

Considering status when representing EEA nationals

Part A

For representatives, advocates, support workers, and agencies working with victims of trafficking

Myth: My client doesn't need immigration advice; they are an EEA national.

Truth: In the UK, EEA nationals do not enjoy automatic residence rights and recourse to public funds, unless they are exercising their EEA treaty rights (and can prove this). Unfortunately, this has meant that numerous victims who are EEA nationals, and who are unable to work, face destitution on exiting the NRM, and even deportation.

In order to ensure the option of longer-term state support for victims, and to mitigate the risk of destitution and deportation, those assisting victims who are EEA nationals should refer them for immigration advice as soon as possible.

An immigration solicitor will be able to advise the individual of their options, for example a grant of leave to remain, such as discretionary leave or indefinite leave under the EU Settlement Scheme. Victims of trafficking with either a Reasonable Grounds or Conclusive Grounds decision are entitled to legal aid for such advice, and legal aid providers can be found here: <https://find-legal-advice.justice.gov.uk/> or on the Law Society's website. With a grant of discretionary leave to remain or indefinite leave to remain victims have recourse to public funds (such as housing benefit and universal credit) and are eligible for state health services.

In the Brexit era it is even more important that EEA nationals receive legal advice about their options. However, there are significant challenges to obtaining that advice. In the current legal aid climate it is increasingly difficult to find an immigration solicitor who has capacity and/or the expertise to advise victims. Further, there is no guarantee that a victim will be eligible for a grant of leave and/or that their application will be processed within a reasonable time period.

However, this doesn't automatically mean the victim is ineligible for support. Housing and welfare representatives, advocates, support workers, and agencies need to explore whether their EEA national client enjoys status, including as a 'worker' or 'retained worker', and are therefore eligible for state support without a grant of leave. Further, this should be explored as soon as possible, so that clients' do not risk losing status, as timing is important. In our experience, if you think your client could have 'worker' or 'retained worker status', you have to make this extremely clear to the relevant decision maker, especially as victims frequently lack vital evidence to support the assertion they have status, such as pay slips, due to their exploitation.

For a quick recap, an EEA national is exercising their treaty rights if they are working (they have worker status). However, they can also **retain** their worker status, if:

- 1) They are temporarily unable to work due to illness or accident;¹ or
- 2) They are involuntarily unemployed and registered as a job seeker. Worker status is retained for up to 6 months if their time in employment was less than a year, and longer if the

¹The Immigration (European Economic Area) Regulations 2016, Section 6 (2)(a)

employment was for longer than a year. Further, the person needs to demonstrate that they have a genuine chance of getting a job in the future.²

It's slightly more complex than this, but that's another blog in itself.

So what does this look like in practice?

Example A, Universal Credit: when an EEA national makes an application for Universal Credit, before an award is made, a decision maker will first consider whether the individual satisfies the Habitual Residence Test (HRT).³ Representations and/or evidence should be presented to the DWP in order to show the client has worker/retained worker (or other) status and has therefore satisfied the right to reside element of the HRT.

Example B, Housing: When presenting as homeless to a local authority, the housing officer will make an assessment as to whether the person has a right to reside and is therefore 'eligible' for housing assistance under the Housing Act 1996. Again, representations and/or evidence should be presented to the local authority in order to show the client has worker/retained worker status and is therefore eligible for support.

My next blog talks about the complexities for victims in evidencing status, whether it be retained worker or any other alternative status, and arguments that can be raised.

Please note this blog post does not constitute immigration advice and is not intended to be used and/or distributed as immigration advice

² The Immigration (European Economic Area) Regulations 2016, Section 6 (2)(b), (2)(c) and (3)

³ Technically if you are a 'worker' or 'retained worker' you are exempt from the HRT (UC Reg 9(4) UC Regs). However, in practice, the DWP does not consider if you are exempt and administratively the same format of the HRT is used.