

Joint Submission to the Group of Experts on Action against Trafficking in Human Beings

Response to the Third Evaluation Round of the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

Access to justice and effective remedies for victims of trafficking in human beings in the United Kingdom

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UNICEF UK

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¹ The ATMG is comprised by the following organisations: AFRUCA, Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), the Snowdrop Project, the TARA service and UNICEF UK.

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Joint Submission to the Group of Experts on Action against Trafficking in Human Beings

Response to the Third Evaluation Round of the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings regarding the United Kingdom

Introduction

This joint response to the Group of Experts on Action against Trafficking in Human Beings (hereinafter ‘GRETA’) is submitted by the Anti-Trafficking Monitoring Group (‘ATMG’), a coalition of thirteen UK-based anti-trafficking organisations,² and by the following UK-based anti-trafficking organisations: the Anti Trafficking and Labour Exploitation Unity (ATLEU); the British Red Cross; CARE; Focus on Labour Exploitation (‘FLEX’); the Human Trafficking Foundation; the International Organization for Migration, Country Office for the United Kingdom of Great Britain and Northern Ireland (‘IOM UK’); the Lumos Foundation (‘Lumos’); UNICEF UK; Unseen UK; and the West Midlands Anti-Slavery Network.

This submission provides a response to the third evaluation round of the questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter ‘the Convention’) in the United Kingdom, which focuses on access to justice and effective remedies for survivors of trafficking in human beings.

At GRETA’s request, the ATMG has collected the responses provided by each of the participant organisations and has collated them into one single document. (The contributions provided by each respondent are also attached in a separate Annex and can be used by GRETA as stand-alone submissions). When appropriate, the ATMG has also drawn on its expertise and prior research in order to provide context to the contributions submitted by the respondents.

While we did our utmost to engage a wide range of relevant anti-trafficking organisations, some important voices are still missing from this submission. We were unable to obtain any responses by a survivor-led organisation working on trafficking in human beings in the UK. Survivor Alliance, a survivor-led organisation that aims to unite and empower survivors of slavery and human trafficking, felt that the length and technicality of the questionnaire in its current format rendered it inaccessible to most trafficking survivors. As GRETA itself recently noted,³ survivors play a crucial role in the design and implementation of responses to trafficking. It will be

² The ATMG is comprised by the following organisations: AFRUCA, Amnesty International UK, Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), the Snowdrop Project, the TARA service and UNICEF UK.

³ Council of Europe Group of Experts on Action Against Trafficking in Human Beings (2019) ‘8th General Report on GRETA’s Activities’, p. 6. Available at: <https://rm.coe.int/8th-168094b073>.

impossible to put into practice the victim-centred approach that lies at the core of the Convention if survivors are not meaningfully involved in its review mechanisms. We recommend that survivor-led organisations are proactively consulted during GRETA's forthcoming evaluation visit to the UK, and that future iterations of the questionnaire are fully accessible to survivors.

Executive summary

Since the end of the 2nd GRETA evaluation round 2015, the United Kingdom has made significant efforts to improve access to justice and to provide effective remedies for survivors of trafficking in human beings. However, there is more to be done if the UK is to achieve its desired status as a world-leader in addressing human trafficking.

The contributions collated in this submission emphasise how the UK is falling short of meeting its obligations under the Council of Europe Convention for Action against Trafficking in Human Beings (the Convention). One of the connecting threads within the following contributions is that many of the shortcomings are not inevitable but are in fact a direct consequence of relevant policy decisions.

Many respondents highlighted that austerity cuts resulted in a systematic lack of funding for trafficking response programmes, as well as for other provisions that trafficked people access as part of their Article 12 entitlements (healthcare, legal aid, education). Among many other problematic consequences, austerity has resulted in the emergence of legal aid deserts, particularly in the North of England, where trafficking survivors are frequently unable to obtain specialist legal advice.

Another frequent concern is that whenever there has been a tension between the implementation of policies that are proven to be effective in preventing and tackling the effects of trafficking, and the UK's immigration policies and laws, including the creation of a 'hostile environment' for people in the UK without leave to remain, authorities have systematically favoured the latter. This submission identifies that such a preference, has consistently undermined the UK government's stated aim to tackle modern slavery, to identify victims and, support the recovery of survivors.

The UK's departure from the European Union in January 2020 will result in a major overhaul of our immigration laws, which risk creating the conditions whereby trafficking in human beings can thrive. A serious consideration regarding the end of the transition period following the UK's departure from the EU will be the non-applicability of important EU legislation, such as the EU Anti-Trafficking Directive.

This evaluation is both timely and important. It is vital that the UK continues to show leadership in addressing modern slavery. To do so, there needs to be a legislative framework, strategy and practical provision in place which keeps people safe, facilitates access to rights and support, and provides opportunities for recovery. We hope this submission provides useful tools to facilitate an evaluation round that will encourage the UK authorities into a more strategic, systematic, and robust implementation of their own anti-trafficking commitments and duties.

Part I – Access to justice and effective remedies

1. Right to information (Articles 12 and 15)

1.1 How, at what stage and by whom are presumed victims and victims of THB informed of their rights, the relevant judicial and administrative proceedings, and the legal possibilities for obtaining compensation and other remedies, in a language that they can understand? Please provide copies of any information materials developed to inform victims of THB, including any materials specifically developed for child victims, in languages in which they exist.

Under the 2016 Home Office frontline staff guidance on victims of modern slavery (hereinafter the ‘Frontline Staff Guidance’), first responders must inform survivors of their right to independent help, protection, and assistance in criminal proceedings against perpetrators, as well as of their rights under the National Referral Mechanism framework (hereinafter ‘NRM’). However, all civil society respondents pointed out that this obligation is inconsistently translated into practice, as not all first responders have the means and knowledge to provide this information. In many cases, survivors are fully informed of their rights if they enter the NRM process. As a consequence, many survivors are never fully informed of their rights, a prerequisite to being able to exercise them.

1.1.a. The information provided by first responders is inconsistent and fragmentary

UK NGOs overwhelmingly responded that information on rights and entitlement provided to survivors does vary significantly across first responders and can be incomplete. While there has been a certain progress since the last evaluation round due to the publication of the 2016 Frontline Staff Guidance, first responders are still lacking in concrete guidance and training by the government. The lack of information can be consequential as presumed adult victims must decide whether to enter the NRM process by providing informed consent. Currently, many respondents referenced that although a first responder should inform presumed victims of their rights and the NRM process, there *“is no way of assessing if this happens or how effective it is in enabling victims or presumed victims to make decisions about what they want to do.”*⁴ There is currently no training process for First Responder agencies in relation to informing victims of their rights, in the UK. Although this was reviewed in 2019, at present there remains no remedy to this.

Both Unseen and The British Red Cross, reported concerns around some First Responders and frontline agencies providing presumed victims of trafficking with *“only basic, checklist-type information which doesn’t enable them to properly understand the options available to them or ensure informed decision-making.”* Service users are often told that the National Referral Mechanism (NRM) will give them access to accommodation but are not provided with any additional information about the NRM process.⁵

In a similar sense, ATLEU’s submission noted that *“(…) the quality of information given around legal rights and options is highly variable. For example, we had a client recently who was told by*

⁴ Unseen UK submission.

⁵ BRC submission.

their NRM support provider for a year that they could get compensation but the client was not told how, through what means, and no referrals for legal advice were made and no application to the CICA scheme was made.”⁶

Information on rights and entitlements is largely dependent on whom exploited individuals come into contact with first, rather than what is most suitable for their needs or circumstances. *“Delays and barriers to people being informed of their rights, relevant judicial and administrative proceedings, and other legal possibilities can be exacerbated by the scarcity of solicitors with the required knowledge of trafficking cases.”⁷*

ATMG and other practitioners also report that often, there is little chance or opportunity for exploration on the advantages and disadvantages of the NRM. This is particularly prevalent in cases whereby people are seeking asylum who disclose an experience of trafficking or exploitation:

“Service users tend to only gain a full understanding of their rights and access to legal advice after their referral into the NRM. We have seen that during initial contact, referrals into the NRM can be accelerated due to the perception that the person is at immediate risk. In these instances, often there is limited consideration of alternative options, and we have found that service users haven’t been fully informed of their options, leading to confusion about why they have been referred into the NRM. Sometimes, access to the NRM takes precedence over a service user being informed of their rights.”⁸

Respondents in Scotland, specifically TARA and JustRight Scotland, agreed completely other respondents, explaining that:

“In Scotland, we agree that access to information can be inconsistent and agree with this part. Our work on an EU funded project on Early Legal Intervention involving the key NGO/First Responders in Scotland, resulted in, TARA and JRS with EU and Scottish Government funding running a weekly legal surgery in the TARA offices. One of the objectives of this service is to ensure that women are systematically and routinely getting access to a funded specialist lawyer to ensure that any consent to the NRM is informed.

*We feel that this has been successful but **only** in cases where an NRM has still to be completed. Therefore, we completely support the last paragraph of this section, submitted by BRC, regarding little exploration of the advantages and disadvantages of the NRM. Increasingly, NRMs are being completed at too early a stage by immigration and law enforcement agencies and from speaking to women at the weekly surgeries, the level of understanding of what women have consented to is extremely low. Therefore, the above noted good practice has limited effect unless all stakeholders ensure that informed consent can be properly obtained.*

In October 2016 both TARA and Migrant Help conducted two service user consultations (one with men, and one with women). Of the 19 participants, all were in the NRM but only two women were aware of the process. TARA maintain concern that where we are not the first responder for the NRM, women have little knowledge or understanding of what they are signing

⁶ ATLEU submission.

⁷ BRC submission.

⁸ BRC submission.

and practice regarding checking informed consent/information being shared via the NRM is limited.

This, in part, led to the Just Right legal surgery at TARA:

two of nine women initially with others after discussion unsure if they had or not.

Q10: Those of you who did....why did you do that?

The Support Worker was very nice and I thought “why not!”

Not sure why I did it.

Q11: Those of you who didn't....why not?

Don't have an understanding of what it is

Unclear information

I don't know if I did it, I was very confused. I had a lot to take in.

Q12 : What changes would you make to NRM to help people sign up to it?

Clearer explanation of what it is.

Make it easier to understand.

Maybe it's too much at the beginning.

Our most recent service user consultation in August 2019 also asked women about their knowledge of TARA prior to coming into the service, with the following highlighted by the women:

nine/nine said the information they received about TARA was limited, but all were told that the service would support them.

Women commented:

- I didn't know what to expect....I didn't feel I had a choice to say no*
- I was worried before I went to TARA but everyone was lovely*
- The Police told me not much*

- *I did not know what to expect*
- *I only knew what TARA provided once they told me*
- *Social work only gave me a little info on TARA*
- *I don't think I took it all in...Maybe they did tell me*
- *I was told to look TARA up on the internet, but I didn't have this.*⁹

1.1.b. individuals that do not enter the NRM are unlikely to be fully informed of their rights

Civil society respondents also agreed that, due to the fragmentary and incomplete nature of the information provided by First Respondents and frontline agencies, presumed victims who do not enter the NRM process are unlikely to obtain a clear picture of their rights and of the NRM process itself. Therefore, many survivors are not able to make fully informed decisions on key issues, such as whether to enter the NRM or not. For instance, the West Midlands Anti-Slavery Network noted *“if the potential victim does not enter the NRM they may be in a position where they are not informed of their rights. Information on rights primarily occurs within the NRM rather than prior to accessing this support or if NRM support is not accessed at all.”*¹⁰

This is supported by evidence provided by Unseen: *“Although the MSI and Duty to Notify obligation on first responders tries to account for this, data about who has completed MSI forms and the outcome of this is not publicly reported”*.¹¹ Information, whether statistical or qualitative on presumed victims who do not enter the NRM is also fragmentary and inconsistent meaning there is a lack of reliable information as to why individuals do not enter the NRM. Such limited understanding around the outcomes for people who do not enter the NRM would strongly support the argument that these individuals are unlikely to be fully informed of their rights. A further contributing factor to this is the lack of free legal advice pre-NRM being unavailable via legal aid, which is covered in question 2.1.

The inadequacy of the information provided to survivors in a pre-NRM phase is also confirmed by ATLEU.

“In response to an ATLEU inquiry in July 2019, The Prime Contractor¹² said:

“We ask for consent to enter the NRM after explaining to the individual the NRM and the referral process and when they are fully informed of the potential outcomes.

We then take the NRM interview with the potential victim, at the end of which we read back the recorded information to ensure that the narrative is accurate. Subsequently the referral is submitted to the SCA.”

⁹ JustRight Scotland and TARA submission.

¹⁰ West Midlands Anti-Slavery Network submission.

¹¹ Unseen UK submission.

¹² The Salvation Army

*This suggests that they do not advise on legal rights and relevant proceedings, or legal options at this stage. From ATLEU's experience information is more likely to be covered by support workers at a later date (...)."*¹³

Evidence provided from JustRight Scotland and TARA went on to highlight the restrictive nature of the NRM, explaining that advice prior to entry is vital to limit the potential consequences of the mechanism:

"From an international perspective, some NRMs are very wide and flexible. It is the restricted interpretation of the NRM and the consequences that can flow from this that mean advice pre NRM is even more important.

*The legal surgery hosted by TARA and JRS and referred to above, has also been made available to women who have not yet entered the NRM. For instance, during the surgery held week commencing 24.2.2020, TARA facilitated JRS to meet with a woman being supported by the British Red Cross who has not yet entered the NRM and was not being supported by them. We should also state that the legal aid system in Scotland provides for funded advice to be provided to individuals pre entry into the NRM provided it falls under an immigration category. The problem is ensuring that specialist advice is available quickly enough in any part of Scotland and available at all in areas of so-called "advice deserts." Therefore, a funded system of routine specialist support available, regardless of participation in the NRM is essential."*¹⁴

1.1.c. Information materials provided to survivors of trafficking in human beings

A number of organisations explained that information materials prepared by the UK government are insufficient to effectively help survivors make informed decisions within the complex NRM and asylum frameworks,¹⁵ while ATLEU reported that it is "*unclear whether the Home Office information leaflets are used, and if so when*"¹⁶, and that "*there are concerns about its accuracy.*"¹⁷ As a result, there has been a civil 'society stepping up' to fill this gap. While there has been a significant increase in the number of stakeholders providing materials to survivors of trafficking, with examples of good practice at local and regional levels, the extent to which these materials are provided consistently is not easily determinable. Respondents stated that generally, resources available often contain limited content, failing to "*empower and enable the individual to make informed decisions.*"¹⁸

ATLEU also raised concerns regarding the accuracy of the leaflets provided by the UK authorities themselves.

"We are unclear whether the Home Office information leaflets are used, and if so when. These

¹³ ATLEU submission.

¹⁴ JustRight Scotland and TARA submission.

¹⁵ BRC submission

¹⁶ ATLEU submission.

¹⁷ ATLEU submission.

¹⁸ BRC submission.

leaflets are still on the government website at the date of writing:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/510593/6_1672_HO_VictimsModernSlavery_DL_FINAL_WEB_230316.pdf

There are concerns about its accuracy. For example, it is not clear from the wording that if you are a European national you can apply for Discretionary Leave (DL) or how the DL test requires you to show you will be at risk of re-trafficking if returned to your country.

This leaflet is still on the government website at the time of writing, but it is out of date:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642112/help_for_adult_victims_of_modern_slavery.pdf.

There is no reference to the EU Settled Status scheme. It incorrectly states that the exceptional threshold applies when it states that a victim must show that “there are exceptional reasons for granting leave due to your personal circumstances”. The leaflet also refers to the National Crime Agency, which has been replaced by the Single Competent Authority.”¹⁹

The role of civil society in providing survivors information materials on their rights and or support provisions is evidenced by a number of publications, including The Slavery and Trafficking Survivor Care Standards and Principles that underpin early support provision for survivors of trafficking.²⁰ These standards set out the principles and frameworks for the delivery of support at different stages of a survivor’s journey, including how and what kind of information survivors require to enable them to make informed choices.

In addition to the above, Kalayaan’s research²¹ has shown that the leaflets and documentation provided by the UK authorities to overseas domestic workers at the reasonable grounds stage, and together with the conclusive grounds notification, routinely fail to include information on the right to apply for further leave to stay under section 53 of the Modern Slavery Act.

1.1.d. The specific case of children

Since 2012, there has not been a strategic and coordinated approach to ensuring child victims of trafficking are informed of their rights. preventing child trafficking. There has been little focus on reducing the vulnerability of children to exploitation, or on creating a “protective environment” for children, as set out in international law. Despite some clearer strategic direction in Scotland and also around specific forms of exploitation, such as child sexual exploitation (CSE), specific child anti-trafficking efforts are limited and can be seen to be largely focused on the investigation and prosecution of traffickers, and to some extent on awareness-raising interventions. There is

¹⁹ ATLEU submission.

²⁰ Human Trafficking Foundation (2018) ‘The Slavery and Trafficking Survivor Care Standards 2018’. Available at: <https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf>

²¹ See Kalayaan (2019) ‘Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group Prevent meeting’. Available at: <http://www.kalayaan.org.uk/wp-content/uploads/2019/09/Briefing-MSSIG-meet-11-September.pdf>

evidence that good practice is occurring in certain areas, largely led by civil society. However, again, progress is not being effectively monitored or evaluated and work on the different forms of exploitation still largely occur in isolation from each other. Little is known about the extent to which children are re-trafficked, but their vulnerability is being increased by the lack of specialist support provided and the failure to ensure each child has a durable solution available to them.

In England and Wales, Section 48 of the Modern Slavery Act sets out provision for Independent Child Trafficking Advocates (ICTAs); following a review of the Modern Slavery Act in 2019, ICTAs have recently been renamed Independent Child Trafficking Guardians (ICTGs) following on from the recommendations from the Independent Review of the Modern Slavery Act.

Research by ECPAT UK revealed that:

“Child victims of trafficking are not uniformly informed of their rights and entitlements at an early stage. Some children in England and Wales might be provided with relevant information by their social workers, if they are looked after, once identified as a potential victim. Significant variations exist between different Local Authority practices, reduced funding for Local Authorities and lack of training for social workers on child trafficking means many children are not informed of their rights or referred for legal advice regarding the trafficking decision-making process. If the child is identified as a potential victim in an area currently covered by the Independent Child Trafficking Guardian (‘ICTG’) service in England (Greater Manchester, Wales, Hampshire, East Midlands, West Midlands, and Croydon) and they are a child for whom no one has parental responsibility for there is a duty for the ICTG Direct Worker to make contact within a maximum of 24 hours with the child. The ICTG will inform the child of their rights and support access to justice. An interpreter must be made available if one is required.[2] An independent evaluation of the ICTG service found that children valued the ICTGs’ role in keeping them informed of the progress of their cases through legal procedures and provided reassurance to them.”²²

As ATMG’s 2018 Prevention report noted, the ICTG scheme is only provided until the age of 18, while the Scottish Guardianship Service works with young people beyond the age of 18 (in line with social work statutory duties to care leavers) and the Northern Ireland Scheme can support young people until the age of 21.²³

ECPAT UK go on to state:

“Young people in their late teenage years are particularly vulnerable²⁴ and unaccompanied

²² Kohli, R., Conolly, H., Stott, H., Roe, S., Prince, S., Long, J. and Gordon-Ramsay, S. (2019). *An evaluation of Independent Child Trafficking Guardians – early adopter sites*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819723/evaluation-independent-child-trafficking-guardians-final-horr111.pdf

²³ Anti-Trafficking Monitoring Group (2018) ‘Before the Harm is Done: Examining the UK’s response to the prevention of Trafficking’. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

²⁴ Pona, I. and Turner, A. (2018) *Crumbling Futures*. Available at: www.childreassoc.org.uk/sites/default/files/seriously-awkward-full-report.pdf

children face specific vulnerabilities at this time.²⁵ Many children go missing at this point as a result of this heightened vulnerability. Research has shown that unaccompanied young people disengaging from services may transition into precarity and destitution. Young people will seek community and support networks which may lead to exploitation.²⁶ Extending the guardianship schemes to cover this critical transition point, and ideally in line with leaving care services (up until the age of 25), would be of significant benefit for these children and act as a broader trafficking prevention measure.²⁷

The Interim Guidance for the earlier adopter sites states that ICTGs will be expected to provide support to the child and advocate on their behalf with all statutory agencies and public authorities for 18 months or until the child becomes 18 (whichever is sooner).²⁸ All work completed, long-term missing and negative NRM decisions were cited as the most common reasons for children exiting the ICTG Service in the quantitative interim findings from ‘An assessment of Independent Child Trafficking Advocates’. As the interim report does not focus on outcomes, due to many children being in the service for short amounts of time, ECPAT UK remains concerned regarding the length of time the ICTG is provided to a child and the gaps in support after they exit the service. It is unclear what percentage of children who exited the ICTG service due to a negative reasonable grounds decision had a reconsideration request submitted by a first responder, if they were advised of their right to seek legal representation to challenge the negative decision and if they were supported through that process to do so. As the data collected by the Home Office is anonymized for evaluation purposes, it is therefore not possible to cross-reference this with decision-making data from the National Referral Mechanism (NRM). Interim guidance is clear that children in the ICTG service with pending immigration decisions, appeals, or other legal challenges to public authority decisions, as well as those with pending issues in the criminal justice system, may have a longer period of support with an ICTG extended to appeals and re-trials. This support continues until the child reaches the age of 18. It is important to emphasise the need for the ICTG to act in the child’s best interests, to have flexibility regarding the length of support, which is based on each individual child’s needs. The main findings of the Hub and Spoke model stated that when commissioning voluntary sector services to support children and young people, it should be for as long as that support is needed.”²⁹

“In Northern Ireland, the responsibility of informing children of their rights and entitlements goes

²⁵ Meloni, R. and Chase, E. (2017). *Becoming Adult Project: transitions into institutional adulthood*. Available at: <https://becomingadult.net/2017/12/12/six-new-research-briefs-launched-today/>

²⁶ Sigona, N. Chase, E. and Humpris, R. (2017). *Becoming Adult Project: Understanding causes and consequences of going ‘missing’*. Available at: <https://becomingadultproject.files.wordpress.com/2017/12/ba-brief-6-low-res.pdf>

²⁷ ECPAT UK submission.

²⁸ Home Office. (2017). *Interim Guidance for the three Independent Child Trafficking Advocates Early Adopter Sites – Greater Manchester, Wales and Hampshire*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/586796/trafficking_Interim_guidance.pdf

²⁹ Harris, J. and Roker, D. (2017). *Evaluation of the Alexi Project ‘Hub and Spoke’ programme of CSE service development: Final Report*. Available at: https://www.beds.ac.uk/_data/assets/pdf_file/0004/568912/Final-Report-Alexi-Project-evaluation.pdf

to the Health and Social care trusts. Unlike in England and Wales, the Northern Irish model of Guardianship is the most comprehensive – covering all unaccompanied children and children who may have been trafficked. However, there was a significant delay in implementing the legal guardianship provision, the scheme only became operational in the spring of 2018. There have been other significant developments in protecting child victims in Northern Ireland which include a dedicated facility which organisations have welcomed^[9] as beneficial for children to access legal advice, a dedicated therapeutic support service and onsite education (as well as access to leisure facilities and faith groups) albeit consideration needs to be given to the best interest of the child with regards to accommodation suitability and if a family-based placement such as foster care would be more suitable as well as the potential risks of accommodating all separated children together on the one site including an increased risk of children going missing from care (such as traffickers becoming aware of the location and targeting the centre).

The Northern Irish model of guardianship is closest to that recommended by the Fundamental Rights Agency and has the broadest definition for a separated child. The independent guardian is comprehensively described in this section of the legislation, including in ascertaining and communicating the views of the child in relation to matters affecting the child, contributing to the safeguarding of the child and providing a link between the child and anybody or person who may provide services to them.

Various organisations have produced a variety of resources aimed at children and young people in various languages:

<https://www.ecpat.org.uk/react-resources>

<https://learning.nspcc.org.uk/research-resources/leaflets/trafficking-leaflets-children/>

<https://miclu.org/who-is-who>³⁰

It is important to note, the Scottish Guardianship Service was introduced in 2010 and is run in partnership with the Scottish Refugee Council and Aberlour Child Care Trust, supporting all unaccompanied and separated children in Scotland. It provides specialist independent advocates for unaccompanied and separated children in Scotland. As noted by JustRight Scotland and TARA, the service is “funded by government. There are currently 12 guardians working across Scotland. A large number of those supported by this service are victims of child trafficking. A consultation exercise is currently ongoing regarding the appointment and functions of guardians within Scotland.”³¹

³⁰ ECPAT UK submission.

³¹ JustRight Scotland and TARA submission.

1.2. How is the obligation to provide translation and interpretation services, when appropriate, met at different stages of the legal and administrative proceedings by different agencies?

Under the NRM framework, presumed victims are entitled to translation and interpretation services in language they understand. While this is primarily provided, through the adult victim care contract in England and Wales these services are contracted to large providers with costs often outlaid by organisations providing support before recouping this expenditure from the Government. However, respondents reported that there is no public information to verify that this obligation is consistently discharged. Furthermore, they also pointed out that there is no public funding for first responders to provide translation and interpretation services. Thus, respondents noted that *“Various interpreting services are available and accessible for a range of agencies – their use of these to ensure understanding of victims is not assessed or measured. An expectation is set within the NRM processes ‘in a language they understand’ but there is no way of recording if this is happening across all public agencies and actors that may interact with potential victims or victims of trafficking in human beings.”*³²

In addition to that, ATLEU also noted that the financial restraints set by the Legal Aid Agency can have a significant impact in the quality of the translation services provided to survivors.

“Where an individual is able to access legal aid for a matter which is ‘in scope’ (ie. they are automatically entitled to is assuming they meet the means and merits criteria) then they are entitled to have the legal aid provider pay for an interpreter under the legal aid scheme. The Legal Aid Agency sets a maximum rate that they will pay for interpreting services procured under a legal aid contract and where the language is not common it can be very difficult, if not impossible, to locate an interpreter willing to act within those prescribed rates. This can lead to protraction and delay in taking instructions and progressing a legal claim.

*Disputes with the Legal Aid Agency arise where funding is sought to translate documentation into the victim’s mother tongue. The Legal Aid Agency has stated that a telephone call or meeting with an interpreter is enough. However, the complexity of issues and indeed trauma suffered makes it more important that matters are recorded in writing and that the victim can read correspondence. The first time that many victims will receive in their own language, a translation of a statement given in the course of an NRM referral or indeed to the Police is during civil compensation proceedings when one party or another seeks to rely on an earlier statement.”*³³

The quality of translation services is thought to be inconsistent by several NGOs, and little funding is available for those agencies who engage with or support potential victims of trafficking prior to

³² Unseen UK submission.

³³ ATLEU submission.

entering the NRM in relation to translation services, with ATLEU reporting at least three cases in which the absence of an interpreter, or poor interpretation services, had very serious consequences for survivors, from a lack of timely access to safehouse accommodation to a negative reasonable grounds decisions that was reversed only after the intervention of a solicitor. In 2018, research for the UK's Independent Anti-Slavery Commissioner by ATMG and AFRUCA found that many civil society organisations reported that it was extremely difficult to find interpreters to assist in meetings between survivors and their own legal advisors, especially in the North East of England.³⁴

As with adults, for children, it is not always clear how the the obligation to provide translation and interpretation services, when appropriate, is met at different stages of the legal and administrative proceedings by different agencies.

Consistently, this was reflected by ECPAT who note:

“From the point of identification, ‘First Responders’ may be constrained in their ability to collate and communicate reliable or complete information on the referred individual in a variety of other ways, as a function of their limited resources, limited time with the child, or otherwise. Inadequate access to interpretation services when interviewing children who have been trafficked and who have limited or no knowledge of English is a significant issue leading to children not being identified or leading to negative trafficking decisions.

