

Legal perspectives on the asylum and immigration process and on healthcare entitlements

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Outline

- Refugees and asylum
- The asylum process
- Resettlement programmes
- Difficulties faced during the asylum process
- Victims of trafficking and modern slavery
- Entitlements and access to NHS healthcare
- Useful references

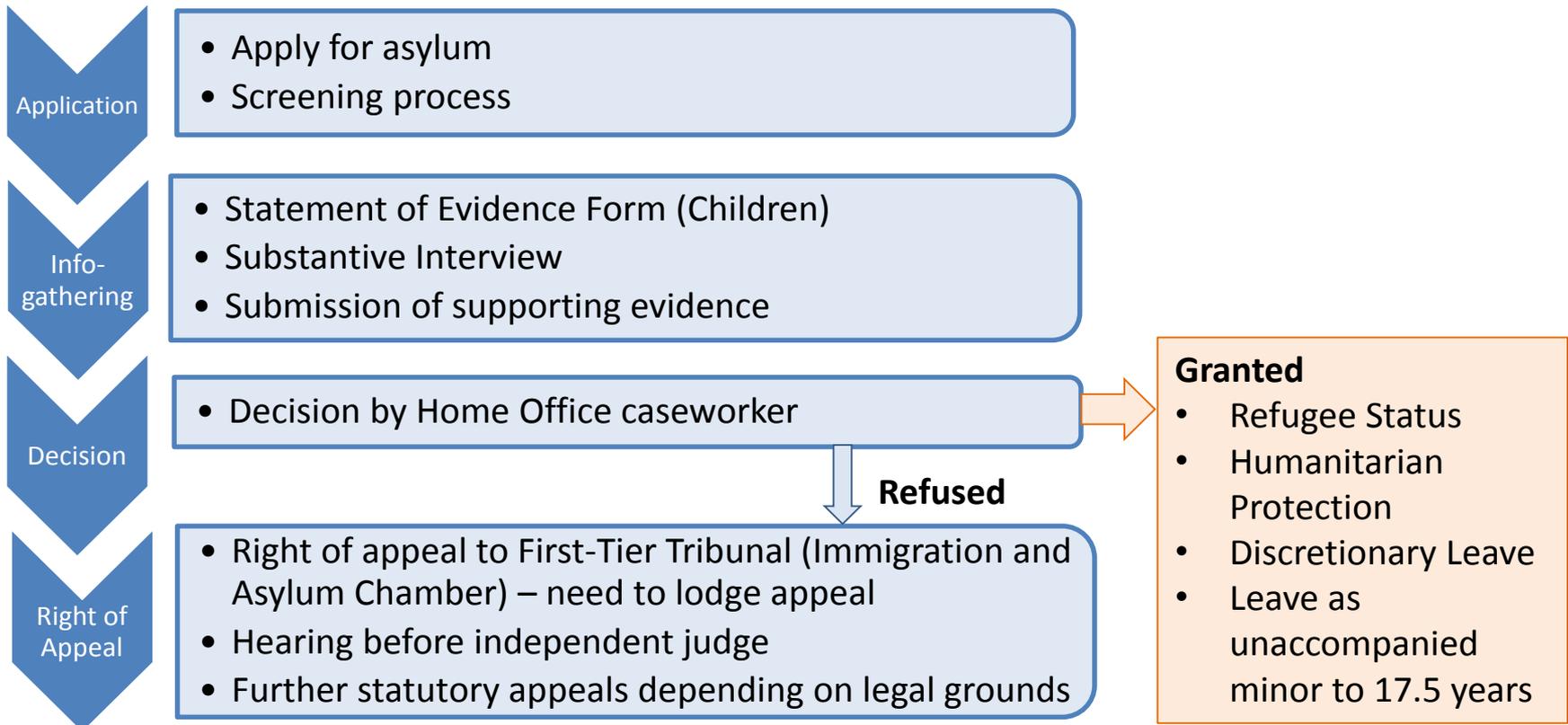
Seeking asylum

- Application for protection may be made in UK under:
 - 1951 Refugee Convention
 - "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country";*
 - Article 2 of 1950 European Convention on Human Rights protecting the right to life; and/or
 - Article 3 of 1950 European Convention on Human Rights prohibiting torture, inhuman or degrading treatment or punishment.
- Criteria explained and expanded in case law

