

# Seeking Refuge? Trafficking, sexual exploitation and the law

## Introduction

Many women are trafficked into the UK for the purposes of sexual exploitation every year.<sup>1</sup> If you have been trafficked there are a number of ways that the law can help you. You may want to remain in the UK for either the short or long term, report violence you have experienced to the police or seek compensation for injuries you have received.

This legal guide explains the immigration and criminal laws relevant to women who have been trafficked into the UK. It also explains some of the financial and other support options that may be available to you. This legal guide is **not** legal advice. If you have been trafficked it is very important that you get legal advice.

If you are supporting a woman who has been trafficked into the UK it is vital that you assist her to get legal advice. You should not give her immigration law advice unless you are allowed by law to do so. It is a criminal offence under the **Immigration and Asylum Act 1999** for anyone to give immigration advice or services in the UK unless they are regulated by the Office of the Immigration Services Commissioner (the OISC), a regulated solicitor, barrister or legal executive (or European equivalent) or exempted by Ministerial Order.



You can contact one of Rights of Women's legal advice lines for free, confidential legal advice. Details of our advice lines and their opening times are given at the end of this legal guide.

You can also contact a solicitor or immigration advisor in your area for advice. Depending on your financial circumstances and the details of your case, you may be entitled to **public funding** (also known as **legal aid**). Public funding enables some people who cannot afford to pay for legal advice to get legal advice and representation free of charge. However, not all legal representatives do publicly funded work and there are limits on the work that a publicly funded legal representative can do on a case. For further information about public funding and getting legal advice contact **Community Legal Advice** by telephoning 0845 345 4345 or visit their website [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

You should always make sure that the person that you see to get immigration law advice is professionally qualified and allowed to help you. You can get immigration advice from a **solicitor** or from an **immigration advisor**.

A **solicitor** is a qualified lawyer who is responsible for dealing with the preparation of cases. Some solicitors may also represent their clients in courts or tribunals. Solicitors are represented by the Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk) and are regulated by the Solicitors Regulation Authority [www.sra.org.uk](http://www.sra.org.uk)

An **immigration advisor** is someone who is not a lawyer but who has the knowledge and skills necessary to give advice on immigration law. For information about immigration advisors contact the Office of the Immigration Services Commissioner [www.oisc.gov.uk](http://www.oisc.gov.uk)

<sup>1</sup> Research carried out by the Association of Chief Police Officers in 2010 found that out of the 30,000 people who are believed to be involved in off-street prostitution in England and Wales, 2,600 are trafficked and a further 9,200 are considered to be vulnerable. The report, *Setting the Record, The trafficking of migrant women in England and Wales off-street prostitution sector* can be accessed here [www.acpo.police.uk/asp/policies/Data/SettingtheRecord\(ProjectACUMEN\)Aug2010.pdf](http://www.acpo.police.uk/asp/policies/Data/SettingtheRecord(ProjectACUMEN)Aug2010.pdf)

## What is trafficking?

Article 4 of the **Council of Europe Convention on Action against Trafficking 2005** (the Trafficking Convention) defines trafficking as involving three things:

- recruiting and moving a person;
- in particular ways, such as by using force, deception, the abuse of power or the abuse of a position of vulnerability;
- for the purpose of exploitation, like forcing someone to be involved in prostitution.<sup>2</sup>

**Recruiting** involves persuading someone to take part in a particular activity, like a new job. For a particular situation to fall within the legal definition of trafficking, a person's recruitment and movement has to be done in certain 'ways', such as by force or deception.<sup>3</sup> A woman may be recruited by someone who uses physical or sexual **violence** against her. A woman might be **deceived** into coming into the UK because she is told that she can study or work here when really those who are arranging her travel intend to force her into prostitution. A woman could also be recruited by someone who is in a **position of power over her**; this could be someone who she cannot refuse, like a powerful person in her family or community. A woman may also be recruited by abusing her vulnerable position. A person is **vulnerable** if they are more likely to be physically, emotionally, or mentally harmed or influenced than other people are. A woman may be particularly vulnerable to trafficking because she has a physical or mental health problem, because of her age or education or because she has experienced violence in the past. Where force, deception or the other 'ways' set out above are present in a particular situation, whether or not a person appears to have 'agreed' to the situation is irrelevant. For example, a woman might be deceived into coming to the UK because she is told that she has been offered a job here when really those who are arranging her travel intend to force her into prostitution. Although the woman concerned might agree to come to the UK and travel here voluntarily, her agreement does not mean that she has not been trafficked because

the deception means that her 'agreement' is not real agreement.