Different agencies have a variety of procedures regarding the provision of interpretation services. Local police forces in England and Wales may use a telephone interpreting service when coming across unaccompanied children sporadically (usually due to lorry drops), where depending on the police force, they might take biometric information and conduct the Welfare Interview as rolled out through Operation Innerste between Local Police forces and Immigration Enforcement. The information gathered by Local Police forces using immigration powers through the Welfare Interview has raised concerns as the form notes that the information may be used in making immigration and asylum determinations (a significant issue due to lack of adequate interpreters, children's fears at first encounter, detailing narratives coached by their traffickers which might lead to adverse credibility findings). Therefore, ECPAT UK has raised concerns that these practices may exacerbate fear and mistrust of authorities among child victims of trafficking, preventing them from disclosing and seeking protection. ECPAT UK echo's UN guidance which recommends that a 'firewall' between child protection services and immigration enforcement should be ensured³⁵ so that initiatives are deployed for safeguarding purposes only.”³⁶

Further detail is provided by ECPAT around unplanned enforcement operations, whereby:

“If undertaking a pre-planned enforcement operation, there might be some consideration taken to the need for an interpreter on-site but this is not a given. If a child or young person is arrested or

³⁴ ATMG evidence to the Independent Anti-Slavery Commissioner, available upon request.

³⁵ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, Joint General Comment on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

³⁶ ECPAT UK submission.

as a witness, they are entitled to an interpreter for an interview or the taking of a statement through Code C of the Police and Criminal Evidence (PACE) 1984. Most police forces outsource the provision of language services, before 2010, forces would use lists of trusted interpreters but government policy of outsourcing interpreting services shifted to reduce cost which has led to serious issues such as the case of an interpreter receiving £500 to pass messages during prison visits and over the phone to a group who ran one of the largest networks of cannabis farms found in Britain.

In England and Wales, solicitors working under legal aid must provide an interpreter and ensure that the interpreter is appropriately qualified.³⁷ They should ensure that the interpreter has no direct relationship with the child as a friend, relative or family member, and that they maintain a neutral role and that the child understands the role of the interpreter and their right to change interpreter if needed³⁸ as well as guiding appropriate seating arrangements to allow for child's comfort, facilitate disclosure and ensure effective communication. Unfortunately, many children in England and Wales find poor practice with regards to their legal representative, particularly in the myriad of legal procedures a child victim of trafficking may be navigating. Children and professionals who work with children report significant instances of poor practice such as solicitors who fail to provide an interpreter, the use of friends/relatives/community members as interpreters and untrained interpreters. There have been safeguarding issues raised such as solicitors who leave the interpreter alone in the room to read through a witness statement with the child and then asks the child to sign it or allows situations where the child is able to contact the interpreter or meet the interpreter independently outside of meetings with a representative. There are cases known to ECPAT where the child's solicitor and the interpreter have been active participants in the child's exploitation and maintain an informal arrangement between themselves to recruit newly arrived unaccompanied children (many of which have later been found to have been trafficked). In Scotland, lawyers have reported that legal aid is not always available to pay for appropriate interpreters to travel to more remote locations."³⁹

Local Authorities have a duty to provide interpreters if necessary to assist in the assessment of the child's needs.⁴⁰ A significant issue social workers have raised with ECPAT UK is the provision of interpretation services on an emergency basis such as following a police operation where child victims were encountered or due to sporadic lorry drops. Usually, a duty social worker attending will only be able to access phone interpretation services which may be of varying degrees of quality particularly when it is out-of-hours. A variety of cases are known to ECPAT where children have been put into placement without any explanation of where they are or who the foster carers/support

³⁷ Legal Aid Agency. (2018). *Standard Civil Contract Specification, General Provisions, 'for requirements and exceptions.*

³⁸ Crawley, H. (2012). *Working with children and young people subject to immigration control Guidelines for best practice.*

³⁹ Finch, N. (2017). *Lighting the Way.* ECPAT. Available at <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=1dcfdd01-44fd-4b0f-90c3-ccbc36649a80>

⁴⁰ Department for Education. (2017). *Care of unaccompanied migrant children and child victims of modern slavery.* Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UAS_C_Statutory_Guidance_2017.pdf

workers/social workers are. In some such cases known to ECPAT, one particular child thought throughout the weekend that his foster carers were agents of immigration observing him and he explained that this fear made him more likely to go missing. Another issue highlighted by practitioners is the need to giving foster carers access to telephone interpretation services such as language line as this is not standard practice across Local Authorities. This was demonstrated by the tragic circumstances detailed in the serious case review of a young person who committed suicide following frustration with communicating with his carers.⁴¹

For all the above-mentioned professionals, there are consistent issues with the use of interpreters and poor practice such as failing to check if the child and interpreter understand each other, failing to inform the child of their right to request a different interpreter and refusing requests to change interpreter.⁴²

⁴¹Henson, R. (2017). Serious Case Review: 'YT'. Available at: <https://new.enfield.gov.uk/enfieldlscb/wp-content/uploads/2017/10/YT-SCR-Report.pdf>

⁴² ECPAT UK submission.

2. Legal assistance and free legal aid (Article 15)

2.1. How, by whom and from what moment is legal assistance provided to victims of trafficking? How is legal assistance provided to children?

In recent years all jurisdictions within the UK have passed new legislation amending the criteria of the legal aid schemes and the eligibility of individuals applying for civil legal aid. The biggest changes have occurred in England and Wales, where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) made significant changes to the operation of the civil legal aid scheme, requiring a capital means test to everyone and increased contributions.

In Northern Ireland, the Legal Services Agency (LSANI) was created in 2015 under the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014, and now serves as an agency of the Department of Justice. Reforms to legal aid in Scotland have mainly focused on criminal legal aid, but some changes have been made to the financial criteria in relation to civil legal aid.

Means testing is common to all three schemes and examines the financial eligibility of a person applying for civil legal aid (we delve into the impact of means testing in question 2.5). Legal advice is a critical part of the support that victims need and is crucial to their recovery. Under the current legislation, across all UK jurisdictions, all presumed victims are entitled to legal aid when they enter the NRM process if they meet the financial eligibility criteria. However, the responses received from NGOs clearly point to a lack of reputable legal aid solicitors and immigration advisors equipped to deal with modern slavery cases, across the UK.

Regrettably, many trafficking survivors across the UK are currently unable to get legal advice when they need it. This is due to three factors. First, a dearth of trusted legal advisors to take on cases. Secondly, a lack of timeliness in the advice, as legal aid is provided only once a survivor enters the NRM, but not before. Thirdly, the reduced scope of the current legal aid programmes, which exclude key remedies such as state compensation, or welfare rights claims.

Evidence provided by JustRight Scotland and TARA provides an overview of access to legal assistance in Scotland and cites the 2015 Scottish Legal Aid Board monitoring report on the availability and accessibility of legal services in the area of human trafficking.⁴³ This report was compiled on behalf of the Scottish Government and was published.

Both JustRight Scotland and TARA go on to highlight:

“While we believe access to legal assistance via legal aid in Scotland should be reviewed, (the last review was completed in 2015), it is the only review of legal aid in this area in Scotland and both contributors provide an overview of important findings from the report, in line with this evaluation.”

- *It recognised that solicitors may be required to assist victims of human trafficking in engaging with the NRM. Additionally, victims of human trafficking may have a range of*

⁴³ See: <https://www.slab.org.uk/app/uploads/2019/03/SLAB-Monitoring-Report-2017.pdf>

other legal issues; in particular the need to regularise their immigration/asylum status, to secure housing, or being a family reunion process.

- *A gender-based violence perspective is being integrated into legal assistance through the Scottish Women Rights Centre (funded by the Scottish Legal Aid Board).*
- *It referenced an EU funded report on access to early legal intervention, which JRS staff undertook with First Responders and Home Office in Scotland in 2014. It noted the concerns from the report that “there is not... a practice in Scotland, either informal or formal, of proactively referring a VOT for legal advice simply because her or she may be a VOT and may therefore require advice in order to realise their rights as such a victim”⁴⁴ It found that this is not necessarily routine as they were informed that referrals to legal services are generally made by the main specialist support organisations. Nonetheless, there may be latent demand for legal advice.*
- *It highlighted the effectiveness of TARA and the Scottish Guardianship Service in ensure access to specialist legal services as soon as possible.*
- *There is no specific category code for human trafficking. The 2015 review of legal assistance in this area did not see that as a problem, at that point, but highlighted that it should be kept under review*
- *It noted that there are a number of firms in Scotland with significant expertise in immigration law: it is not clear whether these firms are the same as those currently acting for trafficking victims (or whether they would necessarily be equipped to deal with the more specialist needs of victims of trafficking).*
- *In terms of the concentration of legally-aided work, their data showed that since 2010-11, both the number of firms submitting relevant intimations, and the number of local authorities in which applicants are located have increased: there are more firms, doing more work, in a greater number of local authorities when compared to five years ago.*
- *The numbers involved continue to be very low. In 2015-16, nine firms submitted intimations, across six local authorities. Furthermore, forty-one of the fifty-one intimations (78%) were in only two local authorities: Glasgow, and Renfrewshire.*
- *Given the very low numbers involved, it may also be useful to consider the totals across the whole of the time period above.*
 - *Between 2010-11 and 2015-16, there were 215 cases received (under the category codes ASY/IMN). A total of seventeen firms submitted intimations.*
 - *In terms of concentration of particular firms, the top four firms by volume submitted over 80% of total intimations. The firm submitting the highest number*

⁴⁴ Ibid.

of intimations submitted 39% of intimations alone. The firms submitting the bulk of legal assistance applications are based primarily in Glasgow, though these firms appear to be providing services across multiple local authorities.

- *In terms of the geographic coverage of legal aid provision in this area, between 2010-11 and 2015-16, legal assistance applications were received from applicants in 15 of 32 local authorities. (In the most recent year there were intimations received from only six local authorities).*
- *These were unevenly spread: intimations from Glasgow accounted for 65% of the total. Intimations from Renfrewshire accounted for 11.6% of the total, the second highest.*
- *The report noted that it does not have sufficient data on the extent and geographic prevalence of trafficking cases to come to any conclusions as to whether there might be specific areas where it is probable that an access problem is occurring. The National Referral Mechanism Statistics provide only a Scotland-level overview, rather than details of where trafficking referrals are made at local authority level.*
- *To date, all firms doing human trafficking related legal aid work appear to be based in Glasgow (with a very small number based in Edinburgh or Aberdeen). None of the firms are based in more rural areas: however, data does suggest that Glasgow-based firms are providing a service to victims of trafficking based in other areas of the country.*
- *The report suggested that the provision of legal services to victims of human trafficking in remote rural areas may depend to some extent on appropriate referral links between first responders (including advice agencies) and legal services. More broadly, consultees highlighted the importance of support services as means of linking potential victims of trafficking to legal services, and suggested that where these support services are not utilised (for example, if a trafficked child were to lack a trafficking guardian) victims may face difficulties in accessing legal services.*
- *The report stated that they currently, have no data available to us, nor reports made to us, which suggest that there are systemic problems with the availability and accessibility of legal services in these areas, in general terms.*
- *For individuals seeking legal advice on human trafficking, we assess that the market is currently narrow, with expertise concentrated in a few providers. Those using legal services will often be dependent on referrals by support agencies, with proactive referral and engagement by legal services important for ensuring uptake. We would also assume that individuals also approach more specific organisations in the third sector for assistance with broad support needs, engaging solicitors (probably legally aided) for more formal processes.*
- *Overall, our assessment on the currently available data is that there is a low risk of systemic problems with access to legal services.*

*The picture of human trafficking in Scotland has changed since 2015. There has been increasing numbers of individuals identified across the whole of Scotland. The nature of this crime has become more complex. JustRight Scotland and TARA are recognising that all individuals require a broad set of legal advice, and not just immigration or asylum advice, related to their status as a victim of human trafficking. This includes individuals who have a secure immigration status or are British. We would recommend that another review is undertaken by the Scottish Legal Aid Board in this area.*⁴⁵

Legal assistance is not easily accessible or available in other parts of the UK: *“Although, victims can access immigration legal advice on other, non-immigration advice (compensation, family law, welfare law) are hard to access and not seen as rights or entitlements in the way the convention is enacted in the UK”*;⁴⁶ *“Whilst legal aid is theoretically available, accessible through legal aid providers across the country – subject to applicants meeting the legal aid eligibility criteria – it is, in practice, unavailable for many”*.⁴⁷ Access to legal assistance was repeatedly referenced as “patchy” in England and Wales, with legal aid described as particularly difficult to access.

2.1.a. Problems with the collection of data on legal aid

As reported by ATLEU, there have been two recent Parliamentary Questions about the numbers of victims of modern slavery accessing legal advice.⁴⁸ The first was asked on 1 December 2017:

To ask the Secretary of State for Justice, how many victims of human trafficking have received Legal Aid in each of the last three years.”

It was answered by Dominic Raab, then the Minister of State, Ministry of Justice:

The Legal Aid Agency cannot identify all applicants for legal aid that have been victims of trafficking, as such a status is only captured in certain cases, for example where an individual is bringing a compensation claim against their traffickers. Victims of trafficking can also access other forms of legal aid, although such cases will not be discernible from the LAA’s systems.

<i>Financial Year</i>	<i>Trafficking/Modern Slavery Matters</i>
2014-2015	51
2015-2016	34
2016-2017	39

ATLEU expanded on these findings:

“During a recent meeting between ATLEU and officials at the Ministry of Justice and Legal Aid

⁴⁵ JustRight Scotland and TARA submission.

⁴⁶ Unseen UK submission.

⁴⁷ ATLEU submission.

⁴⁸ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-21/114965/> and <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-09/142455/>

Agency, in 2019, they indicated that there was not an intention to improve the collection of information on victims of trafficking accessing legal aid. Notwithstanding the Legal Aid Agency's failure to collect information the figures provided by Government in answer to these Parliamentary Questions suggest the number of victims accessing legal aid are minimal and a fraction what is needed by this group.

Dominic Raab gives the example of the Legal Aid Agency's systems identifying individuals bringing compensation claims against their traffickers. The Legal Aid Agency's reporting functions for controlled work (ie Legal Help and Controlled Legal Representation) can also identify some victims applying for non-asylum immigration advice, the figure given for the total number of victims accessing legal help for this type of case was 124, an average of just 41 per year. Over that same 3 year period from 2014 there were 9,404 victims referred into the NRM.⁴⁹ These numbers suggest that just 1.3% of those referred into the NRM are currently able to access legal aid for advice in respect of a potential compensation claim against their trafficker and immigration (non-asylum) advice on leave to remain.⁵⁰

The second parliamentary question was asked on 16 May 2018 by Anne Marie Morris:

To ask the Secretary of State for Justice, what estimate his Department has made of the number of potential victims of modern slavery who have (a) sought free legal assistance and (b) been denied such assistance in each year for which information is available.

This was answered by Lucy Frazer, then The Parliamentary Under-Secretary of State for Justice:

The Legal Aid Agency cannot identify all applicants for legal aid that have been potential victims of modern slavery, as such a status is only captured in cases where the legal aid scheme makes specific provision for such individuals, for example, immigration advice for those identified as a potential victim of modern slavery through the National Referral Mechanism. Victims of modern slavery can also access other forms of legal aid, although such instances will not be discernible from the LAA's systems.

Legal aid for potential victims of modern slavery is available by way of Legal Help or Controlled Legal Representation. However, as the application process for this type of legal aid is devolved to the instructed solicitor, the number of instances where such legal aid was sought or refused cannot be reported on, and furthermore such cases can only be identified when they are reported to the LAA after their conclusion.

For Civil Representation, decisions on funding are taken by the LAA and it is possible to identify applications and refusals at the outset of the case. The information below shows how many legal aid certificates have been issued to victims making claims for damages which arise from trafficking. These figures only relate to public funding where we know the applicant is potentially

⁴⁹ NRM statistics 2017, page 5, <http://www.antislaverycommissioner.co.uk/media/1208/2017-nrm-end-of-year-summary.pdf>. The table shows the total number of referrals into the NRM from 2014 to end of 2016 as follows: 2339, 3261 and 3804.

⁵⁰ ATLEU submission.

a victim by the nature of the service sought and will not include other cases where a victim may have sought legal aid.

Qualifying for free legal assistance will depend upon an individual's financial circumstances for cases where a means test and a merits test must be undertaken in order to obtain legal aid.

<i>Year</i>	<i>Applications made</i>	<i>Applications refused</i>
2014-2015	5	0
2015-2016	14	1
2016-2017	9	0

ATLEU qualify this evidence by explaining:

“The statistics provided by Lucy Frazer in respect of certificates for civil representation were not entirely consistent with data held by us at this time, with the cited number of refusals misrepresenting the situation. Following the advent of LASPO virtually all, if not all, applications for legal aid for civil representation certificates in damages claims for victims of modern slavery were made by ATLEU at this time. It was our experience that the majority were not granted and that they were subject to lengthy delays whilst failures to grant legal aid were being challenged, with some cases taking up to 4 years to resolve.”⁵¹

A case study provided by ATLEU also highlights the Government's approach to decision-making on legal aid as highly reticent and obstructive.

“Martin was trafficked to the UK for the purpose of labour exploitation. He was required to work 6 days a week in a factory and was threatened and verbally abused. An application was made for investigative representation in order to consider a complaint under the Protection from Harassment Act 1997 (PHA) on the basis that the treatment amounted to harassment within the terms of the Act. The LAA responded to the application as follows: “We cannot grant funding as we do not see how the treatment you describe could amount to harassment. S7 of the PHA says that harassment can mean ‘alarming a person or causing distress’. We have also looked up the word harassment in 4 online dictionaries which give the following definitions:

- To trouble, torment or confuse by persistent attacks, questions etc.*
- Annoying or unpleasant behaviour towards someone that takes place regularly*
- Behaviour that annoys or upsets someone*
- Disturbing, pestering or troubling repeatedly, persecution*

An internal review was sought of the LAA's decision and a request made that the relevant case

⁵¹ ATLEU submission.

*law on harassment be considered, as opposed to dictionary definitions. A query was also raised as to whether the decision maker had access to an appropriate legal database. In the LAA's response it was stated "I am not sure what sort of database is being referred to". Following a further refusal of funding steps were taken to initiate judicial review proceedings. Unfortunately, Martin said that he was too scared to bring a claim against the 'authorities' and declined to pursue his compensation claim against the traffickers."*⁵²

2.1.b. Restrictions in the scope of legal aid

Several respondents pointed out that the legal aid provided to trafficking survivors by the UK authorities continues to be substantially limited, with major gaps such as the lack of legal support for survivors before they access the NRM; the absence of support for persons involved in the process of being identified as trafficking survivors; or the unavailability of legal aid in to access compensation under state compensation schemes' (ie. CICA)

Currently, legal aid for pre-NRM advice is not currently in scope under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This fails to provide potential victims, with advice in order for them to make an informed choice based on their options and give properly informed consent as to whether to enter the NRM. In the experience of the British Red Cross, "*not all solicitors are completely proficient in their understanding and advice in terms of the NRM.*"⁵³ It should be noted that some victims may be able to access advice prior to official identification through the NRM if they are claiming asylum, but in that case advice is normally limited to a maximum of two hours of work, as the maximum fee that can be recovered for pre asylum work is £100. In addition, there are small pockets of pro-bono advice available pre-NRM. Pre-NRM advice is also covered by legal aid in Scotland:

*"A lawyer who specialises in cases involving human trafficking in Scotland has advised that she considers that early legal advice actually gives victims confidence in entering official systems such as the NRM. However, in England and Wales many victims often cannot access legal advice until they have a reasonable grounds decision that they are a victim. This is unsatisfactory, as whilst an NRM decision is not an immigration decision it does have immigration implications e.g. risk of deportation, the ability to apply for discretionary leave to remain ("DLR"); can create risks of deportation or removal if a victim has a criminal history. (...)"*⁵⁴

JustRight Scotland confirm that:

"Specialist legal advice pre NRM is essential. In our experience, it does not preclude a referral, it ensures that any referral has a higher chance of remaining within the NRM system. For instance, we have spoken to women who have been very upset to realise how widely and quickly their information had been shared after entering the NRM including police contacts the day after. This leads to fear and mistrust in the process and increases the risk of someone withdrawing from the process. In the alternative, where a woman is aware of this beforehand –

⁵² ATLEU submission.

⁵³ BRC submission.

⁵⁴ Hope for Justice submission.

she can make an informed decision to refer in (and often will) and therefore expects how information will be shared.”⁵⁵

Expanding on these statements further, Scottish contributors stated:

“Whilst individuals absolutely do obtain access to advice about the NRM pre entry in Scotland – this is provided under an immigration category code. It therefore would not cover individuals who are British Citizens or who have a secure immigration status such as settled EU nationals.

The 2015 review of the legal aid board into this area and referenced above, did acknowledge that there was no specific category code for human trafficking. The 2015 review of legal assistance in this area did not see that as a problem, at that point, but highlighted that it should be kept under review. At that time there was a low level of British and EU nationals being identified in Scotland. This is no longer the case. There is an understanding that identification of British and EU settled nationals will continue to increase and a review of a separate legal aid code allowing solicitors to provide funded advice. At the moment, this advice would be provided pro bono by the NGO legal sector such as JRS.”⁵⁶

The Immigration Law Practitioners’ Association (“ILPA”), in their submissions to the MoJ Review of Legal Aid for Victims of Modern Slavery some time ago, noted that:

“A positive reasonable grounds decision under the National Referral Mechanism should not be the gateway to legal aid which should be provided at an earlier stage, at the point of first identification. The support of a legal representative and their explanation of a person’s options (or lack of options) may be what persuade a person to engage with the National Referral Mechanism in the first place. First, without legal advice, fear of detention and removal if they identify themselves to the authorities are powerful incentives for trafficked and enslaved persons to stay hidden.”⁵⁷

In addition, ILPA point out that by the time the reasonable grounds decision has been made deadlines for immigration cases may have passed and without assistance from a legal advisor wrong decisions can be made around the person’s status as a victim.⁵⁸ As noted by the majority of civil society organisations, *“the spirit of ECAT and the Directive is clearly to ensure that victims receive immediate assistance, including legal assistance, to enable them to come forward and feel protected and supported.”⁵⁹*

As ATLEU’s submission makes clear, the lack of pre-NRM legal aid means that survivors are required to make the critical decision to enter the NRM without sufficient information, within a very short period of time, and under very stressful circumstances.

⁵⁵ JustRight Scotland and TARA submission.

⁵⁶ JustRight Scotland and TARA submission.

⁵⁷ ILPA Response to the Ministry of Justice Review of Legal Aid for Trafficking and Modern Slavery Compensation Claims, 27th May 2016

⁵⁸ ILPA Response to the Ministry of Justice Review of Legal Aid for Trafficking and Modern Slavery Compensation Claims, 27th May 2016

⁵⁹ Hope for Justice submission.

“A lack of advice at the pre-NRM stage may leave victims unwilling to enter the NRM if they are not clear about its impact on their immigration status “...fear of detention and removal if they identify themselves to the authorities are powerful incentives for trafficked and enslaved persons to stay hidden.”⁶⁰ Many support organisations find it impossible to fund interpreters and victims’ accounts given without access to interpreters will necessarily be incomplete or perhaps erroneous.

The Home Office announced that “Government-funded ‘places of safety’ will be created so that adult victims leaving immediate situations of exploitation can be given assistance and advice for up to 3 days before deciding on whether to enter the NRM.”⁶¹ This highlights the need for pre-NRM legal advice. Independent legal advice should be available for pre-NRM advice so that victims can make a fully informed decision before entering the NRM, understanding both the strength of their trafficking case and its impact on their immigration status, in order that they can give informed consent to enter the NRM process. It is concerning that not all victims will be able to access this pre-NRM advice. Were it provided through legal aid rather than places of safety, it would allow all victims to access the advice.

Case study: AB is a victim of trafficking from an African country. He was brought to the UK and held in exploitation for over nine years, working in car washes, garages and painting houses. He was never paid by his traffickers and would work without proper clothing and food, sometimes seven days a week. He was sexually assaulted and verbally abused by the people who held him. AB was detained by the Home Office in 2015 and held in different immigration removal centres. He claimed asylum but this was refused and he was told he would be removed from the UK. At this point he had no immigration solicitor. He talked to someone from a visitor's group about his exploitation and told him he could approach the Salvation Army for help. He was interviewed late at night by the Salvation Army for 20 minutes and signed their form referring him into the NRM, without reading it as he was paralysed by the fear of his imminent removal. He was told he would have a proper interview about his case with the Home Office later. He was then given a negative trafficking decision.

AB managed to avoid removal and was released from detention. He finally received advice from an immigration solicitor who prepared a fresh claim for protection with a detailed witness statement that led to his case being reconsidered under the NRM. He eventually received a positive conclusive grounds decision confirming that he was trafficked, some three years after he was first given a negative trafficking decision. AB has been diagnosed with Post-Traumatic Stress Disorder, linked to his experiences in exploitation. His trafficking case was turned down in 2015 due to an alleged lack of information about key parts of the case. With the assistance of a solicitor fuller information was provided and his account has now been accepted by the Home Office. This information could have been provided in 2015 if AB had had access to the legal advice he needed from the start. With the help of a lawyer he would have understood the importance of making sure the Home Office had accurate details and had more time to tell his story. AB had not understood that his exploitation was wrong and worth investigating which is why it was disclosed so late in

⁶⁰ ILPA response to Ministry of Justice Review of Legal Aid for Trafficking and Modern Slavery Compensation Claims, 27th May 2016

⁶¹ <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

the day. He should have had access to free independent advice at that point when he was considering a referral into the NRM, to understand the process and have help to put forward a proper account of the key parts of his story. His refusal, the time he spent in detention and the long wait for his case to be reconsidered could have been avoided.”⁶²

Another critical gap in the UK legal aid framework is the absence of legal support to persons who are in the process of being identified as survivors of trafficking in human beings.

“Legal assistance in preparing evidence to demonstrate that an individual is a victim of trafficking is only available where this is done in connection with making an immigration application. Therefore anyone without an immigration application is unable to access legal assistance in connection with trafficking identification. British citizens would be excluded. They may be able to get assistance at a later date once a negative RG or CG has been made as explained above. (...)

The identification of a victim of trafficking will rely heavily on the account given by the victim themselves. For good decisions to be made it is vital that victims are given support to provide the Competent Authority with the most complete picture possible. Victims of trafficking cannot be expected to provide adequate evidence without legal advice and support. Many victims do not speak English, and thus require interpreters; many are traumatised and have difficulty disclosing until they are in a safe, therapeutic environment; and many will simply struggle to put forward a coherent account of their experiences orally or in writing. Moreover, victims require a lawyer to engage with complex legal frameworks to demonstrate how their circumstances fulfil the necessary criteria for identification. At present it is not clear that legal assistance to victims to provide evidence to the Competent Authority is within the scope of legal aid. Legal assistance at this stage is not within scope for legal aid unless a lawyer can successfully argue that the evidence being obtained is an integral part of an immigration application that is within the scope of legal aid. This kind of case by case approach is expensive for the lawyers making the applications, causes delays for the victims and is an unnecessary administrative burden on government.

In 2017 ATLEU brought the case of (R (LL) v Lord Chancellor CO/3581/2017.⁶³ LL’s parents died when she was a child and a family member brought her to the UK and forced her into prostitution. After three years she escaped. That was over 14 years ago. She has lived precariously, reliant on others, ever since. She still experiences significant and documented trauma associated with her experiences. After getting advice from a charity and a referral into the NRM system she is now getting help from a support worker and some financial support while she waits for her final trafficking decision. ATLEU assisted her to apply for discretionary leave to remain so she can feel safe enough to engage with specialist therapy and finally have the chance to rebuild her life. The Legal Aid Agency refused to fund a medical report that was needed to answer questions from the Home Office. This report was necessary to establish LL’s need for discretionary leave but also to help show why she is a victim of trafficking and so eligible for a grant of leave in the first place. Legal aid was refused and it took almost a year and judicial review proceedings for the Legal Aid

⁶² ATLEU submission.

