



# KALAYAAN

justice for migrant domestic workers

## **Briefing for Second Reading of Modern Slavery (Victim Support) Bill in the House of Lords**

September 2017

The Modern Slavery (Victim Support) Bill will have its second reading in the House of Lords on 8 September 2017. This bill provides assistance and support to potential and recognised victims of trafficking (in England and Wales) and addresses the lack of ongoing support once a victim has been formally recognised by the UK authorities. It will ensure that victims are guaranteed support and protection, prevent risk of further harm, exploitation or re-trafficking and help in bringing perpetrators to justice.

Kalayaan is a member of the Anti Trafficking Monitoring Group and supports the views expressed in their briefing on the bill. This briefing highlights current gaps in protection faced by migrant domestic workers once they are conclusively determined to be a victim of trafficking or modern slavery.

### **Identified to then be abandoned**

As a recognised first responder, Kalayaan is able to refer migrant domestic workers whom we have identified as trafficked and who consent to such a referral into the National Referral Mechanism, the framework used in the UK to identify and provide support to potential victims. We provide long term support and will assist domestic workers whilst they are in the NRM waiting for a decision and once they have been conclusively identified as a victim.

The vulnerabilities that victims present with do not diminish once they have been identified and issued a conclusive grounds decision. They continue to require support and protection. For many of Kalayaan's clients who have been kept hidden by their employer, abused and exploited, the support they receive whilst they wait to be formally recognised is the start of their recovery. After being recognised as a victim, it can be very difficult for our clients to navigate various government systems and access support. For some, English is not their first language and they are not familiar with how different systems work and how issues may feed into one another. Our clients present with numerous issues including delays in issuing documents, housing, welfare support, opening bank accounts and applying for National Insurance numbers. Victims may also be cooperating with a criminal investigation or have other ongoing legal matters including employment and compensation claims.

Recognition as a victim of trafficking does not automatically result in a grant of leave to remain in the UK. Currently, there are 3 possible outcomes for overseas domestic workers who are referred to the NRM and issued a positive conclusive grounds decision:

1. Accepted as a victim of trafficking but granted no leave

2. Granted Discretionary Leave to remain (normally for minimum of 12 months and no more than 30 months)
3. Application for leave to remain in the UK as a domestic worker

The current version of the Competent Authority guidance provides that a grant of discretionary leave to remain will automatically be considered following a positive conclusive grounds decision on the grounds of a victim's compelling personal circumstances, their co operation with the police or because they are pursuing compensation.<sup>1</sup> There is confusion about what constitutes 'particularly compelling personal circumstances' and Kalayaan has had sight of a number of negative trafficking decisions that fail to acknowledge that most victims will have ongoing personal circumstances requiring a continued need for support.

Once a victim is formally recognised, there is no automatic entitlement to ongoing assistance or practical support. Victims receiving outreach support or safe accommodation under the contract administered by the Salvation Army are given just 14 days to exit the service. This is not enough time to ensure that victims are adequately supported and referral pathways are made to appropriate services to help victims start to rebuild their lives. This is also insufficient time to seek advice on challenging a decision not to grant discretionary leave to remain. This results in an unacceptable situation where victims are recognised but then abandoned. In some cases this has left victims destitute, homeless and at risk of being re-trafficked or entering back into exploitative working and living arrangements as means to survive.<sup>2</sup>

### **Applying for leave to remain as a domestic worker who has been determined to be a victim**

If the Home Office issues a positive conclusive grounds decision to a domestic worker but considers they do not fall for a grant of discretionary leave, it is open to the victim to apply for leave to remain in the UK as a domestic worker. Home Office guidance provides that this information should be included in the conclusive grounds decision letter<sup>3</sup> however Kalayaan has noted that this has been absent in letters received by our clients (instead contact information is provided for help and advice on returning home).

Section 53(1) of the Modern Slavery Act 2015 provides that the Immigration Rules must make provision for leave to remain in the UK to be granted to a domestic worker who has been determined to be a victim of slavery or human trafficking. This leave is restricted to work as a domestic worker, without recourse to public funds. Section 53 was implemented in changes to the Immigration Rules laid before parliament on 17 September 2015 and provided that leave would be granted for a period not exceeding 6 months<sup>4</sup>. Amendments made to these rules came into force on 6 April 2016 which increased this period to 2 years. This increase was part of the government's response to the independent review of

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<sup>1</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

<sup>2</sup> The same reality is faced by victims issued a negative conclusive grounds decision. They are given 48 hours to exit the service which is insufficient time to seek advice about challenging the decision.