In addition to recruiting a person, for a particular situation to be trafficking there has to be **movement**. This could be between towns in the UK or from one country to another. A number of people could be involved in trafficking a woman. One person may recruit her, another may arrange her travel documents, another may meet her when she arrives in the UK and another may force her into prostitution.

Finally, the recruitment and movement of a woman has to be for the purposes of **exploitation**. In this legal guide we are focussing on the legal information that would be useful to a woman who has been trafficked for the purposes of **sexual exploitation**, for example, to a woman who has been forced into prostitution. However, people can be exploited in other ways, for example by forcing them to work as a servant in someone's home.

It is important not to confuse people who have been trafficked with people who choose to come to the UK illegally, like those who come to the UK to work but do not have permission to do so from the UK Border Agency (the UKBA). A woman who has been trafficked has not agreed to the situation she is in. This is because the 'ways' that are used to recruit and move women who are trafficked (for example, by force or deception) take away or prevent them from making real decisions about what is happening to them.

Women who have been trafficked may want to remain in the UK for the short or long term. Some women may want to return to their own country. This legal guide explains the law that enables women who have been trafficked for sexual exploitation to seek protection in the UK. You can, at any time, return to your country if you want to and support may be available to help you do this. You should discuss returning to your country voluntarily with your lawyer or support worker.

<sup>2</sup> Article 4 of the Council of Europe Convention on Action against Trafficking 2005 states that trafficking is: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

<sup>3</sup> Where the victim of trafficking is a child (someone who is under 18 years old), their recruitment and movement for the purposes of exploitation is considered trafficking even if this does not involve any of the 'ways' described above.

If your work might bring you into contact with women who have been trafficked it is important that you are aware of what circumstances may indicate that a woman has been trafficked.

The referral form for the National Referral Mechanism (see below) identifies the following as general indicators that a woman has been trafficked:

- she distrusts the authorities;
- she expresses fear or anxiety;
- she appears traumatised;
- she acts as if instructed by someone else;
- she has injuries consistent with assault or other controlling measures;
- there is evidence that her movement is controlled;
- she is found in, or is connected to, a place that is likely to be used for exploitation (like a brothel or ‘massage parlour’);
- her passport or documents are held by someone else;
- she has not had access to medical care;
- she has limited contact with friends, family or wider society;
- she believes that she has to work to repay a debt;
- money is deducted from her salary for food, accommodation and other things (e.g. clothes or condoms);

- she or her family has been threatened (the threats could relate to physical violence or to other things, like threats to report someone to the police or withdraw accommodation or other support);
- she is dependent on others.

It goes on to identify the following as indicators that a woman has been trafficked for sexual exploitation:

- the presence of adverts or other materials that offer women from particular ethnic, racial or national groups for sex;
- she is sleeping at her work premises;
- she is or has been moved between brothels or other premises used for prostitution;
- she has limited amounts of clothing and/or much of her clothing is ‘sexual’;
- she can only speak ‘sexual’ words in English or the local language of those who purchase sexual services;
- she has been forced, intimidated or coerced into sexual exploitation;
- she has experienced violence such as assault, abduction or rape;
- someone other than her receives the money from those who purchase sex;
- she has health problems or injuries, including sexual health problems;
- there are signs of ritual abuse and witchcraft;
- she is involved in alcohol or substance misuse.



## Trafficking case studies: Mae and Nkoyo

Mae was found by police in a brothel; she is very young, from Thailand and the only English words she knows are linked to sexual activity. Mae has bruises on her arm and appears to be very frightened of the police. Mae tells the police through an interpreter that a friend she worked with in Thailand, where she danced in a strip club, arranged for her to come to the UK. She says that she is involved in prostitution as she has to make money for her family who are in debt. She says that she came to the UK voluntarily and that she is not being forced into prostitution, although she has to give the brothel owner most of what she earns.

Mae's age, limited knowledge of English, injuries, fear of the authorities, reference to debt and payment to the brothel owner all indicate that Mae is a victim of trafficking. The fact that Mae might have been involved in the sex industry in Thailand does not mean that she cannot have been trafficked, nor does the fact that she might have known that she would be involved in prostitution when she came to the UK. This is because her reference to her family's debt and the fact that she is paying most of what she earns to the brothel owner indicates

that she is not making a meaningful choice about being involved in prostitution.