⁶³ See more information about the case of (R (LL) v Lord Chancellor CO/3581/2017) in the LAG article here: <https://www.lag.org.uk/article/204954/the-legal-aid-agency-has-finally-conceded-over-immigration-advice-for-victims-of-modern-slavery>

*Agency to agree that discretionary leave applications for victims of trafficking in the NRM, and the associated work on conclusive identification, are within the scope of legal aid. As a result of the case the Legal Aid Agency published guidance on this.*⁶⁴

*The NRM is a separate process to the immigration process. It is complicated and there should be clear provision in new law that advice just about identification as a victim can be covered by legal aid. Similarly, reconsideration decisions are not clearly funded under legal aid. Some solicitors will prepare reconsiderations as part of an immigration case. Others may demonstrate that there are public law grounds for opening a public law file. However, there is little clarity within the legal aid specification whether this work is funded and under what category of law.*⁶⁵

Lastly, legal aid is not available for survivors seeking state compensation before the Criminal Injuries Compensation Authority (CICA), in England and Wales, which is in many cases the only realistic avenue for obtaining compensation.

ATLEU stated:

“For many victims of trafficking an application to the Criminal Injuries Compensation Authority (CICA) is the only route to obtain compensation. Typically, these victims are unable to identify their trafficker, or their trafficker will have no significant assets. Often they are simply too vulnerable to face their trafficker in court or contemplate further legal proceedings. There is currently no legal aid available for victims of trafficking wishing to submit an application to CICA or appeal a refusal.

*The Exceptional Case Funding regime is purportedly in place to provide legal aid to those who would otherwise suffer a breach of a Convention or EU law right. However, the Legal Aid Agency does not accept that an application to CICA involves the determination of Convention or EU rights and so routinely refuse applications. However, a victim’s right to compensation is expressly stated within the Council of Europe Convention on Action against Trafficking in Human Beings and EU Directive 36/2011. An application to CICA is therefore the determination of a Convention or EU right. Where applications are made for CICA matters, legal aid funding is almost always refused in the first instance, regardless of the complexity of issues or vulnerability of the victim and even where opinion is provided by expert counsel, blanket grounds of refusal are made.*⁶⁶

In Scotland, JustRight Scotland and TARA explained:

“Regarding CICA advice, it is true to say that legal aid is available in Scotland for this area of advice, but this does not mean that it is accessible to individuals. Whilst, legal aid may be granted, it is becoming more difficult to obtain the level of legal aid income needed to complete the applications for victims of human trafficking. This has coincided with private law firms ceasing to

⁶⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716499/Clarification_of_immigration_funding_in_trafficking_cases.pdf

⁶⁵ ATLEU submission.

⁶⁶ ATLEU submission.

provide this area of work to victims of human trafficking (who previously did so to victims of human trafficking).

We know of only 2 law centres who now provide this service in Scotland and JRS is increasingly being called on to meet this gap for all victims of human trafficking.

We suspect that this shift from the Scottish Legal Aid Board is for the same reasons behind the difficulties in England and Wales because of the questions we are asked in terms of trying to secure the correct amount of legal aid funding coupled with the cessation of other solicitors doing this work at the same time.

This is compounded by a decision in the Scottish courts regarding non legal NGOs providing assistance to make applications for CICA. As a result of that case, all NGOs have ceased to provide this level of assistance. We however agree with the position taken that legal advice is required.

JustRight Scotland and TARA would therefore state that it is the same position as England and Wales – it is technically in scope but the way it is being administered is shutting out groups of individuals from applying unless they can access one of the few specialist lawyers who do this.⁶⁷

In England, between April 2014 and April 2018 ATLEU made 30 applications for Exceptional Case Funding in relation to CICA matters:

“All 30 were refused following the initial ECF application on the basis that the clients did not require legal advice and assistance to successfully access compensation through the CICA scheme.

- *In 5 of these cases internal procedures were exhausted and pre-action correspondence sent, following which the LAA withdrew its decision. Funding was subsequently refused on an alternative basis requiring a further internal review before judicial determination could be sought. This resulted in an average delay of 12 months before any steps could be taken to advise in relation to CICA*
- *In 2 of these cases funding was granted prior to CICA appeal hearings but only following Judicial Review pre-action correspondence.*
- *In 2 of these cases it was necessary to issue Judicial Review proceedings before the LAA reversed its position.*
- *In 9 of these cases the victims disengaged following advice that the LAA’s refusal of funding would require a further legal challenge, leaving them without compensation.*
- *In 12 of these cases the victims were still in the process of reviewing or making new ECF applications.*

The Legal Aid Agency maintains that an application to CICA does not require legal advice and assistance, as it is merely a form filling exercise. However, the CICA scheme was not set up with the phenomenon of trafficking in mind. Sufficient guidance has not been issued to CICA decision

⁶⁷ JustRight Scotland and TARA submission.

makers, as a result those victims attempting to access the scheme without advice are those least likely to obtain compensation. The Legal Aid Agency's approach appears to arise from financial considerations as opposed to a genuine belief that the scheme can be accessed and compensation obtained without legal assistance. It is notable that where a negative funding decision is challenged by way of an application to the Administrative Court, the LAA have not submitted a response but have sought to settle proceedings, thereby avoiding a precedent being set which provides judicial scrutiny of the problem.

Many victims' express anger and frustration at the ECF process. Protraction and delay can result in the CICA process taking several years. As a result, victims disengage.

Case study: Patrycja⁶⁸ was trafficked to the UK for the purpose of sexual exploitation. She was forced to work in a brothel under threat of violence. Eventually Patrycja was able to escape and reported her traffickers to the Police. Patrycja's trafficker was arrested but no charges were brought due to a lack of evidence. Patrycja applied to CICA for compensation. She was unlawfully refused an award on the basis that the lack of a prosecution meant that it could not be determined that she had suffered a crime. Patrycja sought to appeal CICA's decision to the First-tier Tribunal. She applied to the Legal Aid Agency for Exceptional Case Funding. This was refused leaving her to prepare and present her appeal alone. An internal review of the refusal of ECF was unsuccessful with the LAA maintaining that Patrycja was not entitled to legal representation. Judicial review proceedings were commenced on Patrycja's behalf. The LAA did not submit a defence to the proceedings; they conceded that Patrycja should have been granted legal aid. As a result of the need to challenge this refusal of funding decision the determination of Patrycja's application for compensation has been delayed by 2 years. The LAA was also liable for the costs of the judicial review challenge which amounted to over £9000. This was in relation to an application for legal aid of just £4000. This case study is illustrative of the obstructive conduct demonstrated by the Legal Aid Agency towards victims of trafficking seeking legal aid.

Case study: Sonia was trafficked to the UK for the purpose of labour exploitation. She was required to work lengthy hours in a textile business for which she received no payment. Sonia was fearful as she was subjected to threats in the event she disclosed her treatment. However, she was eventually assisted by the police and gave evidence at trial leading to the conviction of her trafficker. Leading up to the criminal trial Sonia and her family were threatened with violence to deter her from giving evidence. Sonia was diagnosed as suffering from a mental injury attributable to her experiences. She was refused compensation under CICA on the basis that she had not suffered an immediate threat of violence; it was considered that the time between the threat and the work she was compelled to do amounted to a threat to harm in the future. Sonia applied for ECF to challenge the decision. She was refused legal aid on the basis that she would not require legal advice or assistance to make representations to CICA or in the alternative she could attend and represent herself at any appeal hearing. Sonia is illiterate in both English and her mother tongue. Sonia then required advice in connection with judicial review proceedings against the

⁶⁸ Names have been changed throughout this submission

LAA's refusal of funding and was in the meantime unable to pursue her CICA appeal which is likely to be delayed for at least 18 months whilst the funding is sought.

Exceptional Case Funding (ECF) applications are still being made in low numbers. In practice victims of trafficking and their support providers are unable to make effective applications for ECF and in ATLEU's experience most do not attempt to do so. Few legal aid lawyers make the applications, and where they do it is most likely to be within an area where there has previously been success and they consider it highly likely that the application will succeed. This is because the lawyer prepares the application at risk: if it does not succeed they will not recover funding for the cost of their time and be left out of pocket for the cost of any disbursements, for example, interpreters. Given that victims will very often require interpreters to give initial instructions, most legal aid lawyers would not have a budget to incur such costs when they will be unable to recoup them.

There are also a few other areas of law that are not in scope for legal aid which some victims may need. For example, those with family law issues, legal aid is generally not available such as for contact with children and in the absence of domestic violence. For victims who suffer exploitation again after escaping their trafficker legal aid is not available to enforce their employment rights, rendering risk of exploitation and trafficking greater. Their only option would be to apply for Exceptional Case Funding and prospects of securing that are remote.”⁶⁹

ATLEU's submission also draws attention to the government's obstructive approach to survivor access to legal aid in trafficking compensation claims, and to the fact that, when survivors actually file a request for legal aid in such cases, the authorities' decision-making is highly inconsistent, and is frequently delayed.

“In ATLEU's experience very few victims are ever referred for advice on their compensation options by the majority of the NRM support providers. This is largely due to employment law being taken out of scope as a category of law for legal aid in 2013, when LASPO came in. Since then there has been no contract for this area of law.

The government search engine to find legal aid lawyers 'Find a legal aid adviser' does not have an entry for 'compensation lawyers' who can work with victims of trafficking. This was not put in place after ATLEU challenged the limited number of matter starts provided for this area of law nor following the increased provision of matter starts from 6 March 2017. The search engine has still not been updated, despite the commencement of new legal aid contracts in September 2018, which allowed providers to tender for up to 100 miscellaneous matter starts (ie. up from just 5) to undertake this work. ATLEU has drawn the Legal Aid Agency's attention to the issue but unfortunately this simple amendment has still not been made and we understand that it will not be undertaken in the foreseeable future.

The other Government website 'Check if you can get legal aid', which allows a member of the public to check whether they are able to get legal aid and find a lawyer near them, also fails to identify Trafficking Compensation Claims as a potential area available to them. Under the

⁶⁹ ATLEU submission.

Employment banner there is an option to click if you are a victim of trafficking, and you are then directed to a telephone service to check if you qualify for get legal aid. This is insufficient: there needs to be a clear heading on the opening menu that says Trafficking Compensation Claims. For many victims an employment claim is not an option and they will be unaware that legal aid is available for them to bring a compensation claim. A victim or their support provider will often not recognise exploitation as an employment relationship, especially if they think what happened to the victim was illegal. The “Employment” heading also does not cover all possible claims that could be made. (...)

Whilst ‘Trafficking Compensation Claims’ are technically ‘in scope’ for legal aid the way that the legal aid scheme is administered for this group has the effect of shutting out most victims of trafficking from receiving legal aid. Legal Aid Agency decisions on victims’ of trafficking cases are poor. Refusals of applications are frequent, often due to a failure to understand the applicable law or apply lawfully the legal aid regulations. There is a lack of clarity within the Legal Aid Agency on how cases for victims of trafficking should be handled. There is also evidence of more obstructive conduct. Both are wasteful, resulting in unnecessary and adversarial litigation against the state at significant expense to the public purse, whilst denying legal aid to those who need it most. (...)

The Government’s approach to decision-making on legal aid in trafficking compensation claims has been highly inconsistent and obstructive. This is illustrated by the different outcomes and reasoning deployed in 15 cases, involving 15 victims of trafficking all of whom were brought to the UK for the purpose of labour exploitation. Each was required to work in a factory for onerous hours and none received a salary in line with the National Minimum Wage. Each was diagnosed with psychiatric injury resulting from their treatment. The only material difference in their cases was the length of time spent within the factory. Applications for legal aid were made for each of these clients. The table below sets out how the LAA handled these fifteen applications for legal aid.

Client	Date initial application made to LAA	Date application granted / able to access Legal Aid	Approximate length of time to obtain legal aid
1	September 2014	October 2014	1 month
2	April 2014	June 2016	2 years 3 months
3	September 2013	December 2014	1 year 3 months
4	April 2014	June 2017	3 years 2 months
5	October 2014	April 2018	4 years 6 months
6	January 2014	March 2016	2 years 2 months

7	April 2014	March 2015	11 months
8	April 2014	January 2017	2 years 9 months
9	August 2013	August 2014	1 year
10	March 2014	No grant – client	
11	April 2014	January 2016	1 year 9 months
12	April 2014	January 2017	2 years 9 months
13	November 2014	November 2016	2 years
14	April 2014	August 2016	2 years
15	July 2014	March 2017	2 years 3 months

Of the fifteen applications only two clients were granted legal aid in under a year of funding being sought. On average it took clients two years to obtain a legal aid certificate. Four clients were granted legal aid following a referral to the Independent Funding Adjudicator, three were able to access legal aid following ATLEU's judicial review against the Lord Chancellor of the Legal Help matter start provisions for trafficking compensation claims. Eight were eventually granted legal aid following expensive and time-consuming internal reviews by the LAA and/or following formal complaints.

This inconsistent approach to decision making has protracted the litigation against the traffickers and has resulted in the traffickers defending the claims indicating that they intend to raise preliminary points, which they likely would not have taken had steps to issue proceedings been taken as soon as the clients presented. The delay could also result in very significant financial loss to the clients if the Court is not willing to extend time.”⁷⁰

2.1.c. Lack of reputable legal aid solicitors and advisors, especially in certain regions

Civil Society respondents also provided an overview of the problems concerning the legal aid provided within the NRM itself, in terms of geographic restrictions and waiting lists that result in legal aid deserts. In 2017, ATMG conducted a scoping exercise to ascertain the legal provisions for potential victims of trafficking in England and Wales. Feedback was gathered from over forty respondents ranging from support providers, policy officers, researchers, and a number of different solicitors working with victims who have experienced human trafficking for immigration and public law purposes. Overwhelmingly, the responses received from scoping commented on a lack of reputable legal aid solicitors and immigration advisors who were equipped to deal with modern slavery cases.

⁷⁰ ATLEU submission.

Although the issue of availability (or lack thereof) of legal aid solicitors was highlighted as more of an issue in the north of England, this was generally due to geographical distances; especially outside of large towns and cities. On average, availability to reputable and reliable legal aid solicitors was greater in the south, particularly in the greater London area. However, the lack of availability and reputability was still reported to be an issue in this region of the UK. Access to safe, reliable and reputable legal advice is largely dependent on several key factors: capacity; what access to legal advice prior to entering the NRM victims receive and a victim's location in the UK.

Research conducted by the British Red Cross found that many of the survivors supported through their joint project with Ashiana and Hestia, the STEP Project⁷¹ had:

“lacked access to good legal advice on asylum and immigration – particularly outside London in the West Yorkshire and East Midlands regions of the pilot where there are only a small number of immigration solicitors with the relevant knowledge, interest and experience in trafficking and exploitation.”⁷²

In the wider experience of the British Red Cross: “we have found that some solicitors are reluctant to apply for exceptional case funding (ECF), when there are other legal aid cases that are readily available to represent. We have also found that there can be misunderstandings of what falls within the scope of legal aid. For example, we have frequently encountered the misconception that those within the NRM need to be in receipt of asylum support to access legal advice, which has led to delays in accessing legal assistance”⁷³

As evidence of the existence of areas in which legal aid is inexistent or unavailable is unavailable, ATLEU referred to the report “Draughts and Deserts. A report on the immigration legal aid Market”⁷⁴, and to several interviews with practitioners mainly from the North of England:

“In mid-2018 ATLEU has sought evidence from organisations providing services to victims of trafficking in response to the Government’s LASPO Post-Implementation Review. This overwhelmingly confirmed that victims were struggling to access legal advice.

‘There are in our experience huge legal aid deserts particularly outside London and even within London there are still capacity issues for good legal representatives. Hope for Justice struggle to find legal aid immigration providers with knowledge and capacity in significant parts of the UK including but not limited to the North West, North East, Midlands, South East, South, South West, West and South Yorkshire i.e. in all the areas where the victims we advocate for are residing. As modern slavery is a specialism within a specialism our experience is that legal aid immigration deserts are more acute for victims of modern slavery. Even in areas with advisers competent in the area often these advisers are at capacity, waiting times can now be well over 8 weeks for an

⁷¹<https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/human-trafficking-and-slavery/after-the-national-referral-mechanism-report>

⁷² BRC submission.

⁷³ BRC submission.

⁷⁴ Wilding Jo (2019) ‘Draughts and deserts: A report on the immigration legal aid market’. Available at: http://www.jowilding.org/asylum_legal_aid.html

adviser and in some areas it could be 12 months to find someone with capacity.’ Phillipa Roberts, Hope for Justice.

‘I am constantly being asked by other NGOs/ individuals where they can refer victims of trafficking for immigration advice in the north. There seem to be very few solicitors who specialise in trafficking claims either at the JR, compensation or tribunal appeal level...’

‘Due to the short limitation for JR or for putting in grounds of appeal to the tribunal, timely and effective legal representation is so important and lots of VOTs don’t seem to be getting the advice they need when they need it up here. So, for example negative trafficking decisions just don’t get challenged and then weigh against the client when it comes time to further leave applications or asylum appeals.’

‘I know several of the support organizations such as Ashiana, Palm Cove, City Hearts, Hope for Justice, all struggle to find enough experienced solicitors to refer their clients to or who have capacity to pick up cases at short notice.’ Immigration barrister specialising in trafficking work, North of England.

‘We have clients all across the north of England (Yorks and Humber, North West, North East etc.), some of whom really struggle to access appropriate immigration advice.’ Support provider for victims of modern slavery in the north of England, Rachel Mullan-Feroze, Service Manager, Ashiana Sheffield.

‘I think the biggest issue I have come across is that working with survivors of trafficking is such a specialism, and ATLEU have that specialist knowledge of trafficking. We typically work with firms who are immigration specialists, so trafficking just comes along as part of the package, which can leave some gaps in knowledge. With our really complex cases, we can really struggle, especially when they get dropped by their legal representatives’ Support provider for victims of modern slavery in the north of England.

“Very few firms here still doing immigration. Those who do are a bit of a factory. The good people not very well supported. It’s a dispersal area and so there are lots of new clients. Deals with interpreters who work in the emergency accommodation... it’s all very messy. But what it adds up to is a near impossibility trying to get people to do anything that is off beat. We talked about getting ECF for our statelessness cases and referring them out but there’s nowhere for them to go. There are not the providers to take the cases on. Those who are here prefer fast turn over, standard asylum. There are enough new arrivals here, because it’s a dispersal area for these to squeeze out the more complicated cases. It’s a chronic problem. But in trafficking, in particular, it means that ‘victims’ really aren’t getting the legal support they need. How far will your Sheffield office stretch? I think that North West (Liverpool and Manchester) will be out of the LAA area. I don’t suppose you could open an office here could you?’. Person [A] referring victims of modern slavery for legal advice.

‘A not infrequent problem faced presently is immigration applications for European nationals who have been trafficked or abused for 5 years and could meet the rules to qualify for permanent residence in the UK. No local legal aid provider will touch these. The biggest local legal aid

provider refuses to take on these applications saying they are out of scope of legal aid. If so there seems no point approaching other legal aid firms.’ Person [B] referring victims of modern slavery for legal advice.

Lack of access to legal advice is resulting in victims being unable to obtain their entitlements.

Case study: Lucy was trafficked as a minor for domestic servitude. In the years after she escaped her traffickers she suffered repeated sexual exploitation. Lucy lived in the east of England. She was represented by a non-legally aided immigration advisor as she could not find a legal aid solicitor in her area. The advisor failed to identify that she was a victim of trafficking and she was not advised about a referral into the NRM. Instead she was advised to make an application to the Home Office on the basis of her life in the UK. She was detained by the Home Office just a few weeks later; she was told the application that had been made was invalid. The advisor subsequently abandoned her as she could not afford to pay. She would have been eligible for leave under the Immigration rules based on her private life, if the application had been made properly. She would have been eligible for legal aid to make the application based on her life in the UK if she could have found a legal aid solicitor to help her. By the time she found a legal aid lawyer she no longer qualified for leave on that basis. She was later found to be a victim of trafficking after receiving legal aid advice and was eventually granted refugee status.”⁷⁵

Geographical coverage is also problematic in Scotland for obvious reasons related to geography and logistics given the need to cover many areas which could be termed as “remote” including many islands as well as weak communication links.

JustRight Scotland and TARA reported:

“Regarding national outreach, it is fair to say that the Scottish Government are aware of this and fund some work in this area. For instance, the Scottish Women’s Rights Centre has just expanded to run regular surgeries in the North. There are also Civil Legal Assistance Offices, funded by the legal aid board, in more remote areas. However, capacity building is needed. For instance, JRS are in the process of training CLAN – a children’s law centre to upskill them to work with refugee and migrant children including child victims of human trafficking. This will meet an advice gap in Edinburgh. This is funded by charitable funding.

More needs to be done in this area looking at a combination of capacity building, working to build local and regional partnerships complemented by some digital solutions.

In terms of accessing specialist lawyers, it is important to note that there is no specific accreditation scheme or requirement to be specialist in this area in order to provide legal advice in this area like there is in England and Wales. There is no specific training or accreditation scheme related to the provision of immigration/asylum and other forms of funded legal advice in Scotland. This includes in children’s cases.

JRS has a joint collaborative legal project with the Scottish Guardianship Service and it provides free weekly outreach sessions at TARA. These latter sessions with TARA are part funded by the Scottish Government. A pilot of this service with Migrant Help has recently

⁷⁵ ATLEU submission.

*started. The first 2 projects are outlined in the Scottish government's most recent report on its implementation of its human trafficking strategy in a positive light.*⁷⁶

2.1.d. Lack of appeal procedures

There is still no formal appeal procedure for negative NRM decisions in England and Wales. Service providers do informally request reconsideration of poor-quality negative decisions on behalf of trafficking victims. However as trafficking victims are not entitled to government-funded assistance following receipt of a negative decision, access to this form of redress is inconsistent and unequal. Recent changes to legal aid legislation have also caused further inequality for some trafficking victims seeking judicial review of poor NRM decisions. Despite this, in Scotland the system operated very differently, and JustRight Scotland and TARA reported no problems in securing legal aid to undertake reconsideration procedures in Scotland, a significant difference to England and Wales.

As the British Red Cross noted:

*“For victims who require a reconsideration of NRM reasonable and conclusive grounds decisions, there is no entitlement to legal aid for survivors, despite the reconsideration process being complex and often requiring the re-examining or gathering of evidence. Legal -aid should be made available for lodging an appeal or reconsideration of a National Referral Mechanism decision, and people should be able to access legal-aid support to help with appeals, and should continue to have access to support under the NRM while an appeal is outstanding.”*⁷⁷

This was confirmed by ATLEU's submission:

“The Legal Aid Agency does not specify that ‘reconsiderations’ of negative trafficking identification decisions are included under legal aid. It is possible for victims to access legal aid advice on reconsiderations in some circumstances: either from an immigration lawyer where they have an asylum case, or under public law, where there is an issue which gives rise to a potential judicial review challenge. In practice most victims do not receive legal assistance with a reconsideration. The lack of clarity around whether reconsiderations are within scope for legal aid, combined with a financial model which encourages minimal work to stay within the standard fixed fee, means most legal aid providers do not do this work.

Case study (from ATLEU's advice line):

“A female domestic worker, with a negative CG and refused asylum claim, was being removed. She had been to a few different immigration lawyers, none of whom had requested a reconsideration for her, although this was clearly relevant to her trafficking case. She was detained and given removal directions. ATLEU signposted her to a first responder, who is a

⁷⁶ JustRight Scotland and TARA submission.

⁷⁷ BRC submission.

specialist in assisting domestic workers, who were able to provide her with some pro bono initial advice to support a reconsideration. ATLEU also contacted a public lawyer who agreed to take her case. The reconsideration will now be prepared and her removal stopped. ATLEU's assistance involved using relationships with certain organisations and depended on the goodwill of those we contacted. The client in question had been without an immigration lawyer for months and then the lawyer that she had found stopped assisting her and didn't help with reconsideration or a fresh claim, meaning the client was detained and facing removal without needing to be.”⁷⁸

In addition, The British Red Cross also highlighted concerns around erroneous decision making as:

“all reconsideration requests which had received a decision by the close of the STEP pilot project (three cases) were successful and 18 asylum refusals were overturned on appeal suggests a level of poor decision-making across the framework of complex legal systems affecting survivors”⁷⁹

In 2019, the High Court ruled as unlawful the Home Office policy relating to victims of trafficking seeking a reconsideration of a negative decision, which restricted those requests only via a First Responder or Support Provider. Now the Home Office has agreed that it will direct its decision makers to no longer refuse a reconsideration request, even if that request has not come from a First Responders or a support provider. Despite this ruling, the Home Office refused to amend their policy and argued that victims should not be able to make a direct request to the decision maker to reconsider a negative trafficking decision.

Lastly, it should be noted that, while the government has established a process for reviewing negative Conclusive Grounds decisions (the Multi-Agency Assurance Panels Process⁸⁰), there is no reviewing mechanism for negative Reasonable Grounds decisions. This means that a significant number of presumed survivors are deprived of an appeal proceeding just as they are excluded from the system. The government has provided with no convincing explanation for this omission.

2.1.e. The specific case of legal assistance to children

Legal assistance for children present particular difficulties because, as ECPAT evidence, *“Children may experience particular difficulties because, unlike adults, they do not have any specific entitlement to targeted trafficking support once they are referred into the NRM, but instead are treated like other Looked-After Children. As a result, the professionals who work with them do not usually have the knowledge or skills to adequately support them through the NRM process, including by obtaining specialist psychological support and relevant expert evidence. A report from the Department for Education and the Home Office, based on evidence from local authorities*

⁷⁸ ATLEU submission.

⁷⁹ BRC submission.

⁸⁰ See guidance here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806658/2019_06.05_-_MAAP_guidance_FINAL.pdf

and NGOs, mirrors this experience – describing gaps in the provision of specialist or tailored services to non-EEA migrant children who are potential victims of trafficking.”⁸¹

They go on to assert:

“In practice, this means Local Authorities often fail to secure adequate (or any) legal advice for children with regards to their trafficking claims, or additional issues such as seeking compensation. In ECPAT UK’s experience, it is often left to the voluntary sector to fill such gaps by trying to find solicitors in individual cases identified, but that is a very haphazard way of doing things. We often see Looked After Children (and young people who are former Looked After Children) when adverse NRM decisions have already been made, and indeed very late in the asylum process itself. Even where a child or young person does obtain legal advice, this is generally from an immigration solicitor usually in the context of an asylum claim. The majority of immigration solicitors are focused on protection and human rights claims, and then on the statutory appeals process, they may lack the experience of or expertise in judicial reviews to challenge adverse trafficking decisions. There is a very limited number of public law solicitors who have the experience and expertise to challenge NRM decisions in the Administrative Court, particularly in children’s cases.

Child victims who apply for asylum are entitled to a legal representative in order to assist them in making their claim for protection.⁸² They may be referred to an immigration legal advisor through a variety of means such as through Refugee Council Children’s Project or by their Local Authority social worker, personal advisor, support worker or foster carer as well as other NGO’s.”⁸³

JustRight Scotland confirmed:

“In Scotland, where children are allocated a guardian, they ensure access to specialist solicitors for a wide range of legal issues. JRS are funded through charitable funding, to work collaboratively with the guardianship service in this regard.

For other children, JRS seek to work with local authorities across Scotland to increase awareness and we currently have several child clients across Scotland.

We would refer again to capacity building in this area in terms of JRS upskilling a law centre specialising in children to take on more cases in this area.”⁸⁴

2.2. Do all presumed victims have access to legal assistance, irrespective of immigration status or type of exploitation?