<sup>3</sup> See page 120:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461331/51191\\_hc\\_437\\_immigration\\_rules\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461331/51191_hc_437_immigration_rules_accessible.pdf)

the domestic worker visa which was published in December 2015.<sup>5</sup> There are no figures to confirm how many domestic workers have applied and been granted leave under this provision.<sup>6</sup>

A domestic worker has 28 days from the date of their positive conclusive grounds decision to apply for leave to remain. Applicants do not need a job when they apply for leave but victims must provide evidence of their finances and how they plan to maintain and accommodate themselves without recourse to public funds. This will prove nigh impossible for those who have been residing in safe house accommodation, have not had permission to work whilst a decision on their trafficking claim was under consideration<sup>7</sup> and are without references. Given that domestic workers will not know when a decision can be expected or what that decision will be, they will not be in a position to start searching for work and speaking with prospective employers. The concern is that victims will be pressurised or forced into accepting work offered to them within 14 days to avoid becoming destitute. Kalayaan also anticipates that prospective employers will not hire a domestic worker until they are issued with their visa evidencing their permission to work so there is a further period of uncertainty whilst domestic workers wait for their documents to be processed by the Home Office. Equally it is unclear whether the Home Office will issue the visa before a job has been secured.

Competent Authority guidance further states:

*Applications under this Immigration Rule will not be considered by the Home Office Competent Authority but Temporary Migration caseworkers in Sheffield. The relevant team in Sheffield will, when in receipt of an application under the new Rules, check with the Competent Authority that the latter has no outstanding action in respect of the applicant such as an outstanding NRM decision, discretionary leave decision or asylum decision before processing the application.*<sup>8</sup>

This means that a domestic worker who has been recognised as a victim of trafficking but not granted discretionary leave will need to wait for a decision on their outstanding asylum claim before their application is processed. They face an indeterminable length of time waiting, are no longer eligible for support from the Salvation Army and do not have permission to work.

In contrast, a victim of trafficking who has been granted discretionary leave to remain and has an outstanding asylum claim, has permission to work and to access mainstream support and benefits (notwithstanding the issues they face in waiting for their documents to be processed and applying for support all within 14 days). They can be recognised as a refugee during their period of discretionary leave or submit an application to extend their leave if a decision on their asylum case remains outstanding.

Kalayaan is supporting a number of clients who have applied for leave as a recognised victim of trafficking and have outstanding asylum decisions. Many of them are not able to demonstrate that they are able to maintain and accommodate themselves because they have not had permission to work and

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<sup>5</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-03-07/HLWS568/>

<sup>6</sup> Home Office response to FOI request – reference 44613

<sup>7</sup> The Immigration (Variation of Leave) Order 2016 provides permission to work only to domestic workers issued a positive reasonable grounds decision during the currency of their original 6 month visa on which they were admitted to the UK. If they are issued a positive reasonable grounds decision after their visa expires, they do not have permission to work whilst their trafficking claim is being considered.

<sup>8</sup> Page 120:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

See also page 5: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/607256/ODWS-victims-of-slavery-hum-traff-v4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607256/ODWS-victims-of-slavery-hum-traff-v4.pdf)

won't have this until their application is successful. Some have been reliant on support from the Salvation Army and following the withdrawal of this support after 14 days, end up reliant on NASS or the good will of charities to support them. For those not eligible for NASS or not in contact with charities, victims will be left in positions of destitution or reliance on others leaving them at risk of re-exploitation.

### Case studies

**'Nerita'** comes from a poor family who are reliant on her for remittances to pay for basic essentials like rent, food and clothing. Since Kalayaan referred her to the NRM she has been supported by charities providing her with accommodation and a minimal amount of money each week. She was recognised as a victim of trafficking but not granted discretionary leave to remain. The conclusive grounds decision letter failed to inform her that she had the right to apply for leave in the UK as a domestic worker who had been determined to be a victim of trafficking.

Nerita has an outstanding asylum application. She did not have permission to work whilst her trafficking claim was being considered by the Home Office. She has provided letters from the 2 charities supporting her as evidence that she can maintain and accommodate herself however her application will not be processed until a decision has been made on her claim for asylum.