Legal advice

- Important to have good quality legal advice and representation during the process
- Legal aid available for advice on asylum
- Criminal offence to give immigration advice if not a qualified person under s.84 Immigration and Asylum Act 1999

The Asylum Process



'Failed asylum seekers' supported by Home Office/local authority:

- Eg. Made further submissions to Home Office
- Eg. Genuine obstacle to leaving the UK
- Eg. Families at the end of the asylum process

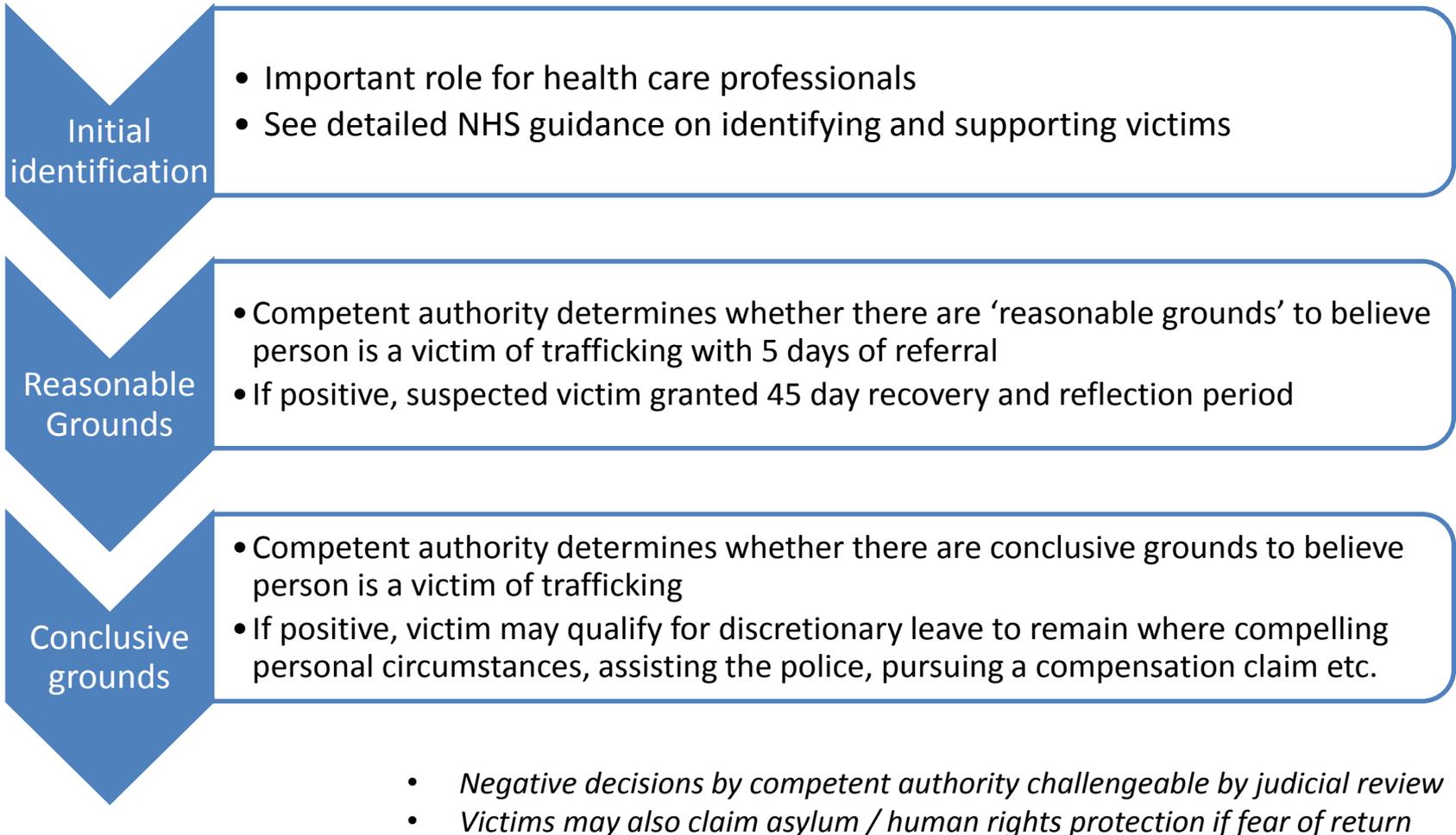
Difficulties during the asylum process

- Trust and disclosure
- Treatment of asylum claim
- Access to services and language barriers
- Fears for family members in country of origin
- No permission to work
- Poverty due to low level of financial support
 - Home Office support approx. 50% Income Support
- Poor quality accommodation, dispersal, isolation
- Reporting requirements