Nkoyo was brought to the UK by her husband shortly after their marriage. Her marriage was arranged by her family who were given money before the ceremony took place. She is much younger than he is and she received little education as a child. She did not know her husband before they got married. Soon after her arrival in the UK Nkoyo's husband was violent towards her and forced her to have sex with himself and his 'friends'. The 'friends' had sex with Nkoyo regularly and paid Nkoyo's husband either in cash or drugs. Nkoyo also found out that her husband lives with another woman with whom he has a child. He told her that she was not his real wife and that if she tried to leave him or go to the police he would have her put in prison.

Nkoyo's age, the arranged marriage, violence, forced prostitution and her 'husband's' relationship with another woman all indicate that Nkoyo's 'husband' trafficked her to the UK for the purposes of sexual exploitation. Trafficking does not have to be carried out by an organised crime gang or involve the 'sex industry'. Trafficking can be carried out by an individual or a family.

## The National Referral Mechanism

The **National Referral Mechanism** (the NRM) is a framework that should identify and protect victims of trafficking. The NRM was created so that the UK could meet its obligations under the Trafficking Convention.

Under the NRM, certain professionals who think that a person may be a victim of trafficking can refer that person to a Competent Authority to have their case assessed. If the Competent Authority recognises that a woman is a victim of trafficking she is given important rights, including rights to accommodation and support.

### Referring a woman into the NRM

Certain chosen organisations, called **first responders** can refer a woman into the NRM. First responders include the police; local authorities; the National Health Service (the NHS);

certain organisations who are experts on trafficking (like the POPPY Project, Migrant Helpline and Kalayaan); and certain government departments like the UKBA and the Crown Prosecution Service (the CPS).

Referring a woman involves finding out about her situation and how she came to the UK and then completing a referral form which will then be assessed by the relevant Competent Authority (see below).

A woman has to consent to be referred into the NRM. It is important that she gets legal advice at this stage so that she is able to make an informed decision about whether or not she wants to consent to referral. The referral should be done within **48 hours** of the first responder coming into contact with her.

If you work for an organisation that is not a first responder and you want a woman you are supporting to be referred into the NRM you should contact one of the first responders or the **UK Human Trafficking Centre** (the UKHTC). The information contained in the referral is the basis

of someone's claim that they have been trafficked. It is therefore important that the referral form is comprehensively completed by someone with the necessary skills and expertise.

The **POPPY Project** provides safe accommodation and support to women who have been trafficked into the UK. You can read about them here [www.eaves4women.co.uk/POPPY\\_Project/POPPY\\_Project.php](http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php) or telephone 020 7735 2062 to make a referral.

**Migrant Helpline** supports migrants in the UK, including trafficked women. You can read about them here [www.migranthelpline.org.uk](http://www.migranthelpline.org.uk) or telephone 01304 203977.

**Kalayaan** supports migrant domestic workers. You can read about them here [www.kalayaan.org.uk](http://www.kalayaan.org.uk) or telephone 0207 243 2942.

The **UK Human Trafficking Centre** co-ordinates the UK's responses to trafficking, you can read about them here [www.soca.gov.uk/about-soca/about-the-ukhtc](http://www.soca.gov.uk/about-soca/about-the-ukhtc) or telephone 0114 252 3891 for further information.

## The 'reasonable grounds' decision

The referral is to the relevant **Competent Authority**. The Competent Authority is the body that will decide whether or not a person is a victim of trafficking.

There is:

- a Competent Authority in the UK Human Trafficking Centre to assess cases where the victim is British or where there are no immigration issues. The UKHTC is based in the Serious Organised Crime Agency (SOCA).

And there are:

- linked but separate Competent Authorities in the UKBA to assess cases where trafficking may be linked to other immigration or asylum issues.

If you are trafficked into the UK and agree to be referred into the NRM your referral form and any other supporting evidence that the first responder has on your case will go to the Competent

Authority that is able to deal with it, either the UKHTC or the UKBA.

The Competent Authority will read through the referral form and any other evidence that is given to them on your case with it and should decide within **5 working days** (which can be extended if necessary) whether or not there are **reasonable grounds** for believing that you have been trafficked. When making this decision the Competent Authority will look at the definition of trafficking in Article 4 of the Trafficking Convention and see if there are reasonable grounds for believing that your case fits into this definition. The 45 day recovery and reflection period is not dependent on you reporting your traffickers to the police or co-operating with them. This means that if there are reasonable grounds for believing that you have been trafficked you are entitled to a recovery and reflection period whether or not you choose to report your experiences to the police or help them in their investigations.

