk of being re-trafficked' (MSS, 2014, p. 65). The Modern Slavery Act (MSA) was introduced in England and Wales in 2015. Although subject to some criticism, it was also deemed ground-breaking by certain commentators at the time in setting out the UK government's approach to combatting modern slavery and human trafficking (MSHT).

However, access to support is not equally available to all victims and depends on a person's UKVI status (see Independent Anti-Slavery Commissioner's Report, (IASC) 2017; Anti Trafficking Monitoring Group (ATMG) 2016). A conclusive decision on whether 'a person is a victim of human trafficking or modern slavery' (National Crime Agency) – known as a conclusive grounds (CG) decision – is less likely to be given to non-UK/EEA nationals than to a UK or EEA national (IASC Report, 2017, p.27; ATMG, 2016). Non-UK/EEA nationals are also to be 'encouraged' to return to their country of origin unless assisting police with their enquiries (MSS, 2014, p. 65).

### ***The disjuncture between the Modern Slavery Act and Immigration policy***

Amendments to Immigration Acts around this time had progressively created a more 'hostile environment' (Travis, 2013) for irregular migrants, undocumented workers and asylum seekers, including limiting access to health care and accommodation (Webber, 2014; Bowsher et al, 2015; Burnett,

2016). Encouraging repatriation, despite undermining the stated intentions set out in the Modern Slavery Act to protect victims, is therefore unsurprising. The contradictory objectives of the MSA and Immigration Acts, and the implications for victims of trafficking and modern slavery are apparent.

The underpinning ideology of immigration legislation, the ‘banishment’ of outsiders (Monnier, 1995, p. 305) and its intersection with modern slavery is evident in political discourse:

If all victims of modern slavery were granted automatic discretionary leave, we expect the NRM would increase by people seeking access to benefits to circumvent recent restrictions (EEA nationals) and by those who have exhausted other options to remain in the UK (failed asylum seekers). (Sarah Newton MP, February, 2017<sup>1</sup>).

Victims of modern slavery seeking asylum are disempowered, stigmatized and often criminalised (Malloch & Stanley, 2005). Asylum seekers and refugees are constructed as security risks and their consequent treatment by the state and its agencies has long been criticised (Malloch & Stanley, 2005; McDonald & Billings, 2007; Masocha & Simpson, 2011). The incompatibility of immigration legislation and protecting potential victims of trafficking (PVOT) has also been condemned (O’Connell Davidson, 2015). Debates about inconsistencies with regard to status as ‘modern slave or illegal worker’ underline adverse outcomes for ‘irregular migrants’ (Morgan, 2017). For migrant, asylum seeking and refugee women in particular, rejection and dismissal within a culture of disbelief and criminalisation are common (Ceneda, 2003; Hales & Gelsthorpe 2012). Continued immigration checks in

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<sup>1</sup> Minister for Crime, Safeguarding and Vulnerability, in response to Rt. Hon. Frank Field, Chair of the Work and Pensions Select Committee, discussing Lord McColl’s Modern Slavery (Victim Support) Bill requiring a duty to provide victims with support for 12 months

cases of suspected trafficking and slavery has become a point of controversy in the context of broader debates about irregular migration, economic migration, and conflation with human smuggling.

### ***Gaining 'Status'***

Recent migration flows present challenges for nation states and foreground a 'constitutive dilemma' for liberal democracies between sovereign self-determination and 'adherence to universal human rights' (Benhabib, 2004, p. 2) and result in harsher immigration policies, stronger border controls and a disregard for human rights. This provokes intensified human smuggling, human trafficking and increased potential for abuse and exploitation (International Organisation for Migration, 2016).

Moreover, the contradiction between human rights and border control, including monitoring the 'quality and quantity of admittees', makes it difficult to integrate notions of political membership, which can only be achieved through 'rituals of entry, access, belonging and privilege' (Benhabib, 2004, p. 1). Upon entering the NRM, trafficked persons without legal membership who wish to remain in the UK must apply for asylum. For this group, *rituals of entry and access* that comply with notions of approved membership are unlikely, thus limiting their ability to achieve *belonging and privilege*, contributing to further exclusion in addition to their trafficking experience.