**'Julia'** was provided support by the Salvation Army whilst she awaited a decision on her trafficking claim. She was issued a positive conclusive grounds decision but was not granted discretionary leave to remain which is being challenged by Judicial Review. Julia was exited from support by the Salvation Army after 14 days. She is staying amongst friends in the community but they cannot provide her with any financial support. Because Julia is not able to meet her essential living needs, she has applied for subsistence support as an asylum seeker.

**\*Names have been changed**

Kalayaan is concerned that this regime places recognised victims of trafficking in positions of destitution and danger when they should be provided with support and protection and a reasonable chance to look for decent work. The option to apply for leave to remain as a domestic worker as a recognised victim of trafficking leaves them either at risk of becoming homeless and destitute in 14 days or for those with outstanding asylum cases, institutionalises their poverty and dependency on the state (NASS) or charitable support by denying them the right to work.

The independent review into the domestic worker visa shared the same concern:

*The Government should nonetheless give consideration to the interaction between this 'no recourse to public funds' condition, which would remain in effect even under the provisions of s.53 upon a conclusive grounds decision of the NRM, and the effect of a residence permit granted on the basis of discretionary leave, for example to a victim who is helping police with their enquiries. Such leave does permit the recipient to have recourse to public funds. **In circumstances of such extreme abuse as to result in a positive conclusive grounds decision, recourse to public funds is plainly appropriate as victims may well require more than another job to aid their recovery.** The provisions of s.53 should be amended accordingly. A possible model for such an*

*amendment is the Destitution Domestic Violence Concession granted to victims of domestic violence, which gives access to public funds for a limited period.<sup>9</sup>[Emphasis added]*

The recent Work and Pensions inquiry into Modern Slavery also recommended that all recognised victims of trafficking be granted at least one year's leave to remain with recourse to benefits and services, and noted that support should be tailored to individual need:

*75.The Government has already recognised that victims of domestic violence need additional support because of the traumatic experiences through which they have lived. The reasons for treating domestic violence victims differently in the benefits system also apply to victims of modern slavery. **DWP should introduce a Jobseeker's Allowance easement and a concession for modern slavery victims, similar to those for victims of domestic violence.***

*76.Louise Gleich said that some victims may not need or want to rely on benefits and would be "desperate [to] work". In these cases, she said their support should be geared towards helping them into work:*

*For many that was their inspiration that led them into the deception and the trafficking. But for them to access work they may need support, they may need language skills, they may need some coaching and some sort of pre-employment support.*

...

*79.It is encouraging that the Government exceeds its treaty obligations to potential victims of modern slavery by offering a 45-day period of reflection and recovery. Unfortunately it will often take victims much longer to start putting their lives back together and there is very little structured support for confirmed victims once they have been given a Conclusive Grounds decision. The Survivor Care Pathway in Wales has demonstrated that ongoing victim support can assist with both the rebuilding of lives and the successful investigation of modern slavery offences. We recommend that all victims of modern slavery be given a personal plan which details their road to recovery and acts as a social passport to support for at least the 12 month period of discretionary leave. This should be available nationwide. Confirmed victims of modern slavery should not be required to leave safe house accommodation until a plan for their ongoing support has been implemented.<sup>10</sup>*

## **The Modern Slavery (Victim Support) Bill**

This bill will ensure that domestic workers who have been recognised as victims of trafficking are given the support they need to recover and move forward with their lives. The bill does this in 2 ways:

1. A domestic worker is provided with support from the point they are referred into the NRM<sup>11</sup>
2. Creates a statutory duty for all confirmed victims of trafficking to be granted discretionary leave for at least 12 months with access to benefits and services to facilitate their recovery and rehabilitation, thereby ensuring continuity of care and a period of stability

<sup>9</sup> Paragraph 112:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_6\\_11\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15.pdf)

<sup>10</sup> <https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/80307.htm>

<sup>11</sup> Currently, support is provided once a victim is issued a positive reasonable grounds decision

The current legislative framework and administrative system is continuing to fail domestic workers who have been determined to be a victim of trafficking in spite of recent provisions. They remain at risk of becoming homeless or destitute with no support and have their poverty maintained whilst they are denied the right to work. A positive conclusive grounds decision should carry status and meaning for a victim. This bill will ensure that domestic workers, along with other recognised victims of exploitation, will be safe and protected and avoid risk of further harm, exploitation or re-trafficking.

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