⁸¹ Cordis Bright. (2017). *Local authority support for non-EEA migrant child victims of modern slavery*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669077/Local_authority_support_for_non-EEA_migrant_child_victims_of_modern_slavery.pdf

⁸² Immigration Rules. Available at: <https://www.gov.uk/guidance/immigration-rules>

⁸³ ECPAT UK submission.

⁸⁴ JustRight Scotland submission.

Under the current framework, presumed survivors of trafficking have the right to legal assistance regardless of their immigration status. However, the continuing strategy by the UK government to create a so-called ‘hostile environment’ aimed at deterring irregular migration to the UK has had a detrimental impact on the rights of survivors who are also irregular migrants, including on the right to access legal assistance.

In a January 2019 submission to the Committee on the Elimination of all forms of Discrimination against Women (CEDAW), several UK NGOs, including ATMG, reported that some survivors do not consent to referral into the NRM due to factors such as: fears about the involvement of immigration services; being unable to work once within the NRM process; uncertainties around support provided within the NRM process; the likelihood of dispersal away from any legal representative; the lack of impact of a positive NRM decision; and the detrimental impact of any negative decision. In line with this, FLEX’s submission highlights how difficulties in identifying presumed victims are significantly higher in the case of survivors with an irregular migration status:

“While all presumed victims should have access to legal assistance from their first contact with the competent authorities, those with insecure or undocumented immigration status and those working in mainstream sectors of the economy face barriers to identification and therefore, to information on relevant judicial and administrative proceedings.”⁸⁵

Research by the Labour Exploitation Advisory Group⁸⁶, coordinated by FLEX, has shown that victims of human trafficking are not being identified at first point of contact with first responders, such as the Home Office, the police or the Gangmasters and Labour Abuse Authority, leading many victims with insecure or undocumented immigration status to be detained, and some removed from the UK without accessing their rights:⁸⁷

“Different Labour Exploitation Advisory Group members described having to advocate on someone’s behalf in order to get first responders to refer them to the NRM, including by having to explain to first responders what human trafficking means and how their client fits the criteria. This is especially true for undocumented victims who have experienced exploitation in mainstream sectors of the economy, who are often perceived solely as immigration offenders, and those with non-stereotypical experiences of exploitation. There is a gap between what authorities believe exploitation looks like and what victims actually experience, meaning that many people go

⁸⁵ FLEX submission.

⁸⁶ The Labour Exploitation Advisory Group (LEAG) is a group of experts from ten organisations working to prevent human trafficking for labour exploitation. LEAG is comprised of Focus on Labour Exploitation (founder and secretariat), Latin American Women’s Rights Service (chair), East European Resource Centre, Unite the Union, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Praxis Community Projects and Equality.

⁸⁷ Labour Exploitation Advisory Group (2019) ‘Detaining victims: Human trafficking and the UK immigration system’. Available at: <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

unidentified or are detained without being given access to the support and recovery to which they are entitled.”⁸⁸

The on-going conflation of trafficking with inbound immigration policies has led to failures in identification for potential victims. The UK’s Independent Chief Inspector of Borders and Immigration (ICIBI) showed concern for this issue in his May 2019 inspection of the Home Office’s approach to illegal working stating that the Immigration Compliance and Enforcement (ICE) teams regularly operate in sectors where they are likely to encounter vulnerable individuals who are being exploited but do not have the resources, time or expertise to interview potential victims of human trafficking in sufficient depth to establish their true working conditions.

The report states that *“ICE teams were not predisposed to identify potential victims during illegal working visits, since their focus was removal”* and that *“there was little sense of an understanding or operational interest in other sectors [other than nail bars] where exploitation and modern slavery is believed to be common”*.⁸⁹

The Labour Exploitation Advisory Group has long raised that:

“Potential victims are going unidentified in sectors such as cleaning and hospitality, where levels of abuse and exploitation are high and yet, there seems to be less interest from labour inspectorates and the Home Office to ensure workers in these sectors are identified and supported than workers in other sectors. Other charities providing evidence to the ICIBI also mentioned the authorities’ knowledge gap, quoting a migrant worker who told them “for immigration enforcement to believe that we are victims, we have to prove that we have been raped, starved and beaten”⁹⁰, showing a disregard for victims actual experience of exploitation.”⁹¹

In addition, ATLEU supported this evidence:

“It is ATLEU’s experience that the number of victims seeking compensation advice without formal recognition of their trafficking status is nominal, it is in the main overseas domestic workers who have not entered the NRM having obtained new employment or status by other means.

A lack of awareness of trafficking compensation claims means that the vast majority referred to ATLEU come from organisations working with those who have formally, or are in the process of being recognised as victims of trafficking.”⁹²

2.2.a. The specific case of survivors under immigration detention

A number of victims are detained under immigration powers. Trafficked people who are not part

⁸⁸ FLEX submission.

⁸⁹ Independent Chief Inspector of Borders and Immigration (2019) ‘An inspection of the Home Office’s approach to illegal working’. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_in_spection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

⁹⁰ Ibid, p. 47.

⁹¹ FLEX / Labour Exploitation Advisory Group.

⁹² ATLEU submission.

of a ‘rescue’ operation might come into contact with authorities when they are arrested for an immigration offence. Enforcement action relies on those who are trafficked to disclose their status quickly, or face detention. Those who are unable to report that they were trafficked at the point of arrest or detention can find they are not subsequently identified as trafficking victims, with late disclosure being taken as a credibility issue rather than an aspect of many trafficking victims’ trauma. Lack of self-identification is compounded because victims are often unaware there is a system to protect people who have experienced exploitation. Many respondents provided anecdotal evidence of people believing they have no rights in the UK, resulting in a lack of disclosure of exploitation.

The lack of access to free legal advice surgeries, provided in Immigration Removal Centres (IRC) further compounds this issue. Although solicitors can help identify potential victims of human trafficking, because when explaining their immigration history, victims may disclose cases of abuse and exploitation, as FLEX notes, *“there is no mechanism for vulnerable immigration detainees held in prisons, including victims of trafficking, to be brought to the attention of the Home Office. This coupled with the lack of free legal advice, means it is highly likely that many victims are not identifying at all and therefore denied remedies and recovery to which they are entitled under the NRM”*.⁹³

“Those detained under immigration powers face additional barriers to accessing legal assistance, as their access to information on their entitlements and avenues for compensation is mainly dependent on their identification by the Home Office, the body responsible for enforcing immigration policy. The UK Visas & Immigration (UKVI), part of the Home Office, is the only NRM first responder with unrestricted access to Immigration Removal Centres (IRC), and therefore the main government agency responsible for providing potential victims with information on relevant judicial and administrative proceedings while in immigration detention. Despite this vital role, UKVI staff are only required to complete two e-learning courses on modern slavery; a 60 minute course on modern slavery for non-Border Force staff and a 30 minute training on the NRM process.⁹⁴ While potential victims detained in IRCs are able to meet with independent duty solicitors who provide free legal advice, most of them do not have knowledge on human trafficking and are therefore, not qualified to provide legal assistance to potential victims about their entitlements and avenues to justice.”

The response by Unseen UK exposes a different dimension of this problem. In its experience, it is precisely survivors who have not had any contact with the asylum or immigration system than those who are far more removed from any form of legal assistance: *“most who require assistance with immigration issues have access to legal advice. It is those who do not have an asylum or*

⁹³ FLEX submission.

⁹⁴ UK Parliament, UK Visas and Immigration: Training: Written Question – 233000, 18 March 2019, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-13/232000/>; UK Parliament, UK Visas and Immigration: Training: Written Question – 235301, 26 March 2019, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-21/235301/>

immigration issue that struggle to access legal advice on other matters.”⁹⁵

In May 2019, the NGO Bail for Immigration Detainees published a survey⁹⁶ of persons under immigration detention, with the aim of assessing their perception of the legal aid they received. The result was highly concerning.

“Interviewees painted a damning picture of the quality of the legal advice surgeries. Of 51 individuals who made a legal advice surgery appointment with the duty solicitor, only 12 were given specific advice about their case. There were 12 individuals who were told by the solicitor that their case couldn’t be taken on because of reasons to do with eligibility for legal aid, and not a single one had been informed of the possibility of applying the Legal Aid Agency for Exceptional Case Funding. Only 43.1% of individuals who currently have a solicitor said that their solicitor had applied for bail.

It was clear that the legal advice surgeries have a poor reputation in detention. Numerous interviewees complained that the duty solicitors lacked knowledge and were not helpful, and one told us that they had not bothered to make an appointment after being repeatedly told by other detainees that it would be a waste of time.”

It seems clear that, if persons under immigration detention are not provided with appropriate legal aid, it will be harder to identify survivor and presumed survivors of trafficking.

2.2.b. The specific case of EEA nationals

ATLEU’s submission also underscores that many survivors hailing from EEA countries are in practice deprived of legal advice.

“EEA nationals technically have access to legal assistance, where they are potential victims of trafficking or confirmed victims of trafficking. However, they very often don’t receive immigration advice for two reasons: firstly, they are not automatically referred by most NRM support providers which has the effect of many EEA nationals not accessing legal assistance; and secondly, they cannot access immigration advice on EEA rights.

ATLEU’s experience is that referrals of European nationals for immigration advice are rare or not picked up. This is based on both our clients’ experiences and on the advice queries we get to our advice line.

We had a recent query recently which illustrates the problem: The enquirer wanted ATLEU’s assistance to get a number of vulnerable EU clients housing and help accessing employment. They made no mention of them needing immigration advice and they had not sought it for them, despite this advice being important in helping them resolve their housing and employment issues, where they are struggling to demonstrate their rights. It is ATLEU’s consistent experience that many

⁹⁵ Unseen UK submission.

⁹⁶ Bail for Immigration Detainees (2019) ‘Serious concerns raised about access to justice in immigration detention’. Available at: <https://www.biduk.org/posts/480-serious-concerns-raised-about-access-to-justice-in-immigration-detention>

people working with EU nationals - support providers, lawyers, others - do not think they need immigration advice. ATLEU proactively suggests this to anyone we are in contact with. For those that are aware that EU nationals need immigration advice, they struggle to find someone to take on the case to advise. It has been the reported experience of a manager at a large NRM safe house and support provider in the North East that they cannot get any legal aid provider to accept a case to offer advice to European nationals within the region. We were also told by support workers in December 2019 at another large support provider in the NRM in the North East and North West that they cannot find lawyers to offer immigration advice to European nationals. This probably points to both lack of financial incentive for the legal aid providers as well as a lack of understanding about immigration options to open to the EU clients. (...)

EEA nationals are unable to get legal advice on the EEA rights as they are not required to make an immigration application to establish these. However, many may not be economically active and will struggle to demonstrate that they have been exercising their treaty rights during their time in exploitation. This means that they may have difficulties in accessing housing and benefits as a result. EEA nationals are able to access legal advice under legal aid for an application under the EUSS and for an application for discretionary leave.”⁹⁷

2.3. What are the conditions for access to free legal aid for victims of THB, including children? For which types of proceedings is free legal aid available? Is free legal aid available to help victims claim compensation and execute compensation orders? Please provide the text of the relevant provisions.

Respondents have highlighted that free legal aid is restricted in two key aspects. On the one hand, free legal aid is not available for several claims, such as welfare benefits or state compensation, which can be crucial for the subsistence of survivors, and can be very complex. On the other hand, fluctuations in state funding including the introduction of LASPO have a knock-on effect in terms of access to legal aid. Although this does not completely explain why the geographical areas cited by contributors lack legal aid services. This is also the result of legal aid providers' budgets. These are generally financially unsustainable models. Legal aid providers are not “cutting budgets”, they cannot afford to keep going because of the way they are remunerated under the legal aid scheme. For example, 1/2 of all legal advice centres in England and Wales have halved since LASPO.⁹⁸ In addition, in Scotland it should be noted that “legal aid does not cover representation at employment tribunals or the criminal injuries compensation tribunal. It covers work done in preparation for these tribunals but not the representation at the tribunals itself.”⁹⁹

In England and Wales, Hope for Justice evidenced:

⁹⁷ ATLEU submission.

⁹⁸ Bowcott, O. (2019), ‘Legal advice centres in England and Wales halved since 2013-2014’, *The Guardian*, 15 July. Available at: <https://www.theguardian.com/law/2019/jul/15/legal-advice-centres-in-england-and-wales-halved-since-2013-14>

⁹⁹ JustRight Scotland submission.

“Legal aid is in scope for legal advice on civil claims and employment tribunal claims, immigration, public law, housing and community care issues. However, there are issues where legal aid is out of scope unless an application for exceptional funding is made. For instance, a victim cannot get legal aid for welfare benefits advice, or a first tier tribunal appeal. Legal aid is available for second tier tribunal appeals. Welfare benefits provide crucial subsistence for victims and can impact housing. Claims, particularly for EEA nationals, are extremely complex requiring representations of complex legal arguments. There are only a handful of agencies such as Hope for Justice, who provide initial legal advice and advocacy around this and even fewer agencies who provide advice and legal representation at a 1st tier tribunal appeal such as the AIRE Centre. Often pro-bono centres such as the Citizen Advice Bureau are ill equipped to deal with these complex cases and are often at high levels of capacity so it can take weeks to get an appointment. In addition, due to cuts to advice services, often there are no interpreters which compromises the ability of victims to voice legal issues and receive appropriate advice. There are also significant legal aid deserts across the UK. These issues have been more widely highlighted in several reports including (but not limited to) the following: -

- *Droughts and Deserts: A Report on the Legal Aid Immigration Market by Dr Jo Wilding.*¹⁰⁰
- *The Law Society Parliamentary Briefing on Legal Aid Deserts.*¹⁰¹

Currently if a victim has pursued an employment tribunal claim this can result in a paper judgment. Legal aid doesn't cover the cost of enforcement of employment tribunal judgments through the County Courts. Whilst on the face of it this might appear to be a mere form to fill in, Paul Yates, Pro-Bono Manager at Freshfields, who does provide pro-bono assistance on enforcement, commented that enforcement can be extremely complex. In his cases there are sometimes multiple proceedings including to secure charging orders, to secure an order for sale over property, bankruptcy proceedings, “Part 71” proceedings, and even in one case fraud proceedings in the High Court. Without substantial reform of the enforcement process, the idea that without access to a lawyer a victim of trafficking could have effective access to a remedy in these cases is fanciful.”¹⁰²

2.3.a. The situation of children survivors

As aforementioned, the eligibility for a person to access legal aid will depend on the type of case they have and their financial circumstances. For children, free legal advice and representation are available if a child, including a child who may have been trafficked, is charged and prosecuted for a criminal offence.

A number of respondents confirmed that all children automatically receive legal aid for legal representation in court in a criminal matter if they are under 16 or under 18 and in full-time education or on certain benefits. But, unlike some other EU states, a child is not provided with a lawyer and/or free legal aid if he or she is a witness in any criminal proceedings. It should be noted

¹⁰⁰ Sourced at <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>

¹⁰¹ <https://www.lawsociety.org.uk/policy-campaigns/public-affairs/parliamentary-briefing/legal-aid-deserts/>

¹⁰² Hope for Justice submission.

other EU states have very different legal systems to the UK. Likely, they are inquisitorial where as in the UK our system is somewhat adversarial.

ECPAT expanded further on conditions for access to free legal aid for child victims of trafficking:

“Trafficked children are entitled to legal aid for civil matters to advise and represent them if they apply for asylum or if there are reasonable grounds to suspect that they may have been trafficked or seek compensation for their exploitation. They are now also entitled to legal aid if they are a ‘separated child’ who needs advice and representation for leave to remain under any non-asylum or non-humanitarian protection provisions of the Immigration Rules or seek to rely on their rights under articles other than Articles 2, 3 and 4 of the ECHR. Trafficked children who are not looked after may be entitled to legal aid depending on their parent or legal guardian’s financial situation except in mental health tribunals or child abduction cases.

Looked after children should also be assisted to access legal in any other matter by their Local Authority as a corporate parent. The law states at Section 23C(4)(a) of the Children Act 1989:

Duties owed to a former relevant child under s23C(4) are the duties to provide:

‘(a) assistance of the kind referred to in s24B(1), to the extent that his welfare requires it;

(b) assistance of the kind referred to in s24B(2), to the extent that his welfare and his education or training needs require it;

(c) other assistance, to the extent that his welfare requires it’

The case of ZH (Tanzania) states the duties of the State to act in the child’s best interest. Despite these provisions, in ECPAT UK’s experience, some Looked After Children may face barriers in accessing legal advice due to lack of specialist advisers, poor local authority practice and resource-driven local authority decisions¹⁰³ which may often go unchallenged.

In England and Wales, legal aid is also available if a child wishes to challenge an age assessment by way of judicial review.

In Scotland, legal aid is available for human rights cases involving trafficked and unaccompanied migrant children and it is also easier to obtain funding for expert reports, although it is necessary to make more extensive arguments to justify the funding and this may be refused if an application is made at a very early stage in the proceedings. Access to legal aid is still more generous in Northern Ireland.”¹⁰⁴

2.3.b. Satellite litigation

The refusal of legal aid to victims can also result in satellite litigation that increases both the cost and the length of proceedings, thus discouraging applications to legal aid. As reported by Hope for

¹⁰³ All Party Parliamentary Group for children. (2017). *No Good Options Report of the Inquiry into Children’s Social Care in England*. Available at:

<https://www.ncb.org.uk/sites/default/files/uploads/No%20Good%20Options%20Report%20final.pdf>

¹⁰⁴ ECPAT UK submission.

Justice:

“Routinely, supporting victims in accessing lawyers for civil compensation cases, we experience refusals for legal aid; this results in satellite litigation e.g. appeals and judicial review applications. This significantly delays progress of the cases, sometimes by years. One large case where we supported victims through very protracted criminal proceedings, was completed by 2016. Referrals were made for advice in 2013. ATLEU, the solicitors dealing with the case, had ongoing persistent issues in getting legal aid in place with routine refusals of legal aid having to engage in appeal and judicial review processes. In many of these cases, it has taken two to three years or more to get legal aid in place. Victims can become incredibly disillusioned and can disconnect from the whole process because of these lengthy administrative barriers. In addition, this does not encourage legal aid firms to take on cases as such actions can mean these cases are not commercially viable.”¹⁰⁵

ATLEU obtained a list, from the Legal Aid Agency, of all of the legal aid firms that had applied for ‘matter starts’ to undertake trafficking compensation claims from September 2018. ATLEU sought to contact each of these firms to see if they were in fact acting in compensation claims for victims of trafficking. Of 250 firms contacted only 26 responded positively. Many advised that they had opted not to take on such claims because of the difficulties in accessing legal aid. For those providing immigration advice, it was seen as too much of a financial risk to also undertake compensation claims.

ATLEU provided a detailed account of how the UK authorities can use the merits test in legal aid applications to generate derivative litigation, thus establishing a significant barrier to access justice and effective remedies.

“The legal aid provider must consider the merits of the case including the likelihood of success and benefit to the client before making an application on behalf of a client. Details of the merits criteria are set out in the Civil Legal Aid (Merits Criteria) Regulations 2013 and subsequent amendments¹⁰⁶. Information is also available in Lord Chancellor’s guidance¹⁰⁷.

In practice the Legal Aid Agency has operated the merits test in a way to prevent litigation from proceeding. For example, where a case has received a positive opinion from independent counsel on the merits of the case (whether a junior or a QC) the Legal Aid Agency will frequently state that the case does not have merits and refuse funding. The Legal Aid Agency has also refused funding on this basis where a case has been granted permission to appeal to one of the appellate courts, including the Supreme Court. This causes significant stress and delay for vulnerable clients.

¹⁰⁵ Hope for Justice submission.

¹⁰⁶<https://www.legislation.gov.uk/all?title=Civil%20Legal%20Aid%20%28Merits%20Criteria%29%20Regulations%20>

¹⁰⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774441/lord-chancellors-guidance-under-section_4-laspo.pdf

Puthenveetil v Director of The Legal Aid Agency CO/779/2014

Exceptional Case Funding, in the sum of £5000, was sought in order to instruct counsel to represent the Claimant at an Employment Tribunal hearing listed for 7 days. The Claimant was a victim of trafficking, illiterate in both English and her mother tongue, and would be required to cross-examine her traffickers in relation to a period of 8 years in which she was held in servitude. The Legal Aid Agency refused funding on the basis that the presence of an interpreter and the Judge meant that she did not need representation at the hearing.

An application was made to the Employment Appeal Tribunal for a stay of the employment tribunal proceedings in order that judicial review proceedings against the Legal Aid Agency could be issued. Permission was granted. Just 2 days before the Judicial Review hearing the Legal Aid Agency reversed its decision and agreed to grant Exceptional Case Funding, following Counsel's positive opinion on the merits of the underlying employment tribunal case. An adjournment of the Judicial Review hearing was sought.

The Legal Aid Agency then made a further decision, relying on counsel's positive assessment of the merits, stating that as prospects were so good that counsel could surely be obtained on a no win no fee basis. The judicial review was relisted. Again, just 2 days before the hearing the Legal Aid Agency conceded the case and granted funding to enable the client to be represented in the Employment Tribunal proceedings.

As a result of this satellite litigation the Claimant's employment tribunal claim was delayed by 2 years. The Legal Aid Agency was also liable for the costs of the challenge: in excess of £18,000 has been spent in relation to an application for just £5000.

The way applications for legal aid are treated has a profound impact on victims of trafficking. The need for satellite litigation frequently protracts proceedings, sometimes for several years, during which time victims are unable to access legal assistance and their entitlements, most notably compensation, and move on from their trafficking experiences. Many report feeling that they are held in a limbo during this time. For many victims the prospect of pursuing a challenge that may take over a year before they can commence their compensation claim is too distressing and difficult to contemplate; others find it difficult to grasp the cause of the delay. Many victims come from countries where a legal challenge against the government would result in repercussions for them. Whilst every effort is made to explain that they will not experience such repercussions in the UK many are deterred from pursuing this course of action

Case Study: Saira was trafficked to the UK for the purpose of sexual exploitation and then coerced into a sham marriage. She sought a certificate of investigative legal representation in order to take instructions with an interpreter and determine what claims might be brought on her behalf. Saira was initially and incorrectly refused legal aid on the basis that she was seeking advice in relation to an out of scope employment matter. She was then refused again, and incorrectly, as she was unable to demonstrate that she could not obtain a 'no win no fee agreement in the private sector'. Saira spoke no English so contacting solicitors in the private sector was not a realistic option for her. Representations were made to this effect. Saira was then refused legal aid on the basis that insufficient information had been provided to determine whether there were complaints with

reasonable prospects of success. Saira's lawyer advised her that there were merits for a judicial review challenge against the Legal Aid Agency. However she declined to formally challenge the LAA after her 3rd refusal of funding, stating, "they don't want to help me, I am nobody, they [the traffickers] didn't treat me like a human being nor do they [the LAA]"

*Case Study: George was trafficked to the UK for labour exploitation. He was forced to work in hand car washes and, when this work was not available, to steal for his trafficker. George escaped and reported it to the police. He attended court to give evidence resulting in a custodial sentence for the trafficker. George then sought legal aid to investigate a compensation claim. His application was refused on 4 separate occasions. George was advised that the decision to refuse was unlawful and that there were merits to challenge the refusal by the Legal Aid Agency but he declined to bring a formal challenge. He said, "I helped the police even though I was scared, why won't the government [LAA] help me. I am half a man after what the trafficker did to me, why are they treating me like this?"*¹⁰⁸

2.3.c. Legal aid in compensation cases

Please see our response to question 2.1, subsection (a).

2.4 Are there lawyers specialised to provide legal aid and represent victims of THB in court? What regulations, if any, are applicable to the provision of such legal aid/representation?

Civil society respondents concurred in noting that the provision of legal advice and representation is reserved to persons qualified as solicitors or barristers, or otherwise accredited by the Office of the Immigration Services Commissioner (OISC) to provide legal advice. If a person provides advice and services without regulation then this is a criminal offence.¹⁰⁹ Beyond this professional accreditation, it is important to underline that the ATMG and AFRUCA have reported a general lack of specialised, trusted legal advice across England. Some respondents also noted that the quality of the advice and the familiarity with NRM process can vary across organisations.

Hope for Justice also set out the regulations applicable to those providing legal representation to presumed victims of trafficking in England and Wales:

"The Legal Aid Services Act 2007 sets out authorisation for certain regulated activities. Currently (aside from immigration above) legal services can be carried out by non-governmental organisations for non- reserved legal activities e.g. welfare benefits advice. However, it is an offence under the Legal Aid Services Act 2007 to carry out reserved legal activities e.g. the conduct of litigation if not authorised to do so. Reserved legal activities, such as the conduct of litigation, can currently still be carried out by both authorised and regulated bodies. Currently section 23 of the Legal Services Act 2007 has transitional arrangements until the law is clarified further for certain bodies who can continue to conduct reserved legal activities without further regulation

¹⁰⁸ ATLEU submission.

¹⁰⁹ See <https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>.

*until this is in place. This includes a not for profit body, a community interest company or an independent trade union.*¹¹⁰

There is a lack of reputable legal aid solicitors and immigration advisors who are equipped to deal with human trafficking cases across the UK. Even where an immigration advisor can be obtained, Independent Modern Slavery Advocates (IMSAs) working for Hope For Justice regularly experience situations where:

*“Advisors are either (a) unaware that EEA national victims would be covered by legal aid, (b) not as familiar with EEA national rights/victim rights such as the fact that an EEA national can (and may need to) apply for discretionary leave to remain and/or (c) are unaware that a victim would be covered by their legal aid immigration contract with a positive reasonable/conclusive grounds decision and/or (d) not familiar enough with issues relating to human trafficking to be able to advise. HfJ often have to connect advisors to a more experienced specialist advisor. Other NGOs in this sector have commented on victims being charged huge sums of money even though they are entitled to legal aid.”*¹¹¹

In connection to this, ATLEU’s submission emphasised that legal practitioners providing advice to trafficking survivors are not required to go through specialist training or to obtain a specific authorisation to engage in this type of work.

“The UK has no requirement that legal practitioners have specialist training, or authorisation to act with victims of trafficking. The previous civil legal aid contract tenders took place after 5 years and during that contract period there cannot usually be new entrants. Legal aid providers are required to have a quality assurance standard in order to obtain a contract: either Lexcel or a Specialist Quality Mark. They are also required to have supervisors in certain areas of law. None of these require any particular knowledge or expertise in trafficking.

In relation to compensation claims, ATLEU has sought to train and encourage practitioners to undertake such claims. Trafficking Compensation Claims are a complex area of law but as there is no contract category for them no legal aid providers are required to have anyone with any prior experience of doing this type of work. ATLEU is aware that much of this work is being done by firms with public law or immigration contracts where there is little or no experience of bringing contractual or tortious damages claims in the high court or employment law claims. ATLEU are not aware of firms being subject to any auditing or scrutiny of the quality of this work at all.

Immigration lawyers will be required to comply with either the Law Society IAAS scheme or OISC. Again, this is not a trafficking specialist. There are general concerns about the quality of detention advisors across the board and experienced detention lawyers familiar with trafficking cases no longer being given the same allocation of slots to see detained clients through the detained duty advice scheme, by which legal aid is available for people in detention to see clients for immigration advice. This means firms will struggle with financial viability, there will be brain drain/loss of expertise. The newer entrants face no requirement to show any trafficking expertise in order to do

¹¹⁰ Hope for Justice submission.

¹¹¹ Hope for Justice submission.

detained work, and are not necessarily familiar with the indicators or particular needs of victims.”¹¹²

There are no specific requirements of specialisation on human trafficking to represent child victims in the myriad of legal issues which may arise. For children, lawyers providing immigration and asylum services through legal aid must be members of the Law Society's Immigration and Asylum Accreditation scheme. If the lawyer is carrying out immigration and asylum work for a child under a legal aid contract then they must have also had an enhanced Disclosure and Barring Service check in the last 24 months, and be a Senior Caseworker or above.