A person's legal status as a citizen of a country is crucial for a sense of belonging and ability to integrate. For persons trafficked overseas without papers, their negotiation of systems to gain citizenship is often complicated and burdened with barriers. Britain is one of the most challenging destinations



for asylum seekers in Western Europe, with the 'harshest policies, and bureaucratic processes that leave many people destitute or homeless' (Lyons et al, 2017). The process of claiming asylum in the UK is 'strictly controlled and complex', it is 'very difficult to get asylum', the 'decision-making process is extremely tough' and 'many people's claims are rejected' (refugeecouncil.org.uk).

### *Gaining Status: Dual Identity*

For trafficking survivors, asylum seeking status and applications for leave to remain represent an additional level of uncertainty. Their dual identity as PVOT *and* asylum seeker complicates their position, and they are subject to further scrutiny, including multiple interviews with legal representatives and Home Office personnel. State agencies are known to be culpable in perpetuating a culture of disbelief (see for example Souter, 2011; Joubany, 2011) in their assessment of the veracity of victims' claims to 'victim of trafficking' status. The adversarial system embedded within UKVI for the purposes of administering asylum claims has an inherent culture of disbelief that has material consequences for those seeking leave to remain:

A victim of modern slavery comes forward, they are presented with a number of forms that they have to sign, then their immigration status is looked at, and then there is a process to decide whether they are a victim or not. If we did the same for a victim of domestic abuse or a victim of rape, I am sure people, parliamentarians and others, would be standing there in shock and horror. (Hyland, K. 2017, Work and Pensions Committee, Parliament UK).

Following the 45-day reflection and recovery period - the main element of enhanced support as outlined in the MSA - there are distinct outcomes

depending on the status of the 'victim': recovery and rehabilitation, or rejection and repatriation, the latter two of which are most common for those without leave to remain (ATMG, 2016; ASCI Report, 2017). The uncertainty experienced by PVOTs during this period can have detrimental effects on their physical and mental health (IASC report, 2017, p. 25). Evidence about negative experiences of 'othering' processes and impacts on the health of asylum seekers who are refused leave to remain show that 'the most influential mechanism directly impacting health and access to health and social services was legal status' (Fang et al, 2015, p. 2).

### *'Status less'*

In this regard, 'othering' is used to describe people that are socially situated outside the 'boundaries of belonging' (Fang et al, 2015, p. 3). For forced migrants, systemic issues associated with being 'status less' have also been identified (Mountian, 2005). For those awaiting a decision, periods of up to nine years have been recorded. Although according to Rotter, (2016) 'waiting was not an empty interlude between events but an intentional and agential process', and persons may be 'affective', 'active' and 'productive' during this time (Rotter, 2016, p. 80), for many survivors of MSHT, the waiting game often mirrors their trafficking experiences during which they lacked agency and personal power and in which state processes are complicit in producing this state of limbo.

### *Theoretical Framework: Waiting*

The relationship between power and time has been comprehensively examined in the social sciences, whereas waiting has been subject to less

scholarly attention (Schweizer, 2008:1 cited in Auyero, 2011). Schwarz, one of the first sociologists to address the topic of waiting in detail, based on empirical studies of people waiting in queues for various ends, asserted that 'So far as it limits productive uses of time, waiting generates distinct social and personal cost' (Schwarz, 1974: 841). It could also be argued that waiting generates a financial cost to the state. Indeed, Schwarz cites findings from Liberman (1968-69), a Russian economist who estimated that '30 million hours' per year were wasted by the Soviet population queuing for food. (Schwarz, 1974: 841). During periods of waiting for a decision regarding status in the UK, individuals are housed in government funded properties and given a weekly allowance. This author earlier argued that a cost benefit analysis of systems designed to 'support' survivors would be useful to assess the cost to the state and to evaluate its true expenditure (Murphy, 2018).

In the meantime, people are waiting. According to Khosravi (2014), waiting is a feature of everyday life. He delineates the everyday circumstances in which we find ourselves experiencing time passing. We wait in queues in shops, in airports, in offices. Other studies focus on other sites of queuing, such as welfare offices (Auyero, 2011) and hospital emergency departments (Schwarz, 1975) and outline the impact of waiting on ordinary people. In Auyero's study, people queuing in the welfare office 'become not citizens but patients of the state' (Auyero, 2011: 2) an interesting assertion in the context of the dehumanising nature of awaiting bureaucratic decisions.