If the Competent Authority finds that there are reasonable grounds for believing that you are a victim of trafficking they will grant you a **45 day recovery and reflection period**. This will involve you being given safe accommodation and support, including support with any medical or other issues that you have.

## The 'conclusive grounds' decision

Before the end of your recovery period the Competent Authority will make a 'conclusive' decision about whether or not you are a victim of trafficking. The legal test at this stage is higher than that applied at the 'reasonable grounds' stage. The question is, whether on the **balance of probabilities**, you are a victim of trafficking. The Competent Authority will look at all the evidence that is available on your case when making this decision. This could include evidence that becomes available during your rest and recovery period. This may be because you reported those who trafficked you to the police or because you received medical treatment for injuries you have received or other support.

Whether, on the **balance of probabilities** you are a victim of trafficking means that it is **more likely than not** that you are a victim of trafficking.

If you are found, on the balance of probabilities, to be a victim of trafficking a decision may be made to extend your recovery period or to grant you a 1 year residence permit. You may also be recognised as a victim of trafficking but not be given a further period of recovery or a residence permit.

You are entitled to a **residence permit** if you are recognised as a victim of trafficking and your stay in the UK is necessary because:

- of your personal circumstances; and / or,
- because you are co-operating with criminal proceedings against your traffickers.

Your personal circumstances includes things like your health and wellbeing, for example, you may want to remain in the UK for longer to enable you to complete a course of medical treatment or counselling. If you reported your traffickers or other violence that you experienced to the police you may be asked to make a formal statement to the police and tell a criminal court what happened to you. In cases like these you can apply for a residence permit to enable you to remain in the UK while the criminal case proceeds.

### **What happens if I receive a negative 'reasonable' or 'conclusive grounds' decision?**

You do not have a legal right to appeal against a negative reasonable or conclusive grounds decision. However, you can ask the Competent Authority who made the decision to **review** it. Reviewing the decision will involve the Competent Authority looking at the evidence in your case again and thinking about whether or not they have made the right decision. You can ask the Competent Authority to consider further evidence or arguments that support your case when reviewing it. Your legal representative or support worker can assist you with this.

If, after the review, the Competent Authority has still found that there are no reasonable or conclusive grounds for believing that you are a victim of trafficking you may be able to challenge this decision by **judicial review**. Judicial review involves challenging the Competent Authority's decision and the way that it was made in a court. The court can look at how the Competent Authority made its decision in your case and

whether or not that decision was reasonable. You can discuss applying for a judicial review of the Competent Authority's decision with your legal representative.

If you have been trafficked into the UK, depending on where you come from and the circumstances of your case, you may be able to remain in the UK under European law or by making an application for asylum or human rights protection. Your legal representative should discuss with you other rights that you may have or applications that you can make to remain in the UK, as well as explaining your rights under the NRM. You can be referred into the NRM and make another application to remain in the UK at the same time.

## **The European Economic Area**

Women who come from other countries in the **European Economic Area** have important rights to enter and remain in the UK, to work and to be able to access housing support and other welfare benefits.