Resettlement programmes

- Examples
 - Gateway Protection Programme (approx. 750 people per year)
 - Syrian Vulnerable Person Protection Scheme (20,000 people over next 5 years)
- Identified to Home Office by UNHCR outside UK
- People with particular vulnerabilities or needs
- Status granted on arrival by Home Office (eg Refugee Status, Humanitarian Protection)
- Support services co-ordinated by local authority

Victims of trafficking and modern slavery



NHS services free at the point of use

- Primary care services
- Accident and Emergency (A&E) services
- Services exempt from charging
- Services for exempt categories of people
 - Including refugees, those with humanitarian protection, asylum seekers, suspected victims of trafficking, and their dependants
- Immediately necessary care

Primary Care Services

- Not chargeable
- Includes primary medical services:
 - GP services
 - Mental health services etc
 - Walk-in services
- And normal NHS charges and exemptions for:
 - Primary dental services
 - Primary ophthalmic services
 - Prescriptions

Guidance on registering with a GP

*“As there is no requirement under the regulations to produce identity or residence information, the patient **MUST** be registered on application unless the practice has reasonable grounds to decline. Registration and appointments should not be withheld because a patient does not have the necessary proof of residence or personal identification. **Inability by a patient to provide identification or proof of address would not be considered reasonable grounds to refuse to register a patient.**”*

Patient Registration: Standard Operating Principles for Primary Medical Care (General Practice), NHS England, November 2015

Prescriptions and other charges

- Income-based exemptions
 - Mainstream welfare benefits
 - Refugees, those with Humanitarian Protection or Discretionary Leave to Remain qualify where not in work or on low incomes
 - HC1 form / HC2 certificate for those on low incomes
 - Asylum seekers qualify under this provision
 - Remember travel costs to hospital or other NHS specialist service can be claimed when referred for treatment or tests

Accident & Emergency (A&E) services

- Exempt from charging
- Includes:
 - Accident and emergency services at an NHS hospital (at A&E department or elsewhere)
 - Observation wards
 - Walk-in services
 - Ambulance services
- But
 - *Treatment after accepted as an in-patient is potentially chargeable if person not exempt, though cannot be refused*

Other exempt services (1)

- Family planning services
 - but does not include termination of pregnancy
- Diagnosis and treatment of sexually transmitted infections (STIs)
- Diagnosis and treatment of certain infectious diseases e.g.
 - HIV, Tuberculosis, Malaria, Measles, Food Poisoning, Tetanus, Acute Poliomyelitis etc.
- Services under Mental Health Act 1983 etc.

Other exempt services (2)

- Treatment of conditions caused by:
 - Torture
 - Referring medical professional may identify
 - Also relevant NGOs eg Freedom from Torture, Helen Bamber Foundation may identify
 - Female genital mutilation
 - Domestic violence
 - Sexual violence

Exempt categories of people

- Refugees and anyone granted humanitarian protection or temporary protection
- Asylum seekers
- Failed asylum seekers supported by the Home Office or local authority
- Children looked after by a local authority
- Victims, and suspected victims, of trafficking or modern slavery
 - *Important role for health care staff in identifying*
- Other specific categories
 - Includes dependants of people in above categories
 - Includes continuation of treatment where status changes

Immediately necessary care

- Clinical assessment
- Chargeable in theory but treatment must be provided irrespective of ability to pay
- Treatment may not be refused or delayed to establish chargeable status or to seek payment
- Includes all maternity services and routine ante-natal treatment

- Legal obligations
 - Human Rights Act 1998
 - Safeguarding and promoting the welfare of the child

Useful References

- **ILPA Information Service**
<http://www.ilpa.org.uk/pages/info-service.html>
- **Patient Registration: Standard Operating Principles for Primary Medical Care (General Practice)**, NHS England, November 2015
<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf>
- **Guidance on implementing the overseas visitor hospital charging regulations 2015**, Department of Health, January 2016
<https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>
- **Identifying and supporting victims of modern slavery: an interactive learning resource to support all health staff in identifying and supporting victims of modern slavery**
Department of Health and Health Education England e-Learning for Healthcare, October 2015, <http://www.e-lfh.org.uk/programmes/modern-slavery/>