Waiting is a feature of bureaucracy in which 'people wait their turn and officials make their decisions' (Khosravi, 2014: 1). According to Pierre

Bourdieu, waiting is also part of a process of domination. 'Making people wait... delaying without destroying hope is part of the domination' (Bourdieu, 2000: 228). Waiting is also stratified and waiting time is unequally distributed (Schwarz, 1974: 856). The status of a person will influence their waiting time and/or others access to them. Time is an important aspect of the waiting game. Schwarz states that 'especially to be kept waiting an unusually long time, is to be the subject of an assertion that one's own time (and therefore, one's social worth) is less valuable than the time and worth of the one who imposes the wait' (Schwartz 1974: 856).

Crapanzano (1985) writes about people waiting 'for something, anything, to happen. They are caught in the 'peculiar, the paralytic, time of waiting' (cited in Coetzee, 1985). They are also caught in a liminal space, between two social realities (Turner, 1969). The 'paralytic' and 'liminal' are pertinent to the conditions in which asylum seekers must exist. Khosravi (2014) focuses explicitly on the experiences of displaced people, including migrants, who spend time waiting in camps, in transit sites or for papers. Undocumented, they experience the waiting as a sense of precariousness and powerlessness. They suffer waiting as a sense of 'weakening of social functioning' and are 'constantly waiting on decisions and assistance coming from others' (Khosravi, 2014: 2) for example from the state, NGOs, religious groups and legal firms. The sense of lesser value produced through the experience of waiting and the reliance on others for decisions and support results in feelings of inadequacy and shame.

Survivors of MSHT, often displaced and trafficked, are aware of their lack of status and their reliance on decisions made by those in power. They

exist in this liminal position, subject to intervention by the state. They are required to survive on minimal funds, are quite commonly housed in unsuitable, dirty and unsanitary accommodation, often former sites of incarceration, with little access to support. The lengthy period of waiting for decisions about their PVOT status, their asylum claim, the not knowing, the 'not-being-in-time-with-others' (Khosravi, 2014: 1) during which the potential for rejection is ever present, exacerbates trauma and contributes to a sense of alienation.

## **Methodology**

This study was commissioned and privately funded with an aim of gaining insights into the practise and experiences of frontline personnel when supporting survivors, and their knowledge of the systems and procedures in place to administer that support. The study was also interested in understanding what provision was available to support survivors in the long-term. Interviews were conducted with twenty-nine participants. Twenty-one (21) interviews and group interviews were conducted with twenty-nine (29) respondents in total. Seventeen (17) of these respondents were from non-governmental organisations (NGOs). Two of the NGOs interviews involved two members of the team because of their level of expertise and their leadership roles within organisations. The remainder were conducted on a one-to-one basis. Twelve (12) interviews were conducted with police forces, including two (2) police consultants (individual interviews) and one (1) Police and Crime Commissioner's office. The remainder consisted of one individual interview and three group interviews, one with two interviewees and two with three interviewees. Group interviews were conducted with police as they tend

to work in specialist anti-trafficking teams. This enabled insight into variation in knowledge and experience across police forces and was a critical insight in the context of this study. The interviews were conducted between June and August 2017.

Purposive sampling identified subjects with specific experience (critical case sample) (Marshall, 1996, p. 523). Although this sample is not nationally representative, it includes a diverse range of organisations from across England and a smaller sample from Scotland. Time restrictions impeded the inclusion of participants from Wales and Northern Ireland. In this case, purposive sampling was used to identify persons with special expertise (key informant sample) (Marshall, 1996, p. 523) ensuring access to key actors widely known within the sector for their expertise in long-term support (NGOs) and proactive approach to identification and protection of victims (police forces). Other services and forces with less experience were also recruited to provide a basis for comparison, with the potential to improve overall validity of findings and to ensure representation of a broad range of voices from across the sector. Additional respondents were recruited using snowball sampling, based on recommendations from participants. The interviews were semi-structured and interview schedules were designed to elicit both broad knowledge and understanding about the topic, as well as more focused questioning relevant to the services provided and the diverse roles performed in the sector by study participants.