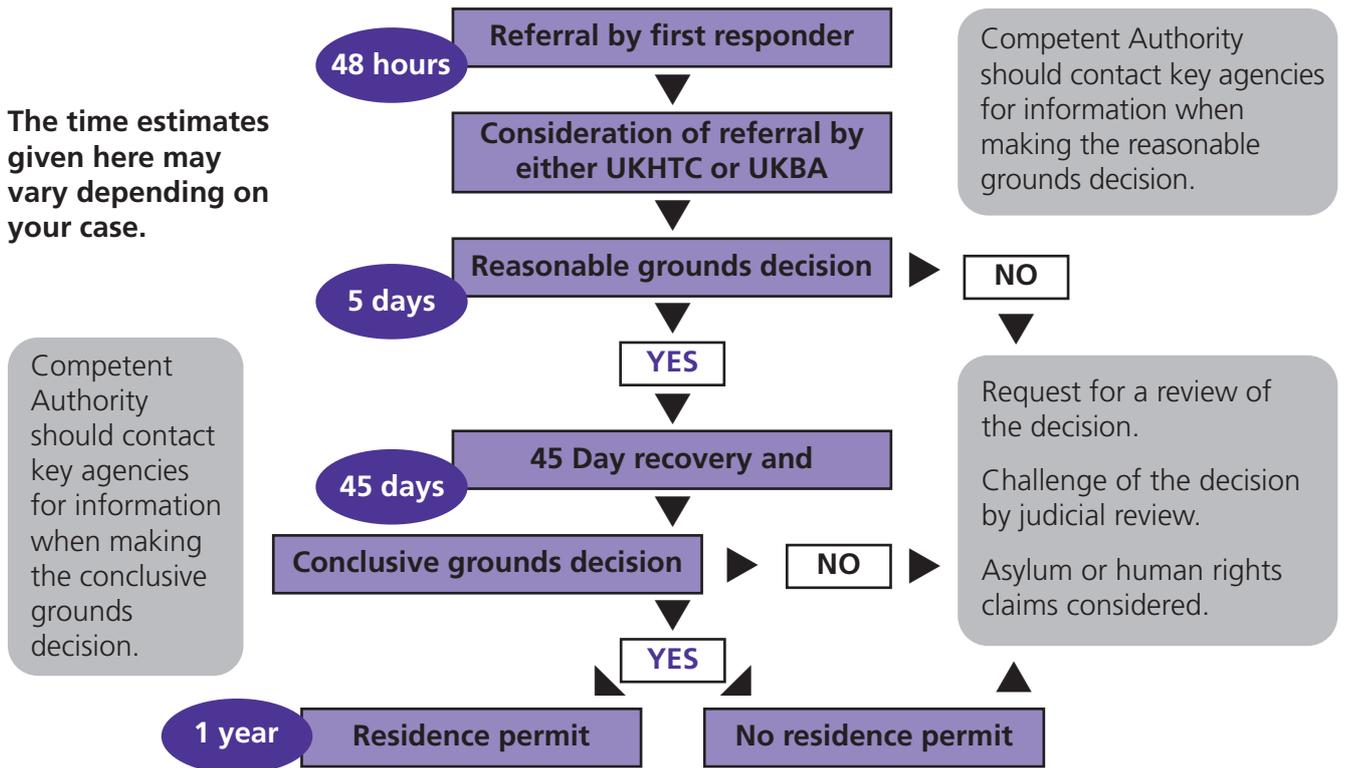
The **European Economic Area** is the European Union (EU) (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, the Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) and three other countries that while not being members of the EU, are treated in a similar way. These countries are Iceland, Norway and Liechtenstein. Switzerland is not a member of the EU or EEA but it is treated as if it is.

The Regulations that bring the Citizen's Directive<sup>4</sup> into UK law refer to all of these people as 'EEA nationals' and gives them important rights in the UK.

If you are from another EEA country you have free-movement rights which give you a right of entry to the UK. You also have rights under European law to (among other things) work, seek

<sup>4</sup> The Immigration (European Economic Area) Regulations 2006 implement the Citizen's Directive, Directive 2004/38/E, which came into force in the UK on 30 April 2006.

## Flowchart of the National Referral Mechanism



work, offer or receive services (such as healthcare) and study in the UK. If you have been trafficked into the UK and you are from another EEA country you can remain here by using these rights. You might also be able to apply for welfare benefits and housing support.

For further information about your rights under European law contact the **AIRE Centre**. Visit [www.airecentre.org](http://www.airecentre.org) or contact their legal advice line on **020 7831 3850**. The AIRE Centre advice line is open between 2pm- 5pm on Tuesdays and Thursdays.

However, in order to be able to receive certain welfare benefits or housing support you will have to meet the relevant eligibility requirements. For example, in order to be able to receive benefits like income support and housing benefit you have to be habitually resident in the UK and pass something called the habitual residence test. To find out more about your rights to get welfare benefits or housing support you can contact our legal advice line (details are given at the end of this information sheet), a Citizen's Advice Bureau or your local law centre.

**Citizens Advice Bureaux** provide people with information and advice on a range of issues, including welfare benefits. Visit [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) to find your local Bureau.

**Law Centres** provide people with legal advice and representation on a range of issues. Visit [www.lawcentres.org.uk](http://www.lawcentres.org.uk) to find your local law centre.

The eligibility rules for getting certain welfare benefits and housing support results in some people from other EEA countries who live in the UK being unable to receive them. Women in this situation may want to apply for a residence permit under the National Referral Mechanism (see above) because a residence permit gives the person who has it the right to receive welfare benefits and housing support.

# Refugee law and the European Convention On Human Rights

## Protection from harm in the UK

Women who have been trafficked may face harm from their family, community or the people that trafficked them if they were to be returned to their own country.