In ECPAT UK's experience:

“There are immigration and asylum lawyers who have developed significant expertise representing child victims of trafficking and have set a high standard with regards to best practice supporting children but these specialists are limited to a few and will not be representative of the general practice of representation in immigration and asylum received by child victims of trafficking. This is compounded by the fact that these may also be highly complex and sensitive cases requiring the specialism but often children report significantly poor practice such as lawyers who hold inadequate qualifications, no or insufficient information about qualifications, provides vague or misleading information about qualifications, fails to refer clients on due to lower level of experience/qualifications and fails to seek advice from supervising/more senior solicitors which has led to serious failing in children's cases rendering them undocumented or in appeals 'limbo' for many years following their 18 birthday.

When children are arrested for crimes they committed due to their exploitation and are not identified as witnesses, they will likely face criminal prosecutions in the Youth Court (a magistrates' court that has been adapted so that it is a less formal setting). It is well known that the quality of legal representation in the Youth Court is often very poor.¹¹³ If a child is charged with a grave crime the court will decide which court will hear the case. More serious cases may be sent to the Crown Court. As it is increasingly being recognised that children are trafficked and exploited for criminal purposes, access to competent and experienced criminal defence lawyers is of central importance. On 29 October 2015 (updated on 2 December 2019), the Law Society of England and Wales published a Practice Note for criminal solicitors.¹¹⁴ In England, there are a few experienced criminal defence lawyers who are concerned to obtain the best outcomes for children who may have been trafficked, with knowledge of the Section 45 defence this number has increased and more defence solicitors are alert to trafficking indicators. However, many others seem to not even consider why children who may have been trafficked would commit the offences

¹¹² ATLEU submission.

¹¹³ Taylor, C. (2016). *Review of the Youth Justice System in England and Wales*. Available at: <http://www.yjlc.uk/wp-content/uploads/2016/12/Review-of-the-Youth-Justice-System.pdf>

¹¹⁴ Law Society. (2019). *Practice note: Criminal prosecutions of victims of trafficking*. Available at: <https://www.lawsociety.org.uk/support-services/advice/practice-notes/criminal-prosecutions-of-victims-of-trafficking/>

they were charged with continue to advise them to plead guilty in order to obtain a shorter sentence.”¹¹⁵

2.5. How is the provision of legal assistance and free legal aid for victims of THB funded? Do victims have to pay a fee to obtain legal assistance or start a procedure, or are there other financial barriers in place? If yes, please specify the amount(s).

In England and Wales, the Legal Aid Agency is the body charged with funding the legal work provided to survivors of trafficking in human beings that falls within the scope of free legal aid. Contributing NGOs highlighted three main aspects in which the funding provided by this agency can fall short; the delays and restrictions in funding provided by the Legal Aid Agency, which can make trafficking cases financially unviable for legal practitioners; the means-testing of aid provided to survivors; and a statutory fee charged on the compensation awarded to survivors.

In Scotland, there are two ways in which Scotland fund legal assistance in this area and in recognition of its specialist nature.

“The first is through the legal aid judicare system and the other is through funding specialist lawyers (also through the Scottish Government) to meet any gaps that stem from the judicare scheme. Some of this funding through the grant system operated by the Scottish Legal Aid Board (such as the Civil Legal Assistance Offices, the Scottish Women’s Rights Centre (SWRC) as well as other areas of the Scottish government (a small grant to JRS and TARA for a legal surgery). JustRight Scotland and TARA assert that there should be more funding of specialist legal assistance in this area in Scotland specifically for all victims of human trafficking regardless of age, gender, immigration status or location.”¹¹⁶

2.5.a. Trafficking cases can be financially unviable for legal providers

As noted by a January 2019 submission to CEDAW by several UK anti-slavery NGOs,¹¹⁷ immigration cases with a trafficking element are considered financially unviable by many legal aid providers due to their length and the lack of clarity around whether the work will be funded. As a result, many providers are deterred from undertaking this work, which leaves victims and support workers struggling to secure lawyers, with some victims waiting up to a year to see an immigration lawyer and less than one percent of victims referred into the NRM accessing non-asylum immigration advice.

The submissions provided by the British Red Cross and Hope for Justice confirm this impression. The British Red Cross:

“ATLEU noted that many of the problems with asylum and immigration advice – both in terms of access and quality – relate to a legal aid system which makes it financially disadvantageous for legal practices to take on trafficking immigration cases, as these will usually run for significantly

¹¹⁵ ECPAT UK submission.

¹¹⁶ JustRight Scotland and TARA submission.

¹¹⁷ Available at: <https://www.antislavery.org/wp-content/uploads/2019/04/ASI-ATLEU-ATMG-HTF-Kalayaan-submission-to-CEDAW-UK-Jan-2019.pdf>

longer than the average immigration or asylum case. As the legal practice is not paid until the end of the case, they will typically be waiting for a period of over three years for any payment.”¹¹⁸

Hope for Justice:

“As an outside agency looking into the system, we consider that there appears to be confusion and a complete lack of transparency from the Legal Aid Agency (LAA) as to the scope of the provisions within schedule 1 section 32 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (“LASPO”)¹¹⁹ covering advice on immigration and compensation to victims of human trafficking and modern slavery. For instance, we had a case where one provider was told by the LAA via a legal aid provider that LASPO schedule 1 section 32 covered an application by a victim for permanent residency. Another legal aid provider was told the complete opposite by the LAA. ATLEU (Anti Trafficking and Labour Exploitation Unit) a legal aid provider who specialise in providing advice to victims have repeatedly asked the LAA for details of the policy/information to clarify the scope to assist legal aid providers but have had no response to this request.”¹²⁰

ATLEU further expanded on this by describing the financial factors that render trafficking cases financially unsustainable for legal aid providers:

“(i) Structure

Immigration cases are paid on a standard fixed fee but trafficking cases can be highly complex. The barriers to disclosure and the time needed to establish a relationship of trust, as well as the multiple different legal frameworks that must be considered mean these cases often exceed the fixed fee paid for immigration cases and some work undertaken on these cases simply goes unfunded. Uncertainties around exactly what work will be funded in relation to obtaining the conclusive identification necessary for a related discretionary leave application act as a further disincentive to lawyers accepting these cases and to expertise being developed.

Trafficking compensation complaints are complex and often raise novel areas of law. Despite this, legal help work falls under the ‘miscellaneous’ category and attracts the lowest rate of remuneration, a fixed fee of £79 in comparison to a fixed fee of £157 in housing or £259 in public law. Within the miscellaneous regime personal injury and employment matters attract a higher fee £203 and £207 respectively, however, even where the trafficking compensation claim involves personal injury or employment work the lower fixed fee is applied. The hourly rate paid is also lower than in other categories of law. Low rates of pay mean there is little business case for a provider to undertake trafficking compensation claims. The lack of a specific contract for providers to undertake trafficking compensation claims also makes the work less desirable. At present the ‘matter starts’ enabling providers to carry out this work have been provided in a piecemeal way. Providers will remain reluctant to recruit practitioners with specific expertise until a specific contract for this area of work is created.

¹¹⁸ BRC submission.

¹¹⁹ Legal Aid and Punishment of Offenders Act 2012 Schedule 1 para. 32 sourced at <http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

¹²⁰ Hope for Justice submission.

(ii) Delays in payment

One of the reasons there are so few lawyers undertaking work for victims of trafficking on legal aid are that cases take such a long time to conclude. On most cases involving victims of trafficking the Legal Aid Agency do not make payments until the case is closed and organisations are required to “cash flow” cases, sometimes for years, before they are reimbursed. By their nature cases involving victims of trafficking often involve expenses (known as disbursements) for interpreters and expert reports and medico-legal reports that must be paid up front by lawyers.

ATLEU’s experience of delays in Competent Authority decision making is that it is not uncommon for victims to wait 2 or 3 years for a conclusive grounds decision. On immigration cases this means that lawyers will need to do regular updating work throughout that period of time and may need to obtain further medico-legal reports. In 2018 ATLEU took a sample of its immigration and asylum legal aid files which had been shut over course of the year. The different costs involved on asylum and non-asylum cases are noticeable, however both are very substantially higher than the standard fixed fee paid by the Legal Aid Agency (ie. the cost of the lawyer’s time which is referred to by the Legal Aid Agency as ‘profit costs’).

On asylum cases, the legal aid standard fixed fee is £413 and on non-asylum immigration cases it is £213.¹²¹

On ATLEU’s asylum cases, the average profit costs were £3742 which is 9 times the standard fee. The average disbursement costs were £1926, taking the total cost of the case to £5668.

On non-asylum immigration cases, the average profit costs were £1162, which is over 5 times the standard fee. The average disbursement costs were £423, taking the total cost of the case to £1585.

In immigration cases there is an additional burden for legal aid lawyers. There is a threshold for disbursements that can be incurred without first seeking permission from the Legal Aid Agency. This is too low on trafficking cases which are disbursement heavy in comparison to standard immigration and asylum cases, which means it creates excessive work for lawyers and the Legal Aid Agency in administering what expenses will be funded. It can easily take up to an hour to prepare a funding application for an expert report, one which anticipates potential points of refusal.”¹²²

2.5.b. Means-testing in legal aid applications

In the UK, access to legal aid is subject to means-testing, which means that some survivors can be required to pay all or part of their legal costs when their income or capital exceed certain thresholds, this is also reported in Scotland, where similar rules/restrictions apply, awarding monies will be used to pay legal costs.

¹²¹ See The Civil Legal Aid (Remuneration) Regulations 2013, Schedule 1, Part 1, Table 4(a), <https://www.legislation.gov.uk/ukxi/2013/422/made>

¹²² ATLEU submission.

In ATLEU's experience, many survivors conclude that they cannot continue with litigation because of funding restrictions derived from this test, or because of the difficulty of providing evidence regarding their resources in their country of origin.

“The means test looks at both the applicant's income and capital. The general rule is that the resources of the partner of the individual applying for legal aid are to be included in the calculation of the financial resources of the applicant. In order to be eligible for civil legal aid, the applicant must pass both the income and the capital eligibility test.

Applicants with gross income above £2,657¹²³ a month limit are excluded from legal aid entirely. An applicant's disposable income cannot exceed £733 per month, if it does they are not eligible for legal aid.

Capital limits and contributions

There is a capital limit of £8000 for civil legal aid, save for immigration which has a capital limit of £3000. This means that where an applicant has savings or assets worth over the threshold they are excluded from legal aid.

Individuals in receipt of legal representation (but not legal help) may be required to pay a contribution towards the cost depending on their level of disposable income and capital. The Legal Advice Agency (LAA) will assess whether clients have to make payments towards their legal aid. There are two types of contribution: lump sum contributions from capital (including savings), and monthly contributions from income. The threshold for contributions starts as low as £316¹²⁴ disposable income per month.

The rules governing payment for services are set out at the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.¹²⁵

44 (2)(b) the individual's monthly disposable income exceeds £315,

the individual must pay the following contributions—

- (i) 35% of any such income between £311 and £465;*
- (ii) 45% of any such income between £466 and £616;*
- (iii) 70% of any remaining disposable income*

44 (3) (b) the individual's disposable capital exceeds £3,000,

¹²³ See Means Assessment Guidance, page 207

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793462/Means_Assessment_Guidance.pdf

¹²⁴ See Means Assessment Guidance, page 207

¹²⁵ <http://www.legislation.gov.uk/ukxi/2013/480/regulation/44/made>

the individual must pay a contribution of the lesser of the excess and the sum which the Director considers to be the likely maximum cost of the civil legal services provided to the individual.

The requirement to make a contribution to legal aid can result in victims concluding that they cannot continue with litigation. We have seen this with many types of cases, including those of strategic importance, which we have been unable to pursue at Court of Appeal and Supreme Court level.

The requirement that applicants demonstrate that assets held abroad should not be considered in legal aid calculations is extremely onerous. For example, in a case where the applicant, a victim of trafficking from Hungary, had been coerced into signing over a property in Hungary by their traffickers. Although the victim no longer had access to the property, and the traffickers actions in respect of the property was one of the reasons for her seeking legal advice, legal aid was only granted following pro bono assistance from solicitors in Hungary who were able to obtain documents confirming that the traffickers had taken over the victim's property. This was the result of ATLEU working in partnership with others internationally to meet the victim's needs. This service would not normally be available to victims approaching private legal aid providers in the UK and those in similar circumstances would likely just be refused legal aid on eligibility grounds.

To evidence assets held abroad applicants will often produce documents in their language. However the Legal Aid Agency will only review documentation provided in English, Welsh or French, so where an initial application is being made (ie. there is no legal aid in place) victims of trafficking often face additional delays whilst pro bono assistance is sought to carry out a translation.

Where applicants for legal aid have a bank account abroad there is a requirement that they provide bank statements for the Legal Aid Agency both when they apply for legal aid and when requested throughout the lifetime of the case as updating evidence of means is needed. For some victims of trafficking, based in the UK, this can be so difficult that it has led to them abandoning their case. It is ATLEU's experience that those victims with more complicated evidence of means, do require a higher level of support and assistance on a long-term basis - as these matters are so often long-running ones – in order to be able to engage with legal proceedings.

Income – passporting benefits

Applicants in receipt of certain types of support are deemed eligible for civil legal aid, subject to their capital not exceeding the £8000 (or the £3000 for immigration advice) upper limit, where they are properly in receipt of: Income Support, Income-Based Jobseekers' Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit. These are known as 'passporting benefits' which mean the applicant will qualify automatically on income. It is notable that there is no corresponding entitlement for victims of trafficking in receipt of support under the NRM. Applicants in receipt of asylum support payments are only passported for immigration advice, but not for any other category of law.

Income – calculating disposable income

An applicant's monthly disposable income is calculated by taking their gross monthly income, including earnings and other income (such as child benefit, pensions, maintenance, dividends, tax credits, benefits in kind, less monthly allowances), less monthly allowances for the following: rent or mortgage instalments (this is capped); dependent allowances of £181.91 for a partner and £291.49 for dependents aged 15 and under 15 or 16 and over; maintenance payments (for example domestic workers who send money home to maintain their family); childcare costs; tax and National Insurance; and a standard allowance of £45 for employment expenses. An allowance for a payment of an income contribution order for criminal legal aid is also deducted.

When calculating disposable income rent is taken in to account, although the amount is capped, no other utility can be deducted. Victims of trafficking will often have debts to service and these are not taken into account. This often means victims feel compelled to meet those debts but suffer significant financial hardship as a result and are unable to obtain legal advice in the meantime.

Impact of the income threshold on victims

In practice many applicants, victims of trafficking included, find themselves ineligible for legal aid despite being on a low income and in receipt of state benefits. Recent research commissioned by the Law Society compared legal aid eligibility thresholds to the minimum income standard set under criteria supported by the Joseph Rowntree Foundation, and found that the monthly disposable income limit excludes people from all types of household at incomes that put them below the minimum income standard.¹²⁶

Victims will often send money home but the Legal Aid Agency require the payments to be regular otherwise an applicant will not meet the eligibility criteria. When a victim is not eligible for legal aid they will usually be unable to afford to pay for legal advice and will go without. Others borrow large sums and end up in debt. Even where lawyers can assist pro bono, in judicial review cases victims are usually reluctant to proceed due to costs implications even where a protective costs order can be obtained as there is still risk on application for permission.

There are special rules concerning an application for the funding of legal representation for proceedings relating to domestic violence, female genital mutilation protection orders and forced marriage. The Legal Aid Agency may waive the eligibility limits for gross and disposable income and disposable capital for this category of work where an injunction or other order for protection from harm to the person is sought; or committal for breach of any such order. There is no corresponding entitlement for victims of trafficking, for example, where they may be trapped in exploitation and unable to access immigration or public law legal advice, following a negative RG decision and therefore unable to access support under the NRM.

Cases involving victims who are ineligible for legal aid are amongst the most difficult to challenge through the courts as the individuals are unable to get legal aid to bring the challenge against the Legal Aid Agency/Lord Chancellor so even with pro bono legal representatives must embark on

¹²⁶ See LAG article: <https://www.lag.org.uk/article/207151/revisiting-the-legal-aid-means-test>

litigation in which they are not costs protected, at least for the initial permission stage of the proceedings. This will usually deter most victims from bringing such a challenge.

Case study: *a victim of trafficking had been unable to be considered for discretionary leave as a victim of trafficking as a result of an unlawful policy on discretionary leave. This was a plank of his case against the Home Office. The case was on appeal to the Court of Appeal. Unfortunately he was unable to pursue the case as he was over the income threshold for legal aid. He was offered pro bono assistance but still felt unable to proceed as he was unable to meet the cost of disbursements, including the cost of a transcript of the decision that was under challenge and was mandatory to obtain. There was also a slight risk of adverse costs if he lost the case. Ultimately he felt that this was too stressful, risky and difficult to proceed with.*

Case study: *In a compensation case in which the applicant, a victim of trafficking, sought legal aid for legal representation, the Legal Aid Agency unlawfully refused legal aid over a period of 12 months. By the time legal aid was granted the victim had obtained employment, albeit on a low salary. The victim had obtained hardship loans from the benefits agency which he was required to pay back, but these are not considered when calculating eligibility. The victim concluded that he could not afford to pay contributions to the LAA and discharge the debt to the benefits agency and opted not to pursue a compensation claim.*

Case study: *The applicant was a victim of trafficking with no earnings or entitlement to benefits because of her immigration status. The victim had a partner who was a UK national and, like the victim, of retirement age. The victim's partner was receiving state pension credits. As means are aggregated the victim was required to obtain from her partner a contribution every month from their already very limited income, leaving them struggling financially.*

Case study: *AB came from Thailand in 2013 because she needed to work to support her elderly parents and disabled sister. She realised that she was being brought to do sex work but was forced to take part in sexual acts and drug taking without her consent. She suffered for two years until she was picked up in a police raid and recognised as a potential victim of trafficking. The police felt it was so important that she provide evidence to their investigation that they wrote to the Home Office to ask that she be allowed to remain in the UK. Their request was ignored and AB had to wait another two years for a decision, only for the Home Office to make a negative CG decision. With irregular immigration status and no other way to earn money AB returned to prostitution to earn money. She rented a flat in Central London to see clients. She used her earnings to cover the rent and to continue sending money home to her family – her father was by this time very unwell and the family continued to rely on her income to pay for his healthcare and to meet her sister's needs. AB's income exceeded the gross income limit for legal aid. Her rent was high as it was in Central London and therefore much of it could not be deducted for the purposes of calculating disposable income. The legal aid rules allow for a maximum deduction of £545 for an individual's rent. AB didn't want to continue working in prostitution but felt she had no choice as she wasn't allowed to work legally and couldn't access immigration advice to regularise her status. Eventually her mental health declined dramatically and by the summer of 2018 AB twice attempted suicide. Only when she was admitted to hospital for psychiatric treatment, did she become eligible*

for legal aid. Following this she obtained legal advice which led to the negative CG decision being overturned and a grant of refugee status.”¹²⁷

2.5.c. The statutory charge in compensation claims

Hope for Justice and ATLEU have also remarked that the UK authorities charge a statutory fee on any successful claim to state compensation in certain cases in which the claimant has previously received legal aid. In some occasions, the financial compensation awarded to a survivor has been entirely funneled to this statutory charge.

“Even if compensation is recovered if legal aid has been in place this will be subjected to a statutory charge which could swallow up the compensation received.¹²⁸ This is despite ECAT (Article 15) and the Trafficking Directive (Article 17) requiring member states to enable victims to access compensation schemes and Article 12 of the Trafficking Directive referencing “free legal advice” and “without delay.”¹²⁹

““The issue of the statutory charge will normally arise in a compensation case. Where a case is run solely on Legal help, in the employment tribunal, the statutory charge will not apply. However, if exceptional funding was received (i.e. to cover advocacy in the employment tribunal) or a legal aid certificate was obtained (for an appeal to the employment appeal tribunal), the statutory charge operates. Once the statutory charge becomes operable, it attaches to all work done for the client on any form of legal aid funding. For example, a client is advised on legal help throughout their employment tribunal proceedings (so the statutory charge would not apply). However, the client needs to make an emergency application to the employment appeal tribunal for a hearing postponement. They cannot use legal help for an appeal so they need to obtain a legal aid certificate. Once they have a certificate, the statutory charge is engaged. This allows the Legal Aid Agency to recoup all of the costs – including those incurred on legal help– from any compensation obtained from the tribunal. It does not matter if the work done on the certificate is only a small proportion of the overall work on the case – the client will have to pay all the legal costs out of any winnings. As the claimant will not normally be able to recover costs against their opponent in the employment tribunal, they will always have to pay the costs of running their case out of any award or settlement if the statutory charge operates

For compensation cases requiring legal representation (ie. those not in the employment tribunal) the statutory charge will operate. Where a court case is won, either through a court judgment or settlement, the opponent will pay the winner’s legal costs in addition to any damages. Sometimes it may not prove possible to obtain all of the legal costs from the traffickers, in which case the victim will have to repay the Legal Aid Agency the costs of running their case out of any monies recovered. See the case of Turkey, R (on the Application of) v The Director of Legal Aid Casework & Anor [2017] EWHC 3403 (Admin) in which a victim of trafficking had her award extinguished

¹²⁷ ATLEU submission.

¹²⁸ Further information on the Statutory Charge can be found here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777007/payin-g-for-your-civil-legal-aid-leaflet-v2.pdf

¹²⁹ HFJ submission.

by the statutory charge. “¹³⁰

Getting Legal Aid Cancelled

ATLEU has also submitted evidence on their experience of traffickers contacting the Legal Aid Agency, in an attempt to have the victim’s funding stopped so that a claim will not be pursued or, if issued, withdrawn. Calls to ATLEU’s telephone advice line confirm that other practitioners have had similar experiences. As ATLEU explain;

“Whilst the LAA are entitled to investigate suggestions that public funds have been obtained inappropriately, it is wholly unreasonable to undertake investigation at the request of the trafficker, further to not consider that the trafficker may have any ulterior motive or apply scrutiny to the representations made by them is unacceptable. Many victims struggle with the notion that they are entitled to vindicate their legal rights or that the legal system is open to them. Where the LAA accept representations from the trafficker, it can result in victims losing faith in the legal system, undermining any trust in the authorities, and in the NRM process.”¹³¹

ATLEU also submitted the following case case studies;

“Case Study

Marla was trafficked to the UK for the purpose of domestic servitude. Marla worked 6 days a week, looking after 2 children under the age of 5. Despite an agreement that she would receive £200.00 a week, after 3 months the trafficker stopped paying her salary on the basis that she was having financial difficulties. When Marla asked for her unpaid salary she was beaten with a chair leg and told that the trafficker would report her to the Police for theft.

Marla ran away. She sought advice to bring compensation claim against her trafficker to recover her unpaid wages. Marla was initially reluctant to pursue a claim as she considered her trafficker to be a powerful and influential person. Marla could not believe that the UK legal system would enable her to challenge her trafficker in Court.

Marla was granted legal aid in order to bring a compensation claim at the High Court. However, Marla’s trafficker contacted the Legal Aid Agency and stated that Marla had lied about her financial position. As a result, Marla’s legal aid was suspended and she was required to undergo a new means assessment. When Marla demonstrated that she was financially eligible for legal aid, her trafficker contacted the LAA and stated that Marla’s claim had no legal merit. Despite the fact that the LAA had been willing to grant legal aid and a barrister had confirmed the claim had merits, Marla’s legal aid certificate was cancelled. Marla was too scared to further challenge the LAA and so disengaged.

Article 12 Convention

LASPO attempts to give effect to Article 12 , however it is common place for the LAA to assert that

¹³⁰ ATLEU submission.

¹³¹ ATLEU submission.

Article 12 does not apply to compensation claims as the heading refers to criminal proceedings.

Current case: N v Director of Legal Aid Casework

N sought legal aid in order to bring a compensation claim against the business that benefited from his forced labour. N was refused legal aid on the basis that he had not demonstrated that he could not obtain a conditional fee agreement or after the event insurance. It was submitted on N's behalf that in both scenarios N would have to pay a fee albeit at the end of the case and so would not amount to free assistance. Moreover, even if a Conditional Fee Agreement (CFA) / After the Event (ATE) Insurance could be found, neither would cover the cost of interpreting and other essential disbursements. The LAA maintained that N was still required to demonstrate that a CFA/ATE was unsuitable, further that Article 12 was not applicable. N has sought permission for JR.”¹³²

¹³² ATLEU submission.

3. Compensation from perpetrators (Article 15)

3.1. What measures are in place to enable courts to award compensation to victims of THB, including children, from the perpetrators as part of criminal proceedings? What is the role of prosecutors in this respect?

Obligations to provide access to compensation are anchored in both the Convention and Directive, obliging States to ensure victims have access to information on relevant judicial and administrative proceedings in a language which they can understand; shall ensure the right of victims to compensation from the perpetrators; and adopt measures to guarantee compensation for victims through the establishment of a fund for victim compensation.

In creating such provisions, the Convention and Directive acknowledge the potential restorative, punitive and preventive effect of compensation. Thus, compensation plays an important role in assisting victims to hold those responsible to account, provide for their families, and rebuild their lives. Yet, numerous barriers are encountered by those attempting to access their right to compensation across each UK jurisdiction.

In a January 2020 submission to the UN Human Rights Committee,¹³³ several anti-trafficking NGOs noted that there is still no civil remedy for victims of trafficking and modern slavery, and that the two available mechanisms are flawed. On the one hand, in England and Wales, the current employment tribunal and High Court and County Court claims for victims of trafficking are remarkably lengthy and complex; it is frequently in excess of 18 months to reach a full trial. On the other hand, the Modern Slavery Act introduced a bespoke Reparation Order to ensure that more money from those convicted of slavery goes directly to their victims, but at the time of writing it appears that no reparation orders have yet been made. In practice, compensation from perpetrators of trafficking is unavailable for many.

In addition to this, the Deduction from Wages (Limitation) Regulations 2014 significantly limits the ability of victims of trafficking to recover the National Minimum Wage (NMW), as it prevents victims from obtaining more than two years owed in NMW, despite the fact that they may have been paid little or nothing for several years. Prior to the introduction of this legislation, a victim of trafficking or servitude could recover wages for the entire period that they were held in servitude. Lastly, the ‘Family Worker Exemption’, contained in the NMW Regulations 2015, provides that live-in domestic workers are not entitled to receive the national minimum wage or any payment at all, if the worker is “treated as a member of the family”. This Exemption is frequently used as a litigation tool by traffickers to defend court or tribunal claims.

Compensation or Repatriation Orders:

In England and Wales, a judge has power to order the defendant to pay compensation, on conviction, for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence, under s.130 of the Powers

¹³³ Available at: <https://www.antislavery.org/wp-content/uploads/2020/01/Submission-HRC-modern-slavery-in-UK-Jan20.pdf>

of Criminal Courts (Sentencing) Act (PCC(S)A) 2000.¹³⁴ Following the introduction of the Modern Slavery Act in 2015, section 8 states that a “*Court must consider making a reparation order to compensate the victim following the conviction of the perpetrator for a modern slavery offence (slavery, servitude, forced labour or human trafficking) and the making of a ‘confiscation’ order*”.