### *Data analysis*

Interview data was transcribed, and the data coded using a thematic analytical framework. Thematic analysis is useful for analysing qualitative data and 'provides a flexible and useful research tool, which can potentially provide a rich and detailed, yet complex account of data' (Braun & Clarke, 2006, p. 5). Themes were identified following the approach taken by Farrell & Pfeffer (2014), in which codes were developed that were representative of predetermined themes originating from concepts evident in the literature, as well as themes based on concepts that were prevalent within and across all or most interviews. Themes were analysed and compared across cases to identify differences that could be attributed to a specific region, although further in-depth analysis demonstrated themes evident in all cases.

Ethical approval was gained from St Mary's University ethics review committee. The interviewees were assured of confidentiality and anonymity at all phases of the study. They were provided with information about the study prior to taking part and on the day of the interviews were asked to complete a consent form to participate and also informing them of their right to withdraw from the study at any time. Permission was obtained to record the interviews on a digital recorder and assurances provided to protect identities in the reporting especially when using direct quotes. Only broad categories were used to indicate the kind of agency they represented, for example, service provider (denotes a non-governmental organisation frontline worker) and police.

## **Limitations**

Limitations to this study include the small number of participants, which has the potential to foreground certain perspectives over others. However, as noted, sampling ensured a mix of participants in terms of knowledge and expertise. Additionally, the congruence of the overarching themes from these sources provided an opportunity to develop a systematic understanding of some of the problematic features of the process under examination. Although there can be no claim to generalizability of the findings, the conclusions can be viewed as part of a growing evidence base about the divergence in knowledge amongst frontline workers and how this impacts on survivors, as well as highlighting the disjuncture between assertions made by the State about support provision, and the outcomes for survivors, especially asylum seekers.

## **Findings**

### *Introduction*

The interviews with NGOs and law enforcement produced powerful testimonies about the flaws in the current system of support for survivors in the UK, especially for those claiming asylum. These flaws were identified at all stages of the process from identification and referral through to support from statutory services and are discussed below under the following themes:

First Encounters: The Referral Process;

Inconsistent Responses;

UKVI: Waiting for a Decision.

### ***First Encounters: The Referral Process***



State interventions have been discussed above with reference to flawed procedures and negative ideologies underpinning the application processes for leave to remain made by survivors of MSHT. On a national and regional level, the state is also responsible for ensuring that other agencies comply with legislation. However, lack of knowledge and awareness within many statutory services and local authorities was identified within this study and added an additional barrier to providing adequate longer-term support to survivors:

The referral is the beginning of the whole process, and so much stems from this point – and it is therefore intrinsically linked with long term support, right to remain in the UK, integration and recovery. The beginning needs to be corrected and looked at - there is no point addressing integration in isolation (Service provider. 21).

Respondents in this study highlighted the importance of the referral process as the entry point to all other services and processes. As awareness of MSHT grows, first responders make more referrals, which are often done hastily and with limited information, with the potential for causing a backload of work and hindering the ability to help those most in need.

And the knock-on effect is that if then as a Competent Authority you are presented with an NRM that hasn't got that much information, but you've got five working days to make that decision, you could also err on the side of caution and I'll give them a reasonable grounds, and then hopefully we'll be able to get the information before the 45 days have passed. Well as soon as you do that, that's resources being spent on someone who may not have been trafficked in the first place. So again, we're spending out on someone who doesn't fit the criteria of the people who we are supposed to be helping. And we all know how difficult it is working with people and helping to protect people, it's never straightforward, but just through that little snapshot of the NRM process, when it's not right, it becomes a mess. (Police.4)

Poor decision-making within statutory services prior to entering the NRM has been shown to have long lasting consequences for persons seeking asylum (Murphy, 2018). Although there were some incidences of exemplary support provision within statutory services, including police, social services and general practitioners, the level of knowledge and understanding of the needs and rights of survivors of MSHT was variable and this had major consequences for accessing broader support.

We also work with people long-term. We get referrals ordinarily from a range of people, including lawyers, but also from the NHS. We are able to see what happens to people when they come in touch with any statutory service or any decision-making body or in the NRM or in the criminal justice system or in the asylum system and see what happens. And we are constantly dealing with the impacts on their mental health as a result of poor decision-making (Service provider 1).