Women may fear harm from their traffickers because they have escaped them or because they have been in contact with the police. Women who have been trafficked may fear harm from their family or community. This is because in some countries and cultures experiencing sexual violence, being exploited in prostitution or having been trafficked is considered unacceptable and shameful. Women may be harmed in their country for a number of reasons, including, in some cases, just because they are women. Women at risk of such harm, whether from their traffickers, family or community, may not be able to seek protection from the police or the authorities in their home country, or be able to live separately from those who could harm them in another part of their country.

If you fear that if you were returned to your own country you would face serious harm you can make an application for **asylum** in the UK. A claim for asylum is a claim for protection under either the **Refugee Convention** or Article 3 of the **European Convention on Human Rights** (the right to be free from torture, inhuman or degrading treatment).

Claims for asylum are decided by case-owners in the UK Border Agency. Decisions of the UK Border Agency can be appealed against to an independent Tribunal. Asylum-seekers are entitled to receive financial and other support while their claim is decided. Women who make successful claims for asylum may be given either Refugee Leave or Humanitarian Protection for 5 years, depending on their case. For further information about asylum law and making a claim for protection in the UK see Rights of Women's **Seeking Refuge? A handbook for asylum seeking women**.

### Example of a case: AZ (Trafficked women) Thailand CG [2010]<sup>5</sup>

AZ was brought to the UK from Thailand by M, a man she thought was her boyfriend. On her journey to the UK M took AZ's passport from her. A few days after her arrival in the UK M forced AZ into prostitution.

After AZ escaped she attempted to return to Thailand using a passport that was given to her to use when she was forced to have sex with men in hotels. AZ was arrested trying to do this and was prosecuted for using a false document (see below for information about trafficked women being prosecuted for immigration offences). AZ was transferred to immigration detention when she had served her prison sentence and plans were made to send her back to Thailand. She then said what had happened to her and she was released and given safe accommodation and support. AZ then claimed asylum.

AZ's asylum claim was refused by the UK Border Agency and she appealed against this decision. In its refusal the UK Border Agency argued that AZ would be safe in Thailand because:

- she had tried to go home herself;
- her trafficker appeared to be her boyfriend; and,
- that there were places she could go to in Thailand where she would be safe.

The Tribunal who heard AZ's appeal disagreed with the UK Border Agency and gave her Refugee Leave. The Tribunal found that:

- women who had been trafficked from Thailand could be protected under the Refugee Convention;
- some victims of trafficking from Thailand may face harm if they were returned there. Whether or not a particular woman would be harmed would depend on facts like her age, education and whether she had family who could help her; and,
- while Thailand had laws on trafficking, corruption had weakened these.

<sup>5</sup> AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC)

## Private and family life in the UK

If you have been trafficked you may have a child who is born in the UK or you may have formed a relationship with someone who lives here. You may want to remain in the UK because of your physical or mental health or wellbeing. Women in this position may also be able to apply for permission to remain in the UK on the basis of Article 8 of the **European Convention on Human Rights**. This article says that everyone has the right to respect for her or his private and family life.

Respecting private and family life means that public authorities (for example, the UKBA) can only interfere with these rights if they are allowed to by law, and only where it is necessary for certain good reasons. Your family life means your relationships with your children or other family members, like boyfriends or partners, who are in the UK. Article 8 will also cover the family life of any children that you have. Your private life means your personal life and includes things like your work, studies and your privacy. It can also include your mental and physical health and well being.

If you make an application to remain in the UK on the basis of your (and / or your children's) Article 8 rights the UK Border Agency will first have to decide whether or not you do have private and family life here and then whether or not it would be possible for you to have that private and family life in your own country. The decision-maker will consider not only how your private and family life would be affected by your return to your own country, but also how any family that you have in the UK would be affected by your return.<sup>6</sup>

In Article 8 cases the decision-maker in your case has to balance your rights to respect for your privacy and family life against the needs of the UK to exercise immigration control. This means that they have to look at the effects on you and any family that you have of a decision to remove you. The courts are unlikely to agree with decisions which have the effect of separating parents from their children or breaking up other significant relationships.<sup>7</sup>

Women who make applications to remain in the UK under Article 8 may be given 3 years Discretionary Leave to remain in the UK. For further information about Article 8 see Rights of Women's **Seeking Refuge? A handbook for asylum seeking women**.