However, as ATMG identified in 2013:

*“obtaining compensation through this method is difficult as orders can only be considered if the defendants’ assets are realisable i.e. they have been seized and confiscated immediately. Furthermore, judges are very unlikely to impose compensation orders if they impose a custodial sentence on the trafficker. Applications for such orders can be made by the police or prosecutor, but have not been requested as a matter of course. For prosecutors, compensation orders appear to be a secondary consideration with the primary focus being on securing a conviction.”*¹³⁵

This view is confirmed by Hope for Justice’s submission to this questionnaire:

*“The criminal courts can make orders for compensation on the conviction of a perpetrator pursuant to section 130 — 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (“Compensation Order”).¹³⁶ More specific to modern slavery, section 8 of the Modern Slavery Act 2015 gives the Criminal Courts powers to make a slavery and trafficking reparation order if the person has been convicted of an offence pursuant to sections 1, 2 or 4 of the Modern Slavery Act 2015 and if a confiscation order has been made.¹³⁷ In large or complex cases, the question is more likely to be a matter for the civil courts. The Court of Appeal has also discouraged criminal courts from undertaking complicated investigations to establish the extent of the loss (see *R v Bewick* [2007] EWC Crim 3297). We have had victims recover compensation via a compensation order in the criminal courts. In our experience even when there has been a successful conviction, a financial investigation and a confiscation has been made, the sums received by victims via compensation orders have been relatively nominal, sometimes as little as £200.00, and in isolation do not on their own adequately compensate a victim for the harm caused and the wider losses such as financial losses incurred e.g. loss of earnings.*

The Home Office was asked via a parliamentary question about the number of reparation orders made. As at 21st November 2018 no Slavery and Trafficking Reparation Orders had been made.¹³⁸ This is not surprising as the reparation orders currently do no more than the existing compensation orders pursuant to the Powers of Criminal Courts (Sentencing) Act 2000. However, we have supported clients who have received compensation through the criminal courts. Compensation via the criminal process is reliant on investment in financial investigations and

¹³⁴ Anti-Slavery International (2013) ‘In the dock: Analysing the UK’s Criminal Justice response to Trafficking’, p. 89. Available at: https://www.antislavery.org/wp-content/uploads/2017/01/in_the_dock_final.pdf.

¹³⁵ Anti-Slavery International (2013) ‘In the dock: Analysing the UK’s Criminal Justice response to Trafficking’, p. 90. Available at: https://www.antislavery.org/wp-content/uploads/2017/01/in_the_dock_final.pdf.

¹³⁶ Sourced at <http://www.legislation.gov.uk/ukpga/2000/6/part/VI/crossheading/compensation-orders>

¹³⁷ Modern Slavery Act 2015 sourced at <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

¹³⁸ Sourced at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-11-21/194087/>

early freezing of assets, as traffickers are skilled at concealing assets or dissipating them as they receive them. Compensation orders are also limited to situations where the calculation of damages is straightforward. R v Horsham Justices ex p Richards [1985] 1 WLR 986 sets out that criminal courts should not make compensation orders where the calculation of awards is complex.(...)

The role of prosecutors is that they are required to consider applying for compensation on conviction. The Crown Prosecution Service have guidance specifically on Human Trafficking, Smuggling and Modern Slavery and Sentencing and Ancillary Orders such as compensation.¹³⁹”¹⁴⁰

JustRight Scotland and TARA confirmed, that in Scotland:

“The Human Trafficking legislation does not have a bespoke reparation order/or equivalent in its legislation. Therefore, existing powers would need to be used and there is a discretion within the Scottish court system to ask for a compensation order to be made. The first point is that it is discretionary and not mandatory. In general, there is also thought to be an under-use of such provisions within the Scottish Courts as in England and Wales However, this is in our anecdotal experience and at this time we lack data on this.

There have not been a high number of prosecutions in Scotland, so it is difficult and we have not been involved in the cases that have gone to court. We are not however aware of compensation being awarded as part of these criminal proceedings.”¹⁴¹

3.2. How is the amount of compensation calculated and are there specific criteria or models for calculating it? What types of injury/damage and costs are covered? Are there any circumstances/conditions that would lead to a reduction of the amount of compensation?

The only organisation that provided an answer to this question was Hope for Justice.

“HfJ experience is that, even when there has been a successful conviction, a financial investigation and a confiscation has been made, the sums received by victims via compensation orders have been relatively nominal, sometimes as little as £200.00, and in isolation do not on their own adequately compensate a victim for the harm caused and the wider losses such as financial losses incurred e.g. loss of earnings.”¹⁴²

3.3. How are compensation orders/verdicts enforced? What measures are in place to

¹³⁹ See Crown Prosecution Service Guidance on Human Trafficking, Smuggling and Modern Slavery sourced <https://www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery> and Crown Prosecution Service Guidance on Sentencing and Ancillary Orders sourced at <https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders>

¹⁴⁰ Hope for Justice submission.

¹⁴¹ JustRight Scotland and TARA submission.

¹⁴² Hope for Justice submission.

guarantee and ensure effective payment of compensation?

Sections 130-134 of the Powers of Criminal Courts (Sentencing) Act 2000 makes provision for compensation orders to be made against convicted persons in favour of their victim(s). However, the number of compensation orders made in the last ten years in human trafficking and slavery cases is low. A specific reparation order for victims of slavery and trafficking was brought in under s8 of the Modern Slavery Act 2015 to enable courts to order a person convicted of a modern slavery offence to pay reparation to their victim or victims, in respect of the exploitation and degradation they have suffered. A reparation order will only be made where the court is satisfied that the defendant has the means to pay.

ATLEU's evidence revealed:

“The MSA provides that the Court must consider making a slavery and trafficking reparation order in any case where it has power to make one, even where an application is not made. If the Court does not make an order it must give reasons for not doing so.

Reparation Orders: The Modern Slavery Act 2015 makes provision for ‘slavery and trafficking reparation orders’ under s.8 of the Act. Reparation Orders can only be made on the successful prosecution of the trafficker. There is no calculation set out in statute. The Court will attempt ‘complete reconciliation’ and compensate the victim for the financial loss suffered and injury to feelings. There is authority to the effect that where complete reconciliation between the parties as to the proper amount of compensation is not readily possible on the evidence before the court, but a calculation of the minimum loss is a comparatively simple task, then the court should make an order in the sum representing that minimum loss. e.g the Criminal Court could still compensate for personal injury without extensive medical evidence. David Edward James [2003] 2 Cr. App. R.(S) 97

In some cases the Criminal Court will use measures set out in other jurisdictions to calculate compensation i.e calculation of personal injury quantum usually applied in the civil courts.

That a reparation order has been granted will not bar the victim from pursuing a civil compensation claim, but there cannot be double recovery and so if the victim recovered a proportion of their unpaid wages from a reparation order and then brought a claim directly against their trafficker, they could only claim the shortfall between the total underpayment and that already obtained.

In relation to reparation orders, commonly the Court will set a date by which payment must be made. Failure to make payment or seek an amendment to the order can result in a custodial sentence.”¹⁴³

Hope for Justice expanded on this point:

¹⁴³ ATLEU submission

“In HfJs experience there is difficulty in the enforcement of compensation orders/verdicts, due to insufficient funding of financial investigation at the beginning of a criminal investigation or the provision of legal aid to make these investigations in an employment tribunal or civil claim.”¹⁴⁴

Kalayaan has reported that there are no mechanisms in place to ensure that perpetrators are held into account following a costs order against them. In one particular case reported by Kalayaan, a survivor was awarded one-hundred thousand pounds in compensations at the Employment Tribunal, but was then tasked to enforce the order by herself or employing an enforcement agency, with no legal aid or support provided to her by UK authorities. Kalayaan also noted that the July 2017 Mathew Taylor Review of Modern Working Practices¹⁴⁵ recommended that the process for employees to receive compensation awards was simplified -to no avail, in the best of Kalayaan’s knowledge.

3.4. When foreign victims of THB are removed from or choose to leave the country where the exploitation took place, what measures are in place to enable them to obtain compensation and other remedies.

Victims who are no longer in the UK can in theory obtain legal aid and pursue a compensation claim in the UK. However, practically this has proven extremely difficult. The LAA will only accept documents in English or French, so steps need to be taken to prepare appropriate translations - often with the cost borne by the legal aid provider.

Where victims are subject to random re-assessment complying from abroad within the set timescale can be difficult.

A reparation order can be granted regardless of whether the victim remains in the UK after giving evidence. Practically if the victim has not taken steps to update the Police of any change in contact details because of the gap between sentencing and POCA proceedings they will not be aware that an order has been made. If the CPS cannot contact them they will not receive payment.

Civil society respondents pointed out that the support provided by the UK authorities to survivors that return to their country of origin, is not enough to enable them to obtain compensation and other remedies:

“Victims of Trafficking including EU/EEA would in theory be able to pursue a CICA claim, employment tribunal and/or civil claim. However, in our experience if victims return to their country of origin there is insufficient ongoing support to enable them to access or continue to access legal advice and representation to pursue or continue to pursue CICA claims or civil claims. Working with victims who have returned home it becomes incredibly difficult for them to pursue any type of compensation from their own country and they often can disconnect with

¹⁴⁴ Hope for Justice submission.

¹⁴⁵ Taylor M. et al (2017) ‘Good Work: The Taylor Review of Modern Working Practices’. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

support providers such as ourselves and legal representatives. In addition, there may be logistical and financial difficulties in victims returning to the UK for issues relating to their litigation such as examination by a medical expert and attendance at a tribunal hearing or civil trial. There are also logistical difficulties in terms of the administrative demands of the legal aid agency in requiring ongoing documentation on financial means of victims which provides additional difficulty especially as wage slips will be in a different language."¹⁴⁶

Other respondents cited serious difficulties in keeping in contact with survivors post NRM, confirming that no-one agency is responsible for *"keeping in touch with a victim or ensuring this obligation is understood/fulfilled."*¹⁴⁷

In Scotland the provision is reported on by JustRight Scotland and TARA:

"JRS and TARA, being aware of this gap in Scotland, try to use the joint legal surgery they have, to ensure that EU nationals in particular obtain access to a lawyer prior to returning home so that a compensation case can be pursued. This has happened in 2 cases so far but the responsibility for keeping in touch lies with JRS and to a lesser extent, TARA.

In one case, we lost touch with the person as did TARA. We therefore try and retain a link with an NGO which TARA assist with. In a second case, we are preparing an application but there are logistical and interpreting difficulties which mean such cases require a higher investment of time from the solicitor. However, TARA and the local NGO are assisting. This extra work is not covered by legal aid funding meaning there is no financial incentive to undertake these cases meaning the gap is filled by legal NGOs.

The importance of this, however, cannot be under-estimated. In this one active case, the person has been disowned from her family after returning to her home country. She therefore required to find accommodation and employment quickly. She did this but the traffickers located her at her place of employment, having had their bail conditions in Scotland reduced to allow them to travel without her knowledge. She had to leave this employment. She requires compensation in order to ensure that the conditions which put her in a position vulnerable to exploitation in the first place do not continue to remain in place and therefore result in re-trafficking back to the UK or elsewhere."¹⁴⁸

¹⁴⁶ Hope for Justice submission.

¹⁴⁷ Unseen UK submission.

¹⁴⁸ JustRight Scotland and TARA submission.

3.5. What procedures are in place to ensure effective access to compensation for victims of THB for the purpose of labour exploitation? Can such victims bring civil claims for compensation and/or recovery of unpaid wages and social contributions on the basis of tort, labour, employment or other laws? Please specify the relevant measures. Can victims of THB working in irregular employment or without a contract claim unpaid wages and other compensation and if yes, how is the amount of unpaid wages and other compensation established?

Each UK legal system contain several procedural avenues that could theoretically allow a survivor of labour exploitation to access compensation through civil procedures. However, compensation orders remain a contested issue. Article 12 provides that the trafficked person shall have access, without delay, to free-of-charge legal counselling, including for the purpose of claiming compensation. It can be argued that none of the possible avenues for compensation in the UK are in accordance with the Convention. As aforementioned, the Scottish Legal Aid Board monitored the availability and accessibility of legal services in the area of human trafficking in 2015. It also highlighted the same report's comments that access to compensation/other civil remedies "in practice was rarely successful and that compensation was one of the weakest rights and often the most inaccessible".¹⁴⁹ It stated that it is not clear whether this results from systematic problems with the availability of solicitors rather than other barriers which may relate to a person's experiences.

The civil procedural avenues are as follows:

Civil Claim:

Trafficked victims have the right to initiate a civil claim for compensation. Civil claims are in scope for legal aid and a victim would only need pro bono assistance if they were not eligible for legal aid. Without pro bono legal assistance, such claims require the claimant to fund their own case, which may not be a viable option. FLEX also provided an assessment of the shortcoming of this approach:

*"A victim of trafficking may bring a claim in the County Court based on civil law actions such as harassment, false imprisonment, and breach of contract. A victim could also bring a claim under the Human Rights Act 1998 against a public body, such as the police or local authorities, for example, for failing to properly investigate or deal with their case. These claims are often lengthy and complex and effectively rely on the victim being legally represented. Costs in these cases is a significant barrier, and it can be difficult for victims to recover the full amount of their loss."*¹⁵⁰

In civil proceedings the parties can agree to settle a claim in the employment tribunal s203 ERA settlement agreements, ACAS COT3 requires that the victim has independent legal advice as to the effect of settlement. County Court/High Court claims if victim is represented then their

¹⁴⁹ See: <https://www.slab.org.uk/app/uploads/2019/03/SLAB-Monitoring-Report-2017.pdf>

¹⁵⁰ FLEX submission.

representative will advise as to the effect of settlement.

Similarly, in Scotland – an individual can access a civil claim for compensation, and this would be covered by legal aid provided the relevant financial and merits tests are met.¹⁵¹

FLEX also highlighted the ineffectiveness of another avenue:

Employment Tribunal:

“A victim of trafficking may bring a claim to an employment tribunal for employment-related abuses such as failure to pay the national minimum wage, for unlawful deductions, or for discrimination. Yet, under current law, victims of trafficking who did not have the right to work in the UK at the time of their exploitation face barriers to claim compensation for labour law breaches in civil or employment tribunals. Under UK law, undocumented workers are not excluded from the definitions of “worker” or “employee”. However, employers can use the “illegality defence” asking the court to strike out the claim if an undocumented worker tries to bring an employment claim against them on the basis that the employment relationship is voided due to the worker’s lack of required authorisation to work in the country. While common, the use of the illegality defence has limits. In July 2019, a court case¹⁵² decided that when a migrant worker is unaware of the fact that they are undocumented, for instance when the employer is responsible for applying for their visa, or they do not have access to their documents to check whether they have a valid visa, the worker can enforce their employment rights despite not having the right to work at the time of exploitation.”¹⁵³

The case in question, *Okedina v Chikale* [2019] EWCA Civ 1393, the judgment considered the old public policy defence to a civil claim for damages of illegality. It was a judgment on public policy and the UK’s international obligations and “the presumption in favour of interpreting English law (whether common law or statute) in a way which does not place the United Kingdom in breach of an international obligation.” (Lord Hoffmann said in *R v Lyons* [2002] UKHL 44, [2003] 1 AC 976, at para 27).

On this basis, Lord Wilson found at paragraph 49 that:

“although the court should remember, for example, that Miss Hounga was not actually locked into the home, it is hard to resist the conclusion that Mrs Allen was guilty of trafficking within the meaning of the definition in the Palermo Protocol. Thus, of the ILO’s six indicators of forced labour, there might be argument about the existence of the second (restriction of movement) but, on the tribunal’s findings, there certainly existed the first (physical harm or threats of it), the fourth (withholding of wages) and the sixth (threat of denunciation to the authorities where the worker has an irregular immigration status).”¹⁵⁴

He found, at para 50, that:

¹⁵¹ JustRight Scotland and TARA submission.

¹⁵² *Okedina v Chikale* [2019] EWCA Civ 1393

¹⁵³ FLEX submission.

¹⁵⁴ (Lord Hoffmann said in *R v Lyons* [2002] UKHL 44, [2003] 1 AC 976, at para 27).

“It is too technical an approach to an international instrument to contend that paragraph 3 [15(3)] relates to compensation only for the trafficking and not for related acts of discrimination. In my view it would be a breach of the UK's international obligations under the Convention for its law to cause Miss Houniga's complaint to be defeated by the defence of illegality.”¹⁵⁵

In light of draft MS Bill, para 52

“the decision of the Court of Appeal to uphold Mrs Allen's defence of illegality to her complaint runs strikingly counter to the prominent strain of current public policy against trafficking and in favour of the protection of its victims. The public policy in support of the application of that defence, to the extent that it exists at all, should give way to the public policy to which its application is an affront; and Miss Houniga's appeal should be allowed”¹⁵⁶

The employment tribunal system is the same in Scotland as it is in England and Wales. See above regarding legal aid not covering representation in the tribunal in Scotland.

JustRight Scotland and TARA are *“aware of one tribunal case in Scotland. We are not aware of any civil claims. In terms of criminal injuries compensation, most current cases are being taken by one specialist provider, JRS who cannot cover the scale of need in this area. In terms of CICA cases, we refer to the Scottish Legal Aid Board review of 2015 referenced above.*

In terms of access – these routes also require to be raised at the correct time and in the appropriate way. Therefore, mentioning compensation as a possible avenue too early can mean it is not understood. At JRS, in addition to our legal surgery with TARA – we have commenced a surgery with Migrant Help in Scotland to try and introduce compensation and improve access to this remedy.”¹⁵⁷

ATLEU provided insight on the amount of compensation established in civil law claims against traffickers.

Calculating Compensation

“The starting point for calculating wages in respect of forced labour, is to look at whether there were workers not in exploitation and the sum they receive under their legitimate contract of employment.

In the absence of a contractual rate of pay it will often be possible to assert that the client had a right to receive the national minimum wage.

The basis for the calculation is set out at section 17 National Minimum Wage Act 1998. The formula set out in that section seeks to ensure that the Claimant is compensated, in respect of the amount by which payments received fell short of the NMW, at an amount equal to the NMW at the date of award.

Where the benefit received by the respondent/ defendant is in the form of services, the starting

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ JustRight Scotland and TARA submission.

point is the objective market value of the services (which may well be determined by the National Minimum Wage) tested by the price which a reasonable person in the defendant's position would have had to pay for them and taking into account conditions which increased or decreased their objective value to any reasonable person in that position. Benedetti v Sawiris 2013 UK SC 50.

Where an award of compensation is made specifically in respect of unpaid wages, there is a corresponding duty for payments of tax and national insurance to be made. An award of wages is therefore usually paid gross so that the victim can then account to HMRC.

A victim who is 'illegal' can recover unpaid wages either because any illegality does not strike down the contract relied on see Patel v Mirza & Houna v Allen or because a restitutionary measure such as quantum meruit is applied (to avoid unjust enrichment).¹⁵⁸

Employment Tribunal

"The employment tribunal has exclusive jurisdiction over claims arising from employment statute. Victims bringing claims in the ET will assert that there was an actual or implied contract of employment, this enables the victim to bring a range of employment claims, to compensate them for the component parts of their treatment.

The methods for calculating compensation are set out in statute. e.g s118 Employment Rights Act 1996 sets out that employees who suffer an unfair dismissal should receive a 'basic award' calculated with reference to length of employment, age and weekly salary and a compensatory award that the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained in consequence of the dismissal in so far as the loss is attributable to the actions of the employer, in practice the Tribunal can compensate for past and future loss of earnings as well as expenses reasonably incurred as a result of dismissal.

The Tribunal has the power to reduce a basic award if it concludes that the actions of the employee contributed to dismissal, or a reasonable offer of re engagement/reinstatement to the role is rejected. In reality where the Claimant is a victim of trafficking, grounds for reduction are unlikely to apply."¹⁵⁹

Discrimination

"If the victims treatment amounts to unlawful discrimination on the basis of sex,race,religion etc then under s124 of the Equality Act 2010 the Tribunal can order that the victim is compensated for financial losses arising from the discriminatory treatment and for injury to feelings for the discrimination suffered, the Tribunal will do this with reference to the scales set out in Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871.

The above are just some of the complaints that can be brought at the ET - see www.athub.org.uk

For claims presented on or after 6 April 2019, the Vento bands are as follows:

¹⁵⁸ ATLEU submission

¹⁵⁹ ATLEU submission

- *lower band of £900 to £8,800 (less serious cases)*
- *middle band of £8,800 to £26,300 (cases that do not merit an award in the upper band), and*
- *upper band of £26,300 to £44,000 (the most serious cases), with the most exceptional cases capable of exceeding £44,000*

For victims who suffer the loss of employment an award will usually always be within the middle bracket Voith Turbo v Stowe [2005] IRLR

Unpaid and deductions of wages can also be claimed - see below

County/High Court

The County/High Court are where tortious complaints not routed in employment statute can be heard. Generally claims seek to place the victim in the position that they would have been in but for' the harm suffered. This means that general damages can be awarded to cover 'pain, suffering and loss of amenity' and special damages to cover financial losses and expenses incurred as a result of the treatment.

Being 'illegal' will not bar a victim from bringing a claim, it simply determines the jurisdiction and type of complaint brought. For example, a someone trafficked into sex work would not bring claims in the employment tribunal but bring claims in the County/High Court focussed on compensating for physical and mental harm as opposed to contractual or labour breaches.

The following are some claims that are available in the courts to victims:

Negligent Personal injury

If a victim has suffered injury – whether it is physical or psychological -they may recover compensation. This will usually involve seeing a medical expert to discuss their history.

Protection from Harassment Act 1997

'Harassment' is very widely defined. A victim can bring a claim for eg physical abuse, verbal abuse, sexual abuse, failure to pay.

oFalse imprisonment/trespass to the person/assault

These claims are available in cases of physical abuse.

Restitutionary claims

These are claims which permit a victim to recover compensation even if there is no contract between them and the victim; these can help victims in less clear cut situations.”¹⁶⁰

Although there are other measures by which presumed victims can access are in place to

¹⁶⁰ ATLEU submission

compensation from the perpetrators of trafficking, it is, in practice, unavailable for many. As noted by ATLEU, there have been two recent Parliamentary Questions about the numbers of victims of modern slavery accessing legal advice. The first was asked on 1 December 2017:

“To ask the Secretary of State for Justice, how many victims of human trafficking have received Legal Aid in each of the last three years.

It was answered by Dominic Raab, then the Minister of State, Ministry of Justice:

The Legal Aid Agency cannot identify all applicants for legal aid that have been victims of trafficking, as such a status is only captured in certain cases, for example where an individual is bringing a compensation claim against their traffickers. Victims of trafficking can also access other forms of legal aid, although such cases will not be discernible from the LAA’s systems.

<i>Financial Year</i>	<i>Trafficking/Modern Slavery Matters</i>
<i>2014-2015</i>	<i>51</i>
<i>2015-2016</i>	<i>34</i>
<i>2016-2017</i>	<i>39</i>

During a recent meeting between ATLEU and officials at the Ministry of Justice and Legal Aid Agency, in 2019, they indicated that there was not an intention to improve the collection of information on victims of trafficking accessing legal aid. Notwithstanding the Legal Aid Agency’s failure to collect information the figures provided by Government in answer to these Parliamentary Questions suggest the number of victims accessing legal aid are minimal and a fraction what is needed by this group.

Dominic Raab gives the example of the Legal Aid Agency’s systems identifying individuals bringing compensation claims against their traffickers. The Legal Aid Agency’s reporting functions for controlled work (ie Legal Help and Controlled Legal Representation) can also identify some victims applying for non-asylum immigration advice, the figure given for the total number of victims accessing legal help for this type of case was 124, an average of just 41 per year. Over that same 3 year period from 2014 there were 9,404 victims referred into the NRM.[2] These numbers suggest that just 1.3% of those referred into the NRM are currently able to access legal aid for advice in respect of a potential compensation claim against their trafficker and immigration (non-asylum) advice on leave to remain.

The second parliamentary question was asked on 16 May 2018 by Anne Marie Morris:

To ask the Secretary of State for Justice, what estimate his Department has made of the number of potential victims of modern slavery who have (a) sought free legal assistance and (b) been denied such assistance in each year for which information is available.

This was answered by Lucy Frazer, then The Parliamentary Under-Secretary of State for Justice:

The Legal Aid Agency cannot identify all applicants for legal aid that have been potential victims of modern slavery, as such a status is only captured in cases where the legal aid scheme makes specific provision for such individuals, for example, immigration advice for those identified as a potential victim of modern slavery through the National Referral Mechanism. Victims of modern slavery can also access other forms of legal aid, although such instances will not be discernible from the LAA's systems.

Legal aid for potential victims of modern slavery is available by way of Legal Help or Controlled Legal Representation. However, as the application process for this type of legal aid is devolved to the instructed solicitor, the number of instances where such legal aid was sought or refused cannot be reported on, and furthermore such cases can only be identified when they are reported to the LAA after their conclusion.

For Civil Representation, decisions on funding are taken by the LAA and it is possible to identify applications and refusals at the outset of the case. The information below shows how many legal aid certificates have been issued to victims making claims for damages which arise from trafficking. These figures only relate to public funding where we know the applicant is potentially a victim by the nature of the service sought and will not include other cases where a victim may have sought legal aid.

Qualifying for free legal assistance will depend upon an individual's financial circumstances for cases where a means test and a merits test must be undertaken in order to obtain legal aid.

<i>Year</i>	<i>Applications made</i>	<i>Applications refused</i>
<i>2014-2015</i>	<i>5</i>	<i>0</i>
<i>2015-2016</i>	<i>14</i>	<i>1</i>
<i>2016-2017</i>	<i>9</i>	<i>0</i>

ATLEU qualify this evidence by explaining:

"The statistics provided by Lucy Frazer in respect of certificates for civil representation were not entirely consistent with data held by us at this time, with the cited number of refusals misrepresenting the situation. Following the advent of LASPO virtually all, if not all, applications for legal aid for civil representation certificates in damages claims for victims of modern slavery were made by ATLEU at this time. It was our experience that the majority were not granted and that they were subject to lengthy delays whilst failures to grant legal aid were being challenged, with some cases taking up to 4 years to resolve."¹⁶¹

A case study provided by ATLEU also highlights the Government's approach to decision-making on legal aid in trafficking compensation claims as highly inconsistent and obstructive.

¹⁶¹ ATLEU submission.

“Martin was trafficked to the UK for the purpose of labour exploitation. He was required to work 6 days a week in a factory and was threatened and verbally abused. An application was made for investigative representation in order to consider a complaint under the Protection from Harassment Act 1997 (PHA) on the basis that the treatment amounted to harassment within the terms of the Act. The LAA responded to the application as follows: “We cannot grant funding as we do not see how the treatment you describe could amount to harassment. S7 of the PHA says that harassment can mean ‘alarming a person or causing distress’. We have also looked up the word harassment in 4 online dictionaries which give the following definitions:

- *To trouble, torment or confuse by persistent attacks, questions etc.*
- *Annoying or unpleasant behaviour towards someone that takes place regularly*
- *Behaviour that annoys or upsets someone*
- *Disturbing, pestering or troubling repeatedly, persecution*

An internal review was sought of the LAA’s decision and a request made that the relevant case law on harassment be considered, as opposed to dictionary definitions. A query was also raised as to whether the decision maker had access to an appropriate legal database. In the LAA’s response it was stated “I am not sure what sort of database is being referred to”. Following a further refusal of funding steps were taken to initiate judicial review proceedings. Unfortunately, Martin said that he was too scared to bring a claim against the ‘authorities’ and declined to pursue his compensation claim against the traffickers.”¹⁶²

In addition to this, the Deduction from Wages (Limitation) Regulations 2014 significantly limits the ability of victims of trafficking to recover the National Minimum Wage (NMW), as it prevents victims from obtaining more than two years owed in NMW, despite the fact that they may have been paid little or nothing for several years. Prior to the introduction of this legislation, a victim of trafficking or servitude could recover wages for the entire period that they were held in servitude. Lastly, the ‘Family Worker Exemption’, contained in the NMW Regulations 2015, provides that live-in domestic workers are not entitled to receive the national minimum wage or any payment at all, if the worker is “treated as a member of the family”. This Exemption is frequently used as a litigation tool by traffickers to defend court or tribunal claims.

Hope for Justice has highlighted that the absence of a civil remedy compensation proceedings is highly detrimental to survivors.