This respondent highlights how referrals that are made to their organisation often uncover the gaps in knowledge within statutory services and the criminal justice system and the impact on survivors. Other respondents confirmed the consequences of poor referral processes for victims in the longer term, within what is regarded as a 'broken' system:

What we have is a broken system. We are reliant upon someone sitting down and taking down the correct information from that first interaction that someone may have with a potential victim. If that doesn't happen, as that case moves on what hasn't been done at the start has to be picked up by someone else so inevitably you find out that it ends up falling upon our lap as policing to take that case and see if that individual wants to speak to Police to actually get a full account that we can then work from. So straight away from that very first scenario, it's broken. (Police.2)

### ***Inconsistent Responses: Police***

Variable responses to MSHT were identified as far back as 2013 (Centre for Social Justice) in which regional inconsistencies, the so-called 'postcode lottery', impinges on all aspects of a survivor's journey and the

likelihood of successful recovery. Levels of understanding of the complexities of human trafficking are evident within law enforcement.

The focus shouldn't just be on increasing the numbers of people referred into the NRM because we've seen poor NRM referrals. Police officers not obtaining informed consent before making such referrals and ultimately identification and lack of understanding of the process causes distress and confusion **and at worst it can have detrimental effects on a NRM decision, asylum claim and future applications to access support resulting in re-exploitation / further harm and abuse and distrust in the authorities.** All too often we have experienced Police officers focusing on someone's immigration status rather than their potential status as a victim of trafficking – this has included making judgements and being biased based on nationality (Service provider. 22, my emphasis)

Gaps in policing responses were identified in the Independent Anti-Slavery Commissioners report (2016) in which a number of regions across the UK reported few or no cases of MSHT. The Commissioner questioned this claim, arguing that modern slavery exists in all parts of the UK. The most recent inspection by Her Majesties Inspectorate of Constabulary and Fire and Rescue Services (MHICFRS) also identified variations in knowledge within law enforcement across the UK. Findings from this study support these conclusions:

We find that with some police we have a great relationship. They would bend over backwards to accommodate the victim, trying to work out how they can do it. They are just fabulous. Others that we have worked for don't know the entitlements of the trafficked person, have no idea how trafficking works, can't understand the complexity (Service provider 2).

Some variations in responses were connected to the historical development of services in the NGO sector that emerged out of a growing awareness of MSHT and the need to support survivors. Often, development of

services in the NGO sector was the precursor to establishing multi-agency partnerships and anti-slavery networks. Dissemination and training developed through these multi-agency partnerships is crucial to establish good practice.

### *Local Authorities*

As with all other agencies, there was some regional and local variation, with some Local Authorities (LA) active and productive in this arena. However, for many the lack of knowledge and awareness about their responsibilities as first responders impacts on many aspects of longer-term support, from accommodation through to access to other services in the community.

I have done a lot of training in initial stages and do a quite bit of training with local authorities looking at identification but also safeguarding long-term. And I'm talking in the beginning about those responders, because any local authority person is a first responder. So, I start off talking about, you know "anybody in here knows what a first responder is? Anybody in here think that they might be one. Nobody. No? You all are. Every single person in here is a first responder and you don't know what it is. Let me tell you about your job." You just think "this is unreal/crazy". You don't know that somewhere it's written down as part of your job to refer somebody to the NRM and you have no idea even how to go about doing it (Service provider.5)

Clearly problematic, this statement highlights that without any statutory guidance, the current situation is unlikely to change, and the response will remain uneven and unequal.

### *National Referral Mechanism (NRM)*

The NRM was introduced in the UK in 2009 to comply with the requirements of the Council of Europe Convention on Action against

Trafficking in Human Beings. The Home Office conducted a review in 2014 that identified some of the flaws of the system and made a series of recommendations (See Home Office Review of the National Referral Mechanism, 2014). This review was later critiqued for, amongst other issues, failure to provide training to first responders resulting in mis- or non-identification of victims (Elliot and Garbers, 2016).