### Family life case study: Xao Ling and Richard

Xao Ling was trafficked into the UK from China for the purposes of sexual exploitation. After a number of months of being forced into prostitution she was able to escape and seek protection from a specialist women's organisation. Xao Ling's case was referred into the National Referral Mechanism and she was found to be a victim of trafficking and was given a 1 year residence permit to enable her to receive medical treatment. During that year she met Richard and formed a relationship with him. Xao Ling did not tell Richard everything that had happened to her while she had been trafficked, but her relationship with him was very important to her.

When her residence permit comes to an end Xao Ling can ask for it to be renewed and / or for permission to remain in the UK because of her family life with Richard. When deciding whether or not she should be given Discretionary Leave the UKBA would have to consider the effect of returning Xao Ling on both her and Richard.

You can download **Seeking Refuge? A handbook for asylum seeking women** from here  
[www.rightsofwomen.org.uk/legal.php](http://www.rightsofwomen.org.uk/legal.php)

You can find out more about trafficking and immigration and asylum law by visiting the **Anti-Trafficking Legal Project's** website at  
[www.ein.org.uk/resources/printfriendly2.shtml?x=227892](http://www.ein.org.uk/resources/printfriendly2.shtml?x=227892)



<sup>6</sup> *Beoku-Betts v SSHD [2008] UKHL 39*

<sup>7</sup> *See the comments of Baroness Hale at paragraph 50 in R v. SSHD ex parte Razgar [2004] UKHL 27*

# Criminal Law

## Reporting trafficking and sexual offences to the police

Those who traffic women into the UK for the purposes of sexual exploitation are committing serious criminal offences. The **Sexual Offences Act 2003** makes it an offence to:

- Traffic a person into the UK for sexual exploitation (section 57).
- Traffic a person out of the UK for sexual exploitation (section 59).
- Traffic a person within the UK for the purposes of sexual exploitation (section 58).

The maximum sentence for these offences is 14 years imprisonment although higher sentences have been given in cases where traffickers have committed further offences, for example, by forcing women into prostitution.

The decision to report trafficking or experiencing sexual violence to the police is a difficult one for many women. Rights of Women has produced a book for women called **From Report to Court: A handbook for adult survivors of sexual violence** which explains how sexual offences are investigated and what happens when cases go to court. We have also written two shorter legal guides that might help you **Reporting an Offence to the Police: A Guide to Criminal Investigations** and **From Charge to Trial: A Guide to Criminal Proceedings**.

Rights of Women’s legal guides and **From Report to Court: A handbook for adult survivors of sexual violence** are available to download free of charge from our website [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

## Criminal proceedings against trafficked women

A woman who has been trafficked into the UK may be investigated or prosecuted herself if a false or forged document was used to enable her to enter or attempt to leave the UK, or if she is found by the police to have such a document.

Women who have been trafficked may commit the following immigration offences while they are being controlled by their trafficker:

- using a false instrument (such as a false passport or identity card) under section 3 of the **Forgery and Counterfeiting Act 1981**;
- having a forged passport or other documents under section 5 of the **Forgery and Counterfeiting Act 1981**; or,
- failing to have a travel document at a immigration or asylum interview under section 2 **Asylum and Immigration (Treatment of Claimants) Act 2004**.

Women who have been trafficked into the UK should not be prosecuted for immigration offences that they commit when they are being controlled by their trafficker. The Crown Prosecution Service has developed guidance which states that where there is evidence that a woman is a ‘credible’ (believable) victim of trafficking it is not in the public interest to prosecute her (take her to court).

The CPS Guidance **Prosecution of Defendants charged with offences who might be Trafficked Victims** can be read [here](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a29)

If you are being investigated or prosecuted for an immigration offence it is very important that you get legal advice and representation from a **criminal defence solicitor**. You can find a criminal defence solicitor by contacting **Community Legal Advice**. You can also contact Rights of Women for advice. Details of Community Legal Advice and our advice lines are given at the end of this guide.

If a woman you are supporting is having action taken against her for an immigration offence you should ensure that she is legally represented and draw her legal representative’s attention to the CPS guidance and the National Referral Mechanism.

If, like AZ (see above), you were convicted of an immigration offence because of your trafficking situation you may be able to appeal against that

conviction (argue at a higher court that you should not have been convicted of the offence). You can discuss appealing against convictions with an advisor on our legal advice line or with a criminal defence solicitor.

## Compensation

If you have been trafficked you are a victim of crime and you may be entitled to receive compensation from the Government or from your traffickers.