“There currently is no specific tort (civil wrong) of human trafficking or other types of modern slavery, therefore if victims pursue a civil compensation claim they have to try to fit their circumstances into another type of tort e.g. false imprisonment, trespass to the person, protection from harassment. The lack of a specific tort can create barriers in accessing legal aid and also accessing a civil remedy. This gap in the law was identified in the case of Taiwo v Olaigbe and another [2016] UKSC 31. This needs to be rectified and could facilitate greater levels of perpetrator accountability, particularly where it has not been possible to meet the criminal

¹⁶² ATLEU submission.

threshold for the Crown Prosecution Service to pursue a criminal prosecution."¹⁶³

Unseen UK has also reported that the complexity of these legal cases can lead to survivors avoiding compensation claims altogether.

"As a frontline service we find that those we support don't often want to seek compensation (any form). Even when this is explained and offered people can feel exhausted by the NRM process, delays in waiting for decisions, may not understand the bureaucracy and the system they are part of. They may not have access to a bank account. Often the NRM and compensation time frames/mechanisms don't fit. It is an underused part of the UK's obligations to victims and is made overly complex and time consuming for those supporting them to assist with."¹⁶⁴

As ATLEU attest:

"Victims of trafficking can bring claims for breach of contract, protection from harassment and false imprisonment in the county court or high court. These jurisdictions remain almost untested. However, equivalent difficulties to those in the employment tribunal will likely emerge. Without a civil remedy attempts to use existing legal remedies, which were designed for or evolved for different situations, amount to pushing a square peg into a round hole.

Compensation rights for victims need to be straightforward and user-friendly. The current employment tribunal and High and County Court claims for victims of trafficking are remarkably lengthy and complex. They frequently take in excess of 18 months to reach a full trial. With delays in legal aid this may easily become in excess of 3 years. In ATLEU's experience, for a victim to take their trafficker to court or tribunal requires very considerable tenacity and courage. Threats against victims (and their families back home) are common. The remarkable complexity and difficulty attaching to current claims for compensation stacks the odds even more strongly against victims and in favour of the traffickers. Due of the complexity and uncertainty of the law, it is effective only for those able to access specialist representation, which is rare in the current climate, and thereby to challenge the general culture of impunity of traffickers from legal redress.

It cannot properly be said that any of the claims above adequately compensates a victim for the gross abuse of their rights they have suffered. The UK is obliged under Article 15 of the Council of Europe Convention against Trafficking to have in place means by which victims can obtain compensation from their traffickers. Despite this and the recommendations of the Joint Committee on the Modern Slavery Bill, there is no provision in UK law for compensation for trafficking per se.

Only a dedicated civil remedy will protect the right to civil compensation from inadvertent damage due to the failure of government across departments and the courts to engage with the anti-trafficking agenda. It is recommended that a civil remedy, enforceable in the employment tribunal and civil courts, on breach of sections 1 and 2 of the Modern Slavery Act 2015 should be introduced. There is clear precedent for such an amendment in the form of the Protection from Harassment Act 1997."¹⁶⁵

Therefore the current civil compensation avenues are ineffective in securing compensation for

¹⁶³ Hope for Justice submission.

¹⁶⁴ Unseen UK submission.

¹⁶⁵ ATLEU submission

trafficked persons and do not fulfil the spirit of the requirement for compensation in the Convention or Directive.

3.6. What training is provided to build the capacity of relevant professionals, such as lawyers, law enforcement officers, prosecutors and judges, to enable victims of THB to obtain compensation and other remedies?

Training and building core capabilities of authorities is necessary to enable victims of trafficking to obtain compensation and other remedies. As the number of agencies and relevant persons in the UK grows, so too must the training of these organisations and individuals. Widening the UK's training initiatives is not just about building and maintaining capacity, it is vital if the UK is to "improve the prevention and protection of (potential) victims, as well as the identification and prosecution of traffickers."¹⁶⁶

While acknowledging that there has been an increase in the level of training provided to relevant professionals on compensation, civil society respondents reported that capacity-building is still clearly insufficient. Historically, the culture of policing targets means that trafficking is not considered a priority and an investigation is often dependent on the good will and perseverance of individual officers. There is also a lack of tailored training to equip law enforcement officers with the specialist knowledge to effectively investigate this crime. More recently, ATMG's research has noted, with appreciation, the increase in training for relevant professionals, such as lawyers, law enforcement officers, prosecutors and judges. In 2018, ATMG's research¹⁶⁷ found that training existed, at regional and national level. However, the majority of these were not evaluated, making the assessment of their impact difficult. Training was also delivered inconsistently and without quality control.

Hope for Justice reflects this, reporting that:

"There has been an increase of training on identification and support of victims of modern slavery. The government have been running some campaigns through the Cabinet Office and there have been some more locally based campaigns run through local police forces and anti-slavery networks. Some financial support is provided particularly for training and Hope for Justice has received government funding for bespoke targeted training including for police, local authorities, prosecutors, first responders and the environmental agency. The government has focused some of their campaigns around business.

However, we have seen a need to address the limited resources regarding the provision of Legal Aid for victims. Legal Aid is a critical part of obtaining compensation. The last 3-4 years has

¹⁶⁶ European Commission (2015) 'Study on Prevention initiatives on trafficking in human beings', p.50. Available at: http://ec.europa.eu/antitrafficking/sites/antitrafficking/files/study_on_prevention_initiatives_on_trafficking_in_human_beings_0.pdf

¹⁶⁷ Anti-Trafficking Monitoring Group (2018) 'Before the harm is done: Examining the UK's response to the prevention of trafficking'. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

seen a rapidly shrinking pool of immigration advisors, additionally, as seen above (question 2.1), in CICA claims there is still confusion over definitions of modern slavery as a violent crime. It appears decision makers need significantly more training on the legal rights of victims including access to legal advice and representation.”¹⁶⁸

¹⁶⁸ Hope for Justice submission.

4. State compensation (Article 15)

4.1. Do the eligibility criteria for State compensation schemes for victims of crimes exclude some victims of THB (e.g. due to irregular residence status, nationality, nature of the offence)? Does access to State compensation depend on the outcome of the criminal case and on failure to obtain compensation from the offenders?

For many survivors, an application to the Criminal Injuries Compensation Authority (CICA) is their only route to obtain compensation, given the limited prospects of obtaining compensation by perpetrators. The Modern Slavery Act, 2015 makes provision for Slavery and Trafficking Reparation orders. In November 2017, an answer was given to a parliamentary question which stated that;

No slavery and trafficking reparation orders have been made since their introduction under the Modern Slavery Act 2015 coming into force for offences committed after 31st July 2015. They can only be made once someone has been convicted of a relevant offence and the Crown Court has made a confiscation order against them. Modern slavery prosecutions are complex and often take a long time to complete. As the number of concluded prosecutions rise, we expect to see a rise in the number of reparation orders. Baroness Williams of Trafford, 23rd November 2017.

Those who seek to make claims under the CICA experience multiple obstacles. An application must be made within two years of the criminal injury suffered. This is not realistic for many victims, due to trauma, lack of knowledge and assistance, and most do not realise that they need to do this on top of being referred into the NRM. There is normally no legal aid available for victims of trafficking to apply to CICA or to challenge their decisions. Some victims are able to get pro bono legal representation but this is not available for everyone. In Scotland, while there is legal aid available in theory, lawyers are not taking these cases because it is not financially viable. The scheme requires a victim to have suffered a “crime of violence”. Trafficking or modern slavery is not of itself always considered a crime of violence and many victims are denied compensation. CICA is able to withhold awards of compensation to an applicant “unless you co-operate fully with the investigation into the crime and any prosecution that follows” and routinely does so without any consideration of the applicant’s reasons or circumstances. When compensation is paid this is usually after years of waiting and is frequently considered by survivors of slavery to be insultingly low, not taking into account the psychological injuries from trafficking and modern slavery. In Scotland, where someone is successful in obtaining an award of compensation, then a solicitor is not able to submit an account to the legal aid board meaning the legal costs are taken from the individual’s award.¹⁶⁹

Additionally, a very small number of intimations have been received for work in relation to Criminal Injuries Compensation Authority in Scotland. Whilst the number of intimations is small in comparison to the estimate of the number of victims, this may reflect a low awareness amongst trafficking victims of their right to pursue compensation, rather than any problems with the availability of legal services.

¹⁶⁹ JustRight Scotland and TARA submission.

ATLEU have written about the lack of information available to trafficking survivors on the CICA scheme:

“We are not aware of any government leaflets on different compensation options for victims of trafficking. Most literature highlighting that victims can seek compensation has been prepared by civil society. ATLEU has provided training and online information via ATHUB.org.uk on this for support providers and legal practitioners to use when working with victims. The Government has a leaflet on the CICA scheme for victims of trafficking, but we are unclear whether this leaflet is disseminated to victims at any point during their time in the NRM. It can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351337/human-trafficking-leaflet.pdf.”¹⁷⁰

The submissions provided by Hope for Justice, FLEX and by the British Red Cross confirm and expand this view.

Hope for Justice:

“Criminal Injuries Compensation Authority (CICA) is a government scheme aimed at providing compensation to victims of violent crime. Currently this is out of normal scope for legal aid and would require an exceptional case funding application to be made to the Legal Aid Agency (LAA). These are rarely granted for victims to make the initial CICA application. In HfJ’s experience, victims of modern slavery face multiple barriers in accessing the scheme, including vulnerability, language barriers and cultural disorientation. These factors impede the ability of a victim to fill in the form without support. This is then compounded by issues that victims face meeting the clear criteria for the scheme. Such issues include

- (a) problems with limitation.*
- (b) difficulties proving mental injury without expert evidence*
- (c) previous unspent criminal convictions barring victims from receiving compensation (this is the subject of a current Supreme Court case).*
- (d) non-cooperation with a police investigation.*
- (e) human trafficking in its own right not being interpreted under the scheme a crime of violence so a victim has to show a crime of violence within the crime e.g. assault.*

¹⁷⁰ ATLEU submission.

Difficulties meeting clear criteria, as well as a need for expert medical advice, means that victims are unlikely to achieve a successful outcome without legal advice and representation from day one. (...)

Many applications are stayed pending the outcome of criminal proceedings which for cases involving modern slavery can take 2-3 years before the case comes to trial. Some cases are stayed behind a civil case. The processing of applications is currently fairly slow and CICA can take approximately 12 months to process the initial application even when there are no pending criminal proceedings. In addition, I understand there have been some delays with reviews and also adjournments of appeals. For instance, one first tier tribunal appeal has recently been adjourned because the tribunal didn't have the specific expertise to deal with the case.

HfJ's experience, for the reasons detailed above, is that complex advocacy is required around the fact that victims often do not meet the strict criteria, contrary to their rights under ECAT and the Trafficking Directive. In particular, pursuant to Article 15(4), ECAT requires "measures as may be necessary to guarantee compensation for victims...". The CICA scheme falls significantly short of guaranteeing compensation. This means often complex legal arguments/representations need to be made. The need for legal aid to pursue criminal injuries compensation applications (in addition to Employment Tribunal Claims) was also recognised in the Independent Review of the Overseas Domestic Workers Visa conducted by James Ewins in 2015." ^{171 172}

British Red Cross expanded on this point:

"Receiving compensation can also play a crucial role in survivors' recovery, and help them to rebuild their lives, and survivors need early advice while in the NRM to identify the right route to compensation, and to ensure their claims are lodged in time. The number of applications to the Criminal Injuries Compensation Authority (CICA) scheme remain low as NRM support workers do not normally assist survivors to make them and individuals typically are not able to make them without assistance. As legal aid is not available for making a CICA application in practice there are very few survivors who ever apply. Only four survivors out of the 70¹⁷³ supported through the STEP pilot were pursuing a compensation claim, and all of these were through the CICA route. One survivor had made the claim herself with support from the STEP worker, as legal aid is not automatically available for these claims and there was no pro bono support available (this case was still pending at the close of the pilot). The other three cases were submitted with pro bono advice and representation from Hestia's corporate partner, and these cases also remained pending at the close of the pilot." ¹⁷⁴

¹⁷¹ Independent Review of the Overseas Domestic Workers Visa by James Ewins 16th December 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODW_V_Review_-_Final_Report_6_11_15_.pdf at para. 137

¹⁷² Hope for Justice submission.

¹⁷³ NB: While 72 people were supported through the STEP programme, two people did not consent to their information being shared for the research report. Information from 70 people was therefore analysed and reported on.

¹⁷⁴ BRC submission.

As did FLEX:

As trafficking or forced labour are not specifically listed as ‘crimes of violence’, victims must demonstrate that their exploitation involved violence or fear of violence. Victims can only receive compensation for physical or mental injuries, or for loss in earnings as a result of those injuries, but not for unpaid wages or deprivation of liberty. Victims are ineligible for awards if they have a criminal record, and may be denied awards if they fail to report to the police “as soon as reasonably practicable” or if they fail to cooperate with police investigations.”

Additionally, where a victim has an unspent criminal conviction then the victim is automatically barred from an award and CICA has no discretion to consider the specific facts of the case. The Supreme Court will determine if the mandatory bar on unspent convictions amounts to unlawful discrimination in respect of victims of trafficking in November 2011 [A& B].

A victim can only recover compensation for physical and mental injury suffered during their exploitation and that injury must have resulted from an immediate fear of violence so where the victim was required to carry out an action on threat of harm in the future they would on the face of it be precluded from an award.

The main shortcoming of the CICA scheme however is that it does not recognise trafficking per se as a crime of violence. A victim who was severely exploited but had no physical injury or diagnosable psychiatric injury would therefore not receive an award. An application for permission for judicial review is currently before the Administrative Court. If granted the Administrative Court will determine whether trafficking should be deemed a crime of violence.

A freedom of Information request undertaken in February 2019, requested by ATLEU, demonstrated that out of 137 applications made by victims of trafficking over a two-year period only 8 had received an award of compensation, with 50 rejected outright, that 79 of the applications made by victims were still to be determined demonstrates that the application process is not quick:

<i>Application</i>	<i>Numbers</i>
<i>Applications to CICA by victims of trafficking</i>	137
<i>Applications made without legal representation</i>	50
<i>Applications rejected</i>	39
<i>Applications rejected - trafficking not a crime of violence</i>	14
<i>Applications which have been awarded compensation by CICA</i>	8
<i>Applications which have been withheld due to failure to co-operate with the Police</i>	6

<i>Applications which have been withheld or reduced due to failure to respond to CICA</i>	10
<i>Applications which have been withheld or reduced due to unspent convictions.</i>	6 ¹⁷⁵

All contributors stated they did not feel that the CICA scheme in its present form, was fit for purpose. It is not genuinely accessible and the vast majority of victims are refused compensation in circumstances where it ought to be granted:

“Legal Aid for CICA matters should be brought back into scope. The scheme as currently operated is not one that can be genuinely accessed by an unrepresented victim.

Human trafficking should be defined within the scheme rules as a crime of violence.

A statement given by a victim of trafficking to the Competent Authority should be treated as a report to the Police.

CICA should conduct basic enquiries and seek information from the Competent Authority where late applications are made on behalf of victims of trafficking.

Where there is apparent non co- operation with a criminal investigation CICA should actively consider the reasonableness of the victims’ actions.

Where there is an unspent conviction there should be discretion to consider mitigating circumstances.”¹⁷⁶

4.2. How is the amount of State compensation calculated so as to address the gravity of the harm endured by the victim?

There is no statutory calculation in respect of reparation orders. CICA has a tariff set by Ministry of Justice so specific injuries are allocated a financial value, however trafficking is not an injury *per se* so no compensation will be received for this via CICA.

Similarly, in the absence of a civil remedy Courts can only compensate for injury to feelings or mental injury arising from being trafficked.

Only a minority of survivors access any compensation and amounts do not adequately reflect the gravity of harm endured. As Hope for Justice explain:

“The Criminal Injuries Compensation Authority (CICA) has a system to calculate compensation costs for victims. They have a set maximum tariff that may be given to victims who apply. There are different tariffs regarding different types of injuries. If a claimant is given any additional

¹⁷⁵ ATLEU submission

¹⁷⁶ ATLEU submission

*outside forms of compensation the amount will be subtracted from a successful CICA pay-out. In addition, there are penalties that will reduce the amount awarded to claimants based on a points system. Further information on the calculation of compensation can be found on the Ministry of Justice's guidance.*¹⁷⁷

Additionally when compared to the civil personal injury guidelines for the assessment of damages¹⁷⁸, CICA compensation awarded is a low fraction of that given in the civil personal injury guidelines.¹⁷⁹ For example for a serious jaw fracture, civil guidelines could be between £14,320 to £24,300 compensation, whereas CICA tariffs suggest a fractured jaw with no operation but a continuing significant disability would receive an award under the tariff of £3,500.00.”^{180 181}

4.3. Is it possible for foreign victims of trafficking to submit claims for State compensation in your country after being returned or repatriated to their countries of origin? Please provide examples of any such cases and indicate the measures stipulating such a possibility.

As is the case for compensation claims against perpetrators (see question 3.4), survivors who return to their country of origin are very unlikely to pursue state compensation claims, due to lack of legal representation and the practical difficulties of evidencing and pursuing a claim as detailed by Hope for Justice:

“While it is legally allowed for victims to claim compensation after being repatriated to their countries of origin, it is, in HfJs experience, incredibly difficult for claims to be made/continued once the victim has departed from the UK. First, there is little to no support for victims in regard to access to legal aid to continue their claim and/or if they have not been told about the scheme before leaving the UK. Second, victims may be required to attend appointments in the UK to process the application. This is impractical for many who have returned to their country of origin. Lack of knowledge of the scheme, lack of victim support to access the scheme and difficulties in maintaining the application all prevent repatriated victims from being able to receive state compensation (see also comments at question 3.4).”

4.4. Are victims seeking State compensation liable for lawyers' costs and fees? Are State compensation awards subject to taxation? Does the receipt of compensation have

¹⁷⁷ Sourced at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf

¹⁷⁸ <https://lexisweb.co.uk/sources/the-judicial-studies-board-guidelines>

¹⁷⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf

¹⁸⁰ Criminal Injuries Compensation Scheme 2012 page 53 sourced at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf

¹⁸¹ Hope for Justice submission.

consequences for access to social security or other benefits?

In England and Wales, if the victim has obtained legal aid to bring their CICA claim then the lawyers costs and fees are paid by the LAA and the statutory charge does not operate meaning that the victim should receive the sum in total.

However, receipt of a large sum (more than £6k is it for benefits) may make the victim ineligible for state benefits. It is possible to set up a personal injury trust but this requires legal assistance and the payment of fees to set up and maintain the trust, the victim also does not have free and easy access to their money.

Furthermore, as reported in the answer to question 2.2, contributors have been clear that state compensation claims are normally not covered by free legal aid schemes.

“Currently CICA claims are out of scope for legal aid and would require an exceptional funding application. In HfJ’s experience victims of modern slavery face multiple barriers in accessing the scheme including vulnerability, language barriers and cultural disorientation. In HfJ’s experience, these factors impede the ability of a victim to fill in the form without support. This is then compounded by issues victims face meeting clear criteria for the scheme. Such issues include problems with limitation (the scheme only allows claims to be made within two years from the injury or knowledge of the injury), difficulties proving mental injury without expert evidence, previous criminal convictions or because they have not cooperated with a police investigation, modern slavery in its own right is often stated by CICA to not be considered a crime of violence despite the Modern Slavery Act 2015 stating it to be so. Difficulties meeting clear criteria, as well as a need for expert medical advice all means that victims are unlikely to achieve a successful outcome without legal advice and representation from day one.” (...)

Additionally, the scheme is seen as a last resort to receive compensation. Claimants are expected to have applied to all other available forms of compensation before their application. If the claimant receives any other form of compensation it will be subtracted from the relevant amount awarded in the relevant category of loss of other forms of litigation.”¹⁸²

Where survivors do recover compensation, the Government can recover the cost of running their case on legal aid from the total award, in some cases almost entirely extinguishing their compensation, however there has been only one known case of this, and it was not in a state compensation case:

“In addition, if victims win their case under legal aid they may have to pay a statutory charge which may wipe out a significant portion of their damages. This is not in the spirit of ECAT which requires under Article 15 (4) that victims should be guaranteed compensation.”¹⁸³

It should be noted that when discussing the statutory charge, this references that in costs jurisdictions, costs will normally follow the event so the victim should be recovering costs from

¹⁸² Hope for Justice submission.

¹⁸³ Hope for Justice submission.

their opponent if they win and so statutory charge is not an issue. It is only an issue where the opponent cannot afford to pay both costs and damages.

5. Sanctions and measures (Article 23)

5.1. Please describe the legislative and other measures adopted by your country which allow to: i) confiscate or otherwise deprive perpetrators of the proceeds of criminal offences, or property of an equivalent value to those proceeds; and ii) identify, trace, freeze or seize rapidly property which is liable to confiscation, in order to facilitate the enforcement of a later confiscation. Do these measures allow the identification, tracing and seizure of property into which the proceeds of illicit activities have been converted?

The UK legal framework allows; Proceeds of Crime Act 2002 provides for the confiscation/seizure of the proceeds of a criminal offence; Power to make Compensation Orders comes from s.130 the Powers of Criminal Courts (sentencing) Act 2000 s.134 PCCSA.

It should be noted that any order made in criminal proceedings will not prevent the victims from bringing civil proceedings in respect of any further or additional losses.

While the amounts seized from traffickers have increased since 2015, NGO respondents are clear that the lack of adequate funds for financial investigations is a serious barrier to the implementation of this law. As explained by Hope for Justice:

“The legislative measures which allow confiscation of assets are contained within the Proceeds of Crime Act 2002.¹⁸⁴ These measures allow for the identification, restraint, freezing and seizure of assets. However, this requires adequate resourcing of financial investigations at early stages in criminal proceedings and the resourcing of prosecutors to manage orders through proceedings.”¹⁸⁵

Unseen UK are also clear that POCA is still not used to full effect:

“POCA – there is still a huge amount of POCA that is outstanding or not collected. In order to use this effectively though the primacy of financial investigations in case of THB needs to be understood by law enforcement and then used as standard practice when conducting an investigation into suspected THB.”¹⁸⁶

In its submission, Focus on Labour Exploitation (FLEX) also highlighted the impact of immigration legislation in the survivors’ capacity to bring claims under POCA.

“Existing sanctions and measures penalising perpetrators need to be considered in relation to other areas of law and policy, which interact and affect the extent to which these measures can be enforced. Unfortunately, the UK has introduced legislation that sanctions workers in vulnerable employment situation, which increases their risk to human trafficking whilst reducing penalty risks for perpetrators. The Immigration Act 2016 made it a criminal offence to work in the UK without required documentation and made it legal for the government to seize wages from undocumented

¹⁸⁴ <http://www.legislation.gov.uk/ukpga/2002/29/contents>

¹⁸⁵ Hope for Justice submission.

¹⁸⁶ Unseen UK submission.

workers “as the proceeds of crime”.¹⁸⁷ Those found working without required documents are also liable for a maximum custodial sentence of six months and/or a fine of the statutory maximum, which is unlimited in both England and Wales. Migrants found to be working without required authorisation can have their bank accounts frozen and their savings confiscated, pushing undocumented workers even further underground and increasing their vulnerability to exploitation. Those who are being exploited are unlikely to report to the police or labour inspectorates because they not only risk immigration repercussions but also having their income seized as proceeding of a crime, putting them and their families, in the UK and abroad, at risk of destitution.”¹⁸⁸

5.2. In what way do victims of THB benefit from seized and confiscated assets of perpetrators of THB? Do the confiscated assets go directly to victims, to a compensation fund or scheme for victims of trafficking or to other programmes for the assistance or support of victims of THB? Please provide information on seizures and confiscations of assets in THB cases and how they were used.

The UK has no compensation fund into which assets of traffickers are placed in order to compensate other victims.

Although there are provisions to freeze and seize assets, it is clear that this happens rarely. Where assets are confiscated, there are no clear channels for these assets to compensate victims. As Hope for Justice explain:

“The Modern Slavery Act 2015 specifies that perpetrators convicted of slavery or trafficking face the toughest asset confiscation regime. It also includes a Slavery and Trafficking Reparation Order to encourage the courts to compensate victims where assets are confiscated from perpetrators.

As the motivation for modern slavery and human trafficking offending is financial gain, an important element of an investigation is to ‘follow the money’ to build a case.

*The following table was published in October 2019 shows assets seized by year from traffickers. Over £7M in 2017/8, although this reduced in 2018/9.*¹⁸⁹

Asset Recovery

Order Type	2015/16		2016/17		2017/18		2018/19		2019/20 ¹⁹	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Restraint Orders	10	£2,725,000.00	14	£1,650,000.00	26	£6,975,000.00	16	£2,600,000.00	0	£0.00
Cash Forfeitures	26	£193,153.45	24	£175,340.90	17	£155,034.11	22	£154,720.79	10	£114,502.79
Confiscation Orders	16	£511,196.48	23	£1,387,717.47	31	£836,424.69	54	£1,901,458.90	14	£126,355.13
TOTAL	52	£3,429,349.93	61	£3,213,058.37	74	£7,966,458.80	92	£4,656,179.69	24	£240,857.92

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Table A25: Value of cash forfeiture orders and criminal confiscation orders for modern slavery offences, England and Wales¹⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf

& Wales £1.6 billion was recovered from criminals between April 2010 and March 2018. Over £180m has been paid in compensation to victims from confiscation between 2012/13 and 2017/18, with £30m paid in 2017/18.¹⁹⁰

It was reported at the end of 2017 that assets confiscated under the new Modern Slavery Act 2015 legislation amounted to £1.3 million.¹⁹¹ The report however cited that assets had been confiscated using previous legislation. In this same report the following case study appeared, showing where assets are recovered, only a fraction seems to be awarded to the victims:

“The CPS took more than £2 million from five members of a family who were convicted in December 2012 of slavery-related offences committed across Leicestershire, Gloucestershire and Nottinghamshire. The defendants beat their victims, forcing them to work for as little as £5 a day. They were found guilty of conspiracy to require a person to carry out forced or compulsory labour. The assets recovered include a red convertible Mini, a Mercedes-Benz E350 and a Yacht Master steel Rolex watch. Around £150,000 was returned to victims as compensation.”¹⁹²

As mentioned above as of 21 November 2018 the government, through answering a parliamentary question, reported no Modern Slavery Reparation Orders had been made since the Act came into force. However, HfJ are aware that orders have been made under normal criminal law compensation orders”.¹⁹³

5.3. Is it possible to use plea bargaining or some other form of settlement in cases of THB? If yes, please provide the relevant provisions. What protections are in place for victims of THB to ensure that their right of access to justice and effective remedies is not compromised by the plea bargaining or settlement in the legal process?

Victims of trafficking should be kept informed as to the progress of a perpetrator's case and given the opportunity to raise concerns, particularly regarding their personal safety. However, as case work support for survivors of trafficking is relatively short and courts are over stretched survivors do not always feel they have been communicated with adequately or given sufficient time and support to raconcernsise .

As Hope for Justice explain, for compensation, where claims are made this will often be through a civil case:

¹⁹⁰ Asset Recovery Action Plan page 5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815900/20190709_Asset_Recovery_Action_Plan_FINAL_Clean.pdf

¹⁹¹ HM Crown Prosecution Inspectorate Report: The CPS Response to the Modern Slavery Act 2015 para. 5.32 page 46 sourced at https://www.justiceinspectrates.gov.uk/hmcpai/wp-content/uploads/sites/3/2017/12/MSA_thm_Dec17_frpt.pdf

¹⁹² Ibid

¹⁹³ Hope for Justice submission.

“In criminal cases HfJ have seen cases where offenders have agreed to plead guilty to a lesser offence and would have a discount on a sentence for pleading guilty. However, in a civil or tribunal case settlements out of court are actively encouraged as part of normal civil litigation process. This would not be any different for a victim of human trafficking. A solicitor in the case would advise the victim as to whether the settlement was reasonable for the case taking into account the full circumstances of the case including such things as an assessment of quantum and whether liability is accepted.