Making erroneous decisions about the status of a PVOT in cases of MSHT is also an indicator of poor training. This is not just an issue for law enforcement or local authorities. Evidence of poor practice on the part of UKVI personnel and other state actors dealing with those without leave to remain confirms this. Following identification and referral to the NRM, for survivors of trafficking, the consequent stages vary depending on status. Those without leave to remain face particular difficulties and must negotiate a number of institutional challenges bound up in the NRM process. Frontline workers interviewed for this study demonstrate the failings of the NRM processes and decision-making judgements that have severe consequences on survivors of MSHT:

The NRM is not without its flaws. Some decisions they made are made in error and they are made outside the law. So, when you actually analyse some of the conclusions then, the negative ones, they are not made correctly. Either it's the wrong information they looked at or they have given us very bad reasons why they don't believe the person. One we are challenging at the moment which is...they got a negative CG because they didn't go to the police as soon as they left the trafficking situation. And it literally says in their guidance, in the NRM guidance, 'you cannot give a negative CG essentially, simply based on that person didn't go to the police', because there are a lot of reasons why they didn't go (Service provider.5)

The Home Office review also recommended a series of changes and published guidance for frontline staff in 2016, (*Victims of Modern Slavery Frontline Staff Guidance*.) However, introducing changes without training and guidance is unlikely to address some of the problems identified within government agencies in this study. Additionally, evidence from this study indicates serious flaws within the interview processes to establish Conclusive Grounds decisions.

### ***UKVI Interviews: Waiting for a decision***

Attending interviews with Home Office personnel is part of decision-making requirements. Concerns have been raised about the training and skills of Home Office interviewers by Anti-Trafficking Monitoring Group (ATMG, 2010) about the minimal training received by staff, supported by flawed legal guidance. The response of a service provider in this study illustrates the flaws within a system that relies on untrained and unknowledgeable interviewers.

In the transcripts you can see the full interview, the questions that were asked as well as the answers. Once they ask one question and the answer she gave, it was like “ask more”, don’t just go “ok, that’s the answer”. And you’re thinking “no, no, **there are some flags in that answer, you should probably unpack that a little bit more**”. And it was just a bit of “ok, on we go”. It’s kind of the idea or presumption that if I have asked the question, they must have given me everything rather than being curious and asking, “can you tell me a little bit about that?” And what we found with this lady is that one of the major barriers to actually disclosing everything is because she had been a domestic servant her entire life, literally from childhood. She did not know that it was relevant the fact that she slept on the floor. Or that she didn’t always get fed. Stuff like that to her was her life. It wasn’t like that was a relevant piece of information, because it’s just kind of like how it’s linked (Service provider.5)

Research participants raised questions about the competency of the interviewers to undertake this task, especially with this particularly vulnerable

group. Incidences of poor interviewing skills for the purposes of establishing evidence of trafficking were commonplace and, in some cases, the experience was extremely traumatising for the victims.

The thing is these people are so vulnerable that had we not been there, I really believe that all these incidents could have resulted in another deterioration. You know, to get into the Home Office, you have to assure them that they will not be detained or detained again. Some of them had already been detained. And they are very, very frightened and the Home Office are very, very ignorant in the way that they treat them. It's always very shocking (Service provider.20)

The implications for those also seeking asylum within an interview process that must decide on two very different aspects of a person's status was also raised by Elliott and Garbers (2016) who notes that there was often a cut and paste of key information to be found in both a negative asylum decision and a negative NRM decision. Without addressing this issue and separating these systems, progress made in terms of survivors' recovery is put at risk. The consequences of disregarding the needs of victims in these processes undermine the state's commitment to protect and support victims. The impacts of negative decisions are not a consideration for decision makers, the culture of disbelief is evident and the consequences for victims can be severe:

We have a lot of setbacks along the way, because of the legal system. Somebody who will be doing much better, having trauma focused therapy, doing quite well, and then suddenly they get the letter saying "you are a liar" – which is what the government is saying to a lot of people. Like "this wouldn't have happened, the trafficker wouldn't have done this, you wouldn't have said this". This asylum type decision-making in the NRM system or in the asylum system brings them straight back down. (Service provider 3)

Thus, bureaucratic processes can undermine and undo much of the work of services that go to great lengths to support survivors in their recovery, alongside helping with their application for leave to remain. These services act as intermediaries between the survivor and the state, and support engagement with other state and non-state actors.