The **Criminal Injuries Compensation Scheme 2009** is a Scheme set up by the Government to enable victims of crime to be compensated for any injuries they have received. The Scheme is run by the **Criminal Injuries Compensation Authority** (the CICA).

The **Criminal Injuries Compensation Scheme 2009** is run by the **Criminal Injuries Compensation Authority** (the CICA). Victims of crime in England and Wales can apply to the CICA for compensation in certain circumstances. For further information visit [www.cica.gov.uk](http://www.cica.gov.uk) or telephone **0800 358 3601**.

To be able to receive compensation from the CICA you must have reported the traffickers and any violence you experienced to the police within two years of escaping your trafficking situation (this can be extended in some circumstances). You also have to help the police with their investigation, including, if necessary, telling a court what happened to you. Your traffickers do not have to be arrested or convicted for any offence for you to be able to receive compensation. You just have to report the offences and help the police. Women who have been trafficked have been successful in getting compensation for what they experienced from the CICA.



MM was trafficked into the UK from Romania and forced into prostitution. She was unable to escape from her traffickers for three years. After MM had escaped and was in a place of safety she decided to report her traffickers to the police and help them investigate her case. She later applied for compensation from the CICA. MM received £22,000 for the sexual violence she had experienced over the three years she had been forced into prostitution and £40,000 for the earnings and opportunities she lost as a result of being trafficked.

The amount of money a person who has been trafficked into the UK may receive will depend on the facts of their case.

In addition to compensation from the CICA, a woman who has been trafficked may want to take her traffickers to the civil courts for damages for the harm she has experienced. If she has reported her traffickers to the police and they are being prosecuted, she may want the judge dealing with her case to make an order that her traffickers pay her compensation, in addition to any other punishment that they receive. If a trafficked woman is unlawfully detained or not treated as she should be in detention, or if the police or CPS fails to investigate and prosecute her case properly, she may be entitled to damages under the **Human Rights Act 1998**.

For further information about compensation see Rights of Women's legal guide **A Guide to Criminal Injuries Compensation** or seek legal advice.

If you are supporting a woman who has been trafficked see:

- Rights of Women's legal guide **A Guide to Criminal Injuries Compensation** which is available to download from [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk); and,
- Eaves' POPPY Project and Anti-Slavery International's guide for professionals on trafficking and compensation **Rights and Recourse - A guide to Legal Remedies for Trafficked Persons in the UK** which can be ordered from Eaves by emailing [post@eaveshousing.co.uk](mailto:post@eaveshousing.co.uk) or telephoning **020 7735 2062**.

The law relating to trafficking is complex; in this legal guide we have only provided a basic overview of the relevant law and procedure. We would strongly advise you to seek legal advice.

The law explained in this legal guide is as it stood at the date of publication. The law may have changed since then so you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

For free legal advice on sexual violence, criminal, immigration and asylum issues please call **020 7251 8887 (telephone) or 020 7490 2562 (textphone)**. The advice line is open on **Mondays 11am-1pm** and **Tuesdays 10am-12 noon**.



## Other useful contacts

**AIRE Centre**  
**020 7831 3850**

(the legal advice line is open between 2pm- 5pm on Tuesdays and Thursdays)

[www.airecentre.org](http://www.airecentre.org)

**Community Legal Advice**  
**0845 345 4345**

(for finding a publicly funded family or immigration solicitor)

[www.communitylegaladvice.co.uk](http://www.communitylegaladvice.co.uk)

**Immigration Lawyers Practitioners Association**

(for information about immigration and asylum law through their 'Info Service' and to find an immigration lawyer).

[www.ilpa.org.uk](http://www.ilpa.org.uk)

**Kalayaan**

(support for migrant domestic workers)

**0207 243 2942**

[www.kalayaan.org.uk](http://www.kalayaan.org.uk)

**Migrant Helpline**

(support for migrants)

**01304 203977**

[www.migranthepline.org.uk](http://www.migranthepline.org.uk)

**POPPY Project**

(accommodation and support for trafficked women)

**020 7735 2062**

[www.eaves4women.co.uk/POPPY\\_Project/POPPY\\_Project.php](http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php)

**UK Human Trafficking Centre**

**0114 252 3891**

[www.soca.gov.uk/about-soca/about-the-ukhtc](http://www.soca.gov.uk/about-soca/about-the-ukhtc)

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Part of the Rights of Women Toolkit

Funded by Comic Relief