We help them to apply for asylum, motivate them, help with solicitor, physical health, take them to the GP, monitor their wellbeing and access counselling services. They get 36 pounds a week. Get food from foodbanks, get extra money, £20. If they are appealing their case, we accompany them to court, do official letters to remain. (Service provider. 4)

As well as providing supporting documentation as evidence for asylum claims, accompanying survivors to interviews, despite being excluded from the actual interview, is a key support mechanism provided by frontline workers. The potential for increased trauma and insecurity is clear. The treatment of PVOTs by UKVI requires review of a process that shows little sensitivity to the impact of trauma as a consequence of trafficking experiences.

State processes such as these underpin the 'banishment' of outsiders and are supplemented by a particular interpretation of international conventions and the law (Monnier, 1995). If procedures for its administration as developed by the state are adhered to, there can be little recourse to appeal. The consequent lack of status was shown to exacerbate trauma and contribute to a sense of alienation, particularly given that decisions can be delayed for lengthy periods:

Status is a barrier, and with the NRM, there can be significant delays, 18 months, 3 years, during which time the case is closed (Service provider 2).



Many respondents reported extensive waiting times for decisions by the State during which time survivors were restricted in their activities. In this state of 'limbo', the sense of alienation acquired throughout the journey of trafficking and exploitation is exacerbated by the requirements of UKVI that limits engagement in wider society in terms of education and employment. As noted above, the experience of waiting for a decision that has no timescale attached has deleterious effects on those seeking asylum, and for victims of trafficking, can mirror their prior experiences of lack of control over decisions about their lives. One respondent stated that this was a violation of human rights:

And even if they don't have the right to remain, when they are in this limbo, they should have the right to work and right to be educated. It's a violation of their human rights that they are not allowed to do anything. It's a huge violation. (Service provider 5)

### *Conclusion and recommendations*

This study has demonstrated that despite the intentions of the Modern Slavery Act to protect survivors, there are many gaps in its application. There is a vast range of variability amongst statutory services and first responders in terms of their knowledge and ability to respond to the needs of survivors. Decisions made erroneously by statutory agencies can have long-lasting impacts on survivors. This is especially the case for those seeking asylum and has been shown to be particularly problematic in the context of UKVI interviews in which untrained personnel are unaware of how to conduct interviews with persons suffering trauma.

Additionally, the ability of survivors to understand their status as a victim of MSHT is not always straightforward and in this study, Home Office interviewers were criticised for failing to notice 'flags', ask the right questions and display humanity and sensitivity to traumatised persons. As a consequence, the process of engagement with bureaucratic processes through applying for leave to remain contributes to increased anxiety and frustration on behalf of applicants and frontline support workers alike.

Variations in responses from statutory agencies and first responders has an impact on survivors. A need to provide clear guidance to all first responders, to inform them of their responsibilities under the Modern Slavery Act and to provide proper training is of critical importance in smoothing the journey for survivors, ensuring that they gain access to state provision where available, and are supported adequately in a manner that does not later impede them, especially with regard to achieving asylum status.

The concept of waiting (for example, Schwarz, 1974; Auyero, 2011; Khosravi, 2014) has been used to contextualise the experiences of asylum-seeking survivors. The importance of having recognised status is clear as are the impacts on health and mental health on victims/survivors of MSHT as noted by frontline workers. Despite attempts by services to provide for persons seeking asylum in the UK, those in need have frequently been left in limbo, waiting for decisions. Waiting is frequently used as a tool of domination (Bourdieu, 2000). It makes those waiting feel devalued (Schwarz, 1975) and protracted periods of waiting results in a suspension of 'underpinnings of social life both temporarily/ temporally' (Khosravi, 2014: 1). The experience of

waiting and its implications in terms of perceived lower status and lack of value contributed to already damaged feelings of self-worth. Trapped in an in-between 'outsider' world with few resources and reliance on state and other bodies to provide the bare necessities to survive has been a crippling experience for many survivors. The negative repercussions that occur due to a lack of control over their lives is apparent. The asylum process is challenging for survivors of modern slavery and human trafficking through its exclusionary practices, denial of autonomy and rights of citizenship. Without the support of NGOs, many would have fallen through gaps in support, risking re-trafficking and re-exploitation.

Thus, the individual survivor with a range of often complex needs, may, depending on levels of knowledge and understanding of the issues from first responders, including statutory services, be subject to a response that ranges from efficient, effective and empathetic, to one in which there are high levels of mistrust, misunderstanding and mismanagement.

### *Reducing Harm*

In order to reduce harm to survivors, a review of the current lengthy process of waiting is necessary. Despite many pronouncements by the UK government to reduce the time it takes for asylum decisions, there has been little improvement in this regard. Alongside this, the requirement for multiple interviews for survivors of trafficking that takes account of trauma should be reconsidered. Whilst authorities need to follow protocols when making decisions about who is granted right to remain, when it comes to PVOTs in

particular, a culture of open enquiry that respects human dignity should replace the culture of disbelief.

Arguing for changes in the way that victims of trafficking are dealt with within the asylum system may seem futile. However, recent developments offer the prospect of change, including the proposed extension of the 45-day reflection and recovery period, a commitment to the removal of UKVI from NRM decision-making processes and the introduction of multi-agency decision-making panels. A recent High Court ruling that the Home Office had failed to comply with the Council of Europe Convention on Action against Trafficking found in favour of a victim being granted leave to remain, and may offer hope to other survivors (Taylor, 2018). Lord McColl's Modern Slavery (Victim Support) Bill requiring a duty to provide victims with support for 12 months and attaching status to the Conclusive Grounds decision has reached committee stage in the House of Lords.

Any changes introduced though will have little impact without a commitment to provide resources for training of frontline staff in statutory services who have a duty as first responders to understand systems and procedures around MSHT that takes account of the complete process from identification to recovery. The referral process can be complicated, and it is important to get the documentation in order. This requires understanding of the overall process for referrals, what services are available, what the statutory duties of care are, and the range of outcomes depending on the nationality of the survivor. Robust support systems need to be established to provide comprehensive, respectful and inclusive services so as to limit the harm to victims of trafficking who are also asylum seekers.

Raising awareness of and campaigning for change to address the disconnection between, on the one hand, positive statements about protection and provision of support, and on the other the exclusionary practices embedded within immigration policy and processes is an important step. Passing legislation, such as that proposed by Lord McColl's Modern Slavery (Victim Support) Bill is one such example. Australia, a country renowned for its restrictive immigration policies, could incorporate such legislation into their recent Modern Slavery Act. Additionally, comparative analysis of discriminatory practices towards survivors of MSHT in other countries could inform new frameworks of practice. Further research and evidence is needed to evaluate whether recent changes outlined above effectively modify the nature of the asylum process for those who have been trafficked. As noted above, a proposal to extend Schwarz's (1974) reference to the social and personal costs of waiting by the inclusion of the financial costs may be of value. To that end, a cost benefit analysis recently completed by the Rights Lab at Nottingham University (Nicholson *et al*, 2019) based on my recommendations (see Murphy, 2018), evaluated the potential benefits to the State of passing the Modern Slavery (Victim Support) Bill.

A final note is also necessitated that acknowledges recent developments in the social and political sphere. Brexit negotiations have added an additional layer of uncertainty to tackling MSHT. Until there is clarity about the terms of leaving the EU following the Brexit referendum, the impact on the fight against modern slavery remains unclear. Critics have pointed to potential risks: 'by Brexiting we risk jeopardising the progress made in tackling modern slavery and protecting its victims' (McQuade, 2017). The prospective

loss of Joint Investigation Teams and the European Arrest Warrant if the UK withdraws from the jurisdiction of the Court of Justice of the European Union (CJEU), which governs all the EU security bodies, will have consequences for the policing of MSHT. EU passport holders may be made more vulnerable to exploitation and abuse, and they may be less likely to seek support and justice due to insecurities or lack of clarity about their status (ATMG, 2017). Likewise, the impact of Covid-19 on the potential for labour exploitation and the impact on referrals has been recently discussed by a number of commentators (Sobik; The Salvation Army; The Modern-Day Slavery Unit). These dramatic changes to the social and political life of the UK will need resources and further study. To echo Auyero, “the theoretical agenda to be developed and the empirical ground to be covered are vast and challenging’ (Auyero, 2011: 26). To further this process, more in-depth studies both qualitative and quantitative are necessitated to better understand the implications of the flaws in implementation of the MSA, and how external political and social changes might impact on outcomes for survivors.

Words: 7514

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