However, it is highly likely in most circumstances if a victim is able to recover compensation through a civil case they will receive a higher award of compensation. Additionally, a civil action would have:

- *3-6-year limitation (depending on the claim) to make the claim v 2 years for the state route or under a criminal case a successful prosecution case coupled with a confiscation order.*
- *no penalty if the victim has previous or existing criminal convictions.”¹⁹⁴*

5.4 What is the average duration of court proceedings in THB cases? In which circumstances are such cases given priority? Do you have a system to fast-track human trafficking-related prosecutions in order to improve the trial process and reduce the burden on victims and witnesses, including children? What safeguards are in place to ensure that judges deal with cases of THB without undue delay?

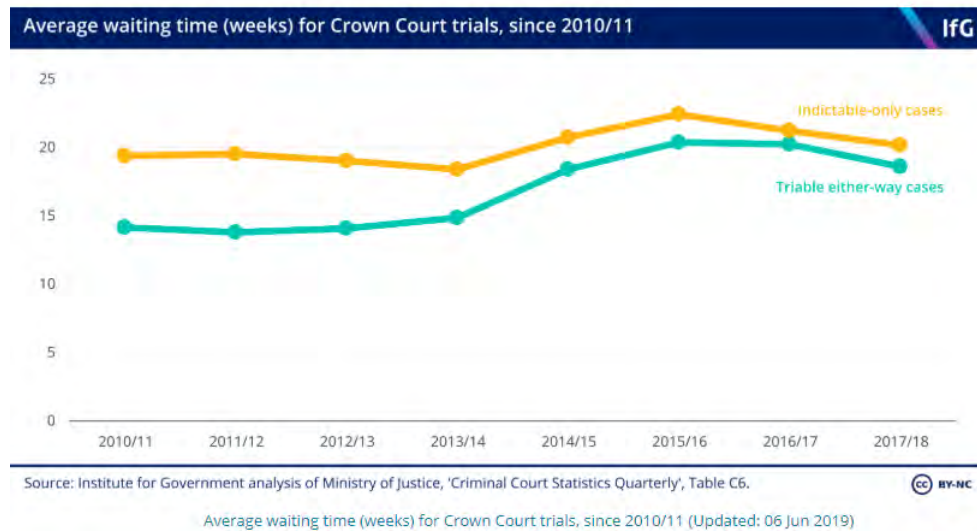
Our response to Question 2.1 already provides information on the duration of criminal proceedings for trafficking offences, as well as on the duration of compensation claims. However as noted by ATLEU, in civil proceedings there is no mechanism to fast track claims solely because the Claimant is a victim of trafficking. In fact, claims brought for victims are often lengthy and complex in part because of the lack of civil remedy. The need to obtain legal aid and the concurrent delays can greatly extend the length of proceedings.

As Hope for Justice explain human - trafficking related prosecutions can be lengthy with real implications for victims, especially those giving evidence;

“Currently there is no system of fast track for human trafficking cases. However, it must be borne in mind that cases can take 3 years for criminal investigate owing to their complexity and the fact that evidence may need to be obtained from multiple jurisdictions. During this time an employment tribunal, civil proceedings or criminal injuries compensation authority will be stayed pending the outcome of the criminal case thus delaying compensation. In HfJ cases where the victims are pursuing a civil case persistent delays in providing legal aid compounds these issues delaying proceedings further.

¹⁹⁴ Hope for Justice submission.

No detailed reporting was found of court proceeding durations for THB cases. However, the below chart shows crown court average waiting time for trial to commence as of 6 June 2019 was close to 20 weeks.¹⁹⁵



According to the latest Modern Slavery report published in October 2019, there are currently more than 1,400 police operations concerning trafficking or slavery however, the Daily Mail reports cases are taking three years to complete – up from 18 months in 2015.¹⁹⁶ This is also HfJ's experience of working with victims through criminal process.

The law is currently silent on wider safeguarding measures for victims and prioritisation to be given to criminal prosecutions for modern slavery aside from those applicable to all victims of crime.

It is HfJ's experience that claims for compensation have taken a long processing time. Claims that have been filed for incidents are so slow that many victims lose patience with the process. Only a handful of HfJ's clients have been successful on first application to the CICA scheme (see 2.1). The time to appeal the decision causes further frustration for victims. We have had some victims die before the compensation claim has come to fruition.¹⁹⁷

5.5. How do you ensure that sanctions for THB offences are effective, proportionate and dissuasive?

¹⁹⁵ <https://www.instituteforgovernment.org.uk/explainers/criminal-courts-10-key-facts>

¹⁹⁶ <https://www.dailymail.co.uk/news/article-7793489/Crackdown-human-traffickers-failing-number-convictions-fell-just-42-year.html>

¹⁹⁷ Hope for Justice submission.

Civil society respondents recognised that investigations and prosecutions have improved since 2015. However, the UK's overall ability to prevent trafficking by increasing the risks for traffickers remains disproportionately low in comparison to the number of victims

The number of potential victims referred into the NRM in the UK each year has more than doubled from 3266 in 2015 to 6993 in 2018. The proportion of children identified has increased during the same period from 30% to nearly 45%, in large part due to the rise in cases of the drug trafficking networks called "county lines". However, while there is an increase each year in referrals into the NRM, prosecution numbers remain low and positive conclusive grounds decisions still remain fairly stagnant, with only the minority granted residence permits, and it is clear that many victims of trafficking and modern slavery remain unidentified.

There are a number of factors which impact the UK authorities' ability to mount a prosecution, including inadequate victim support and a lack of resources. Lack of sustainable support for victims has a significant impact even where victims are willing to engage in proceedings. Support is inconsistent where cases took months or years to build, with victims often left in limbo. Cuts to the criminal justice system over the past decade have been substantial and lack of resources contributes to low prosecution and conviction rates of traffickers. Trafficking cases are complex crimes, often involving multiple victims and perpetrators, often international and may include many other offences such as fraud, assault or extortion.¹⁹⁸ The introduction of new legislation has not always simplified prosecutions as intended.

As Hope for Justice explain:

"The Modern Slavery Act 2015 (MSA) aimed to ensure that perpetrators receive suitably severe punishments for modern slavery crimes (including life sentences); to enhance the court's ability to put restrictions on individuals where it's necessary to protect people from the harm caused by modern slavery offences; and to introduce a new reparation order to encourage the courts to compensate victims where assets are confiscated from perpetrators.

The evidence some three years after the Act was introduced shows that some prosecutions are being made for modern slavery but these are still very low compared to the rapid rise in victims being referred to the National Referral Mechanism. This data alone suggests that the sanctions for THB offences are not yet effective, proportionate or dissuasive.

Many areas of the detail behind the Act need further work for instance sentencing guidelines cover 'sexual exploitation' but not for 'labour trafficking', despite labour trafficking according to NRM statistics being the most prevalent form of modern slavery across the UK.¹⁹⁹

¹⁹⁸ Anti-Trafficking Monitoring Group (2018) 'Before the harm is done: examining the UK's response to the prevention of trafficking'. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>.

¹⁹⁹ Sourced at <https://www.sentencingcouncil.org.uk/news/item/modern-slavery-guidance/>

Additionally, there appears to be a lack of understanding by the judiciary on labour exploitation and its effect on victims, with some cases being viewed as needing to be under employment law not criminal law.

Hope for Justice gave an independent submission in January 2019 as the Modern Slavery Act was being reviewed.

A summary of recommendations that HfJ made are detailed as follows:

- 1. The offences within sections 1 and 2 should be redrafted and each element of the offence should be clearly defined including definitions of slavery, servitude and forced or compulsory labour taking into account well established international definitions.*
- 2. Consideration to removing section 1 (2) with clearer definitions provided within the MSA.*
- 3. Consideration should be given to extending the section 1 provision to an offence of holding a person in exploitation with the definition of exploitation construed in accordance with an extended list of definitions in section (3).*
- 4. Consent should be construed as per international obligations.*
- 5. The offences should make a distinction between adult and child victims.*
- 6. Enhancement of victim care including victims receiving clear status e.g. discretionary leave to remain and ongoing support for a minimum period of 12 months once they receive a positive decision that they are a victim. This reflects Lord McColl's Modern Slavery Victim Support Bill.²⁰⁰*
- 7. The development of an accredited model of specialist Independent Modern Slavery Advocates.*
- 8. Clear and comprehensive risk assessments and management of risks posed by engagement with the criminal justice system during and for a reasonable period after the criminal justice process has ended.*
- 9. The development of criminal justice materials that are accessible to this client base."²⁰¹*

The Human Trafficking Foundation provided an additional reason for why the scale of trafficking offences is often not fully represented in trials:

"One concern reported to us by those working in the judiciary was that they found that police tended to charge traffickers on one or two individual cases even if the trafficking was wide-scale. We were told that this happened because when police try to charge on a larger scale (i.e. in a labour trafficking case with 50 victims) only some victims will give strong enough evidence of trafficking. Therefore, justice is not being done, as the judgement should reflect the scale of the

²⁰⁰ Sourced at <https://services.parliament.uk/bills/2017-19/modernslaveryvictimsupport.html>

²⁰¹ Hope for Justice submission.

criminality and therefore it has been suggested that something in the MSA needed to change.

One option is an amendment to the MSA with an offence of exploitation with a lower threshold than slavery. A similar approach has been taken towards victims of domestic violence recently – by recognising controlling behaviour and calling it more broadly ‘domestic abuse’ without violence. Indeed, this has been a success in putting more criminals behind bars and recognising the complexity of these crimes.”²⁰²

²⁰² Human Trafficking Foundation submission.

6. Ex parte and ex officio applications (Article 27)

6.1. What is the procedural position of a victim of THB in criminal proceedings? What steps are taken to assist victims of THB, including children, to enable their rights, interests and views to be presented and considered during the criminal proceedings against offenders? Who is entitled to assist victims of THB in court? Can victims of THB be represented by NGOs in criminal proceedings?

In England and Wales, there are no national professional standard of support or individual advocate for victims of trafficking in human beings. In Scotland, *“regarding criminal proceedings, a victim has no legal standing in criminal proceedings, (apart from in relation to obtaining medical records in certain cases) and therefore no funded legal assistance would available for that.*

Wider advocacy services are available in Scotland to support individuals as witnesses in a criminal trial, but they are support functions only. This support would come from TARA, Scottish Guardianship Service and Victim Support. Other services, such as the Scottish Women’s Rights Centre, also have advocates who could attend a criminal trial to provide support if needed.”²⁰³

The support that is available in England and Wales, as explained by Hope for Justice, varies according to a number of factors including circumstance and capacity:

“There is an Independent Child Trafficking Guardianship service which exists in areas of the UK and is slowly being rolled out to wider areas of England and Wales. Part of the role of guardians is to represent (but not legally act) for the victim and provide support and guidance through criminal proceedings. Wider advocacy services are also run by the Refugee Council and Children’s Society. In addition, there are some wider independent advocacy services which may assist victims such as Independent Sexual Violence Advocates and HfJ Independent Modern Slavery Advocates. Victim Support also run a support service for children and young people.

Victims can receive assistance from Victim Support as a victim of crime regardless of whether they cooperate with a criminal investigation.²⁰⁴ In addition, if a case proceeds to prosecution they would be able to receive support from the witness service who provide support to prosecution and defence witnesses in court.²⁰⁵ This includes an enhanced service for vulnerable witnesses such as victims of human trafficking. As part of the service the witness service provides information and a court visit for vulnerable witnesses. HfJ find this is invaluable in orientating foreign national victims and also for all victims providing assurance of support and protection through trial. However, in HfJ experience victims often need ongoing assistance through process to enable an understanding and access to these services which are often inaccessible without support. Currently the NRM provides quite limited support and often support ends well before criminal proceedings, CICA applications have been processed or civil proceedings. In HfJ experience victims require ongoing assistance to be able to engage in these proceedings following the NRM.

²⁰³ JustRight Scotland and TARA submission.

²⁰⁴ <https://www.victimsupport.org.uk/>

²⁰⁵ <https://www.citizensadvice.org.uk/about-us/citizens-advice-witness-service/>

*Often this requires a holistic socio-legal advocacy approach to ensure victims have access to ongoing legal advice and advocacy support through all processes.*²⁰⁶

While special measures will be put in place to ensure evidence can be given e.g screens, videolink etc. as well as guidelines about when to consider reparation orders, there is nothing that gives a victim of trafficking VOT a more prominent role, or differing treatment to any other ‘vulnerable witness’.

6.2. If the authorities fail to discharge their obligation to effectively investigate and prosecute suspected cases of trafficking, what possibilities for redress exist for victims of THB and their families? To what extent have victims of trafficking, including children, access to complaint mechanisms, such as Ombudsman institutions and other national human rights institutions?

Investigations, prosecutions and civil orders against traffickers have been inconsistent since the last UK evaluation. However, the UK’s overall ability to prevent trafficking by increasing the risks for traffickers remains low. The number of successful prosecutions stands in stark contrast to the number of identified victims and estimates of the extent of trafficking in the UK. Several years since the introduction of new anti-trafficking laws across the UK, their implementation is inconsistent and there is no mechanism to monitor the outcomes and impact of the UK’s legislation. Key issues identified by ATMG and respondents include lack of resources, as a consequence of budget cuts to the criminal justice system, and poor coordination. Furthermore, despite the likely detrimental impact of Brexit on the UK’s capacity and ability to combat the crime of trafficking, this has been absent from debates about exiting the European Union.

As explained by Hope for Justice, while mechanisms exist, this are unlikely to be accessible to victims of trafficking in practice:

“In our experience victims would need advocacy assistance to access complaints mechanisms and review processes. For criminal proceedings victims may have a right to review in certain circumstances if a case is not pursued further. In addition, if there is a failure to investigate victims may be able to pursue a claim for compensation for failure to investigate the claim pursuant to Human Rights Act 1998. Victims could also make a complaint to the Independent Office for Police Complaints (IPOC). In a criminal case an application could also be made to the Criminal Cases Review Commission who independently look into miscarriages of justice.²⁰⁷ Victims would technically have access to Ombudsman institutions around various issues however in our experience would require assistance to understand these processes and lodge a claim. In our experience victims sometimes can be reticent to lodge complaints against authorities as they are often fearful of authorities and the potential repercussions especially if they are a foreign national.”²⁰⁸

²⁰⁶ Hope for Justice submission.

²⁰⁷ <https://csrc.gov.uk/>

²⁰⁸ Hope for Justice submission.

Where there is a credible suspicion that a person is a victim of trafficking and/or modern slavery an obligation to identify and investigate arises under both the Convention and Article 4 European Convention on Human Rights ('ECHR').

ECPAT observe:

"In the UK there are two key cases that assist in determining the scope of the duty to investigate that would arise: O v The Commissioner of Police for the Metropolis [2011] EWHC 1246 (QB) [2011] HRLR 29 and DSD v The Commissioner of Police for the Metropolis [2018] UKSC 11.

A 2017 report²⁰⁹ from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services found that the overall quality of many investigations carried out by local police forces, particularly smaller-scale ones conducted by non-specialists, was poor. They found cases where allegations were not investigated, cases that had been closed without any inquiries being made and victims who were not debriefed to gain intelligence about offending behaviour which might have informed further investigations, and potentially helped to safeguard other victims.

In ECPAT UK's experience, many children and young people who wished to participate in a criminal investigation found very little interest from their local police forces in pursuing their traffickers. In these cases, due to the child's vulnerability and on-going litigation in other matters such as immigration, albeit there was the availability to legally challenge the police's failure to investigate, it was determined not to be in the child's best interest to launch another tranche of protracted litigation. We have also had positive experiences with some dedicated units within policing which have developed the specialism to effectively investigate these crimes."²¹⁰

ATMG's research has consistently identified a disjointed response from the UK in this area. In 2014, the UK Government launched a Modern Slavery Strategy and, as at October 2019, was continuing to focus on implementing this strategy. The strategy sets the Government's primary objectives as follows: "Fewer people, in the UK and overseas, engage in modern slavery crime in any of its forms. We prevent the facilitation of modern slavery crime and actively reduce reoffending." It does not set out possibilities for redress that exist for victims and their families.

6.3. What reporting and complaint mechanisms are in place for victims of trafficking who are in an irregular migration situation and/or in detention?

Under the legal framework established by the 2015 Modern Slavery Act, survivors who are in an irregular migration situation or in detention should be treated, first and foremost, as victims, and should have access to all reporting and complaint mechanisms. As immigration is a reserved matter, civil society respondents report that the UK's anti-immigration policies mean that in practice the implementation of anti-immigration policies overrule anti-trafficking concerns, and

²⁰⁹ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. (2017). *Stolen freedom: the policing response to modern slavery and human trafficking*. Available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/stolen-freedom-the-policing-response-to-modern-slavery-and-human-trafficking.pdf>

²¹⁰ ECPAT UK submission.

result in a widespread failure to identify, and to ensure the right to access to justice, of survivors in an irregular migration situation. This means that peoples irregular migration status is often in fact used by traffickers as an exploitation tool. As explained by FLEX:

“The UK does not currently guarantee secure reporting and complaints mechanisms for migrants with insecure or undocumented immigration status, which reduces migrants’ trust in these systems and decreases their likelihood of reporting cases of abuse and exploitation for fear of negative immigration repercussion, such as arrest, detention and removal. Government agencies are encouraged to report migrants working without required authorisation to immigration enforcement but practices vary, with some agencies routinely providing personal immigration data to the Home Office, through bulk data-sharing and/or shared databases, to others providing information about undocumented workers on a case-by-case basis. While victims are encouraged to report cases of trafficking to the police, poor training and a focus on immigration offences mean that victims are being sent to immigration detention despite having raised trafficking indicators to first responders. In March 2019, the UK-charity Hestia submitted a super-complaint to the HM Inspectorate of Constabulary and Fire & Rescue Services outlining how police officers are failing to refer victims of trafficking to the NRM and their poor handling of sensitive information is discouraging victims from supporting criminal investigations against their exploiters.

In December 2018, the UK National Police Chiefs’ Council (NPCC) issued a guidance stating that anyone reporting a crime in the UK would be treated first, and foremost, as a victim. The guidance also clarified that police officers should not take immigration enforcement action themselves. These positive commitments are in line with secure reporting systems that help create a trusting relationship between enforcement agencies and victims. However, this guidance proved to be inefficient because it still encourages police officers to make immigration enforcement aware of the victim’s immigration status, which will most likely lead to immigration action being taken against them. So while the UK police seems to be taking steps on the right direction, it still needs to address the way that immigration enforcement interferes with its primary responsibility to help victims of human trafficking.”²¹¹

Hope for Justice expand on this:

“The Home Office appear to have a complaints handling procedure. It is unclear how much information is provided to those in detention including victims of human trafficking.²¹² Currently there are concerns about the ability of victims in detention who have not been identified to access services to facilitate formal identification e.g. into the National Referral Mechanism. A recent report would indicate that victims of human trafficking are being detained. (...)

Joint working between immigration and enforcement bodies, including the police and wider enforcement agencies such as the Gangmasters and Labour Abuse Authority (GLAA) in HfJ’s experience, undermines efforts to reach the most vulnerable and exploited workers. Invariably

²¹¹ FLEX submission.

²¹²Sourced at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/589147/DSO_03_2015_Handling_of_Complaints_.pdf

those with irregular immigration status may fear coming forward due to fear of deportation. This plays into the hands of exploiters who in HfJ's experience use irregular immigration status to trap people in exploitative conditions. In addition, the enactment of section 34 of the Immigration Act 2016 which created an offence of illegal working compounds these issues."²¹³

6.4. Can victims of THB bring claims against the State or its officials for: i) direct involvement in THB; ii) failure to prevent THB or protect them from THB? Have there been cases where State agents or persons acting on behalf, or at the direction, of the State were found responsible for engagement in THB and/or failure to prevent it or protect victims from THB by third parties? Please provide information on any prosecutions against diplomatic and consular staff for alleged involvement in THB.

It is possible to bring claims against the public authorities for the failure to identify, investigate or protect from trafficking and legal aid is available for such claims. ATLEU have acted in a number of complaints arising from the failure of the Home Office on entry clearance to overseas domestic workers. ATLEU explain the difference between state immunity and diplomatic immunity;

"State Immunity against claims by victims of trafficking"

For claims against a state, where the victim is employed by an Embassy, the current law is found in the Supreme Court case of Benkharbouche (Respondent) v Secretary of State for Foreign and Commonwealth Affairs (Appellant) and Secretary of State for Foreign and Commonwealth Affairs and Libya (Appellants) v Janah (Respondent) [2017] UKSC 62.²¹⁴ The effect of the Supreme Court decision is that the UK law which prevents employees bringing claims against Embassies contravenes the human rights of most victims of trafficking. However, the UK government has failed to amend domestic legislation to give effect to this ruling.

The resulting position is that a UK court or tribunal has jurisdiction (via the EU Charter of Fundamental Rights) to consider such a complaint only if it is based on a right derived from EU law, for instance sex discrimination. However, because of the failure to amend UK law, the tribunal and court have no such jurisdiction if the legal right is not derived from EU law, but from domestic law.

To illustrate, a victim brings claims for the national minimum wage, sexual harassment, holiday pay and unfair dismissal. The employment tribunal only has jurisdiction to consider the sexual harassment and holiday pay, because these are EU rights. These claims proceed in the Employment Tribunal as they would against any other respondent. There are a number of such claims proceeding in the Tribunal currently.

²¹³ Hope for Justice submission.

²¹⁴ <https://www.supremecourt.uk/cases/docs/uksc-2015-0063-press-summary.pdf>
[supremecourt.uk/cases/docs/uksc-2015-0063-judgment.pdf](https://www.supremecourt.uk/cases/docs/uksc-2015-0063-judgment.pdf)

If a victim wants to pursue the national minimum wage and unfair dismissal claims, there is no domestic remedy. Accordingly, the victim has to bring a claim against the UK in the European Court of Human Rights for the unlawful infringement of their human rights. There is at least one case proceeding in the Strasbourg Court. It is unclear if the Strasbourg Court will award sufficient damages to victims to make up for the failure of the UK government to amend its domestic law.

The position will likely change after the end of the UK's transition period in withdrawing from the EU (currently 31.12.20). Under the EU Withdrawal Act 2018 the Charter will cease to have effect after 1 January 2021. After that date it is very unclear if courts and tribunals will continue to have jurisdiction over EU-derived claims. In which case, victims will have to bring all claims in the ECHR against the UK government, with the consequent concerns over sufficient compensation.

Diplomatic Immunity against claims by victims of trafficking

For claims against a diplomat, where the victim is employed by the individual diplomat, the current law is found in Reyes (Appellant/Cross-Respondent) v Al-Malki and another (Respondents/CrossAppellants) [2017] UKSC 61.²¹⁵ By a majority of one, the Supreme Court found that victims do not have the right to bring claims against a serving diplomat. The minority disagreed.

*Therefore, currently a victim cannot bring a claim against a diplomat. However, a victim is currently seeking permission to challenge this law in the Supreme Court. Other claims against diplomats are expected to be stayed behind the Supreme Court case.*²¹⁶

Hope for Justice also submitted on the issue of diplomatic immunity:

*“Victims could bring a complaint against the state or officials for direct involvement in human trafficking. This becomes more problematic if officials have diplomatic immunity. There have been significant issues in pursuing both criminal and civil cases in British courts due to diplomatic immunity. In October 2017, the UK Supreme Court in *Reyes v Al-Malki* in a civil case had held that a former diplomat was not immune in those circumstances, but the Justices had been split on whether a current diplomat still enjoyed immunity. In a landmark case this year of *Mrs J Wong v Mr Khalid Basfar EAT Case Number 2206477/2018* 11th June 2019 the Employment Tribunal held that the diplomat was not immune from civil jurisdiction.*

*Victims can also bring a compensation claim under the Human Rights Act 1998 for failure of authorities to identify and investigate cases as well as failures to protect and support victims. The limitation date for such a claim is 1 year from the date of the breach. There is a discretion to allow a claim to be pursued outside the limitation date if it is in the interests of justice to do so.*²¹⁷

For claims against the state, ECPAT UK provided the following evidence:

²¹⁵ <https://www.supremecourt.uk/cases/docs/uksc-2016-0023-judgment.pdf>

²¹⁶ ATLEU submission.

²¹⁷ Hope for Justice submission.

“The UK Government was found to be in breach of its obligations under Article 4 of the European Convention on Human Rights when a Vietnamese child trafficking victim went missing.²¹⁸ ‘TDT’, a Vietnamese victim, was found by police in the back of a lorry in Kent in September 2015. He was treated by Immigration Enforcement as an adult and placed in immigration detention in Dover Immigration Removal Centre and then at Brook House in Sussex. His age was disputed by Immigration Officers and he was not initially treated as a potential trafficking victim, despite presenting clear indicators. After seeing a specialist support worker at the Refugee Council, he was referred to the NRM. His lawyer challenged the Home Office on various aspects of his treatment, including the failure to conduct an age assessment and to recognise him as a potential victim of trafficking, as well as calling for his release into safe and secure accommodation. The Home Office did not reply. He was subsequently released on temporary admission without any protection measures in place. His solicitors had sought assurance that he would be released under arrangements that would minimise the risk of re-trafficking. However, he was released by the Home Office to an address that was not residential but actually listed as a Buddhist temple. He went missing soon after and was last seen by police with a man at Gatwick Airport railway station. He has not been seen since. The police have made inquiries as to his whereabouts but without success. His solicitors believe that he was re-trafficked. This case highlights the serious failure to prevent re-trafficking of child victims and the lack of structures in place to prevent this from occurring.”²¹⁹

6.5. What steps have been taken to strengthen and maintain the capacity of prosecutors to effectively prosecute trafficking cases?

While support and capacity-building on trafficking in human beings in the Crown Prosecution Service (CPS) has made progress since 2015, lack of resources and capacity is still one of the key drivers of the extremely low rate of prosecutions on trafficking offences, as evidenced in our response to question 5.5.

According to an internal review carried out in 2018, Her Majesty’s Crown Prosecution Inspectorate identified “a confused picture” in terms of the consistency of training of casework lawyers tasked with prosecuting trafficking and modern slavery in England and Wales. In other parts of the UK there is evidence of inconsistent capacity-building, with prosecutors in Northern Ireland and Scotland lacking up to date and comprehensive training. The HMCPI report concluded that “victims are being let down at every stage. Identification, information flows, victim focus and investigative practice all need to be improved considerable so that victims receive the full range of protections and safeguards to which they are entitled, and more offenders are brought to justice.”

This view is confirmed by the input submitted by Hope for Justice:

“HfJ understand training has been conducted for those within complex cases units so knowledge is increasing. However, cases are complex, time consuming and costly to investigate so in HfJ

²¹⁸ *R (TDT) v SSHD [2018] EWCA Civ 1395*

²¹⁹ ECPAT UK submission.

experience these cases require much more resourcing to achieve effective and successful prosecutions."²²⁰

In Scotland:

*"TARA used to have a regular one-hour slot on the COPFS Sexual Offences Act training where we tried to highlight the indicators, NRM and the presumption not to prosecute. This as very challenging. However, since 2019 we have not been asked to input but were advised that COPFS intended to develop more in depth training on the issue/Human Trafficking and Exploitation Act. We have not been asked for any input or views which is disappointing as we now have a dedicated Training Officer."*²²¹

²²⁰ Hope for Justice submission.

²²¹ TARA submission.

7. Non-punishment provision (Article 26)

7.1. Please indicate what measures are taken to ensure that victims of THB, including children, are not punished for their involvement in unlawful activities (criminal, civil, administrative offences), to the extent they were compelled to do so, providing any concrete examples of their implementation.

Since 2015, UK jurisdictions have amended their legislation in an attempt to incorporate, in all or in part, the non-punishment provision set in Article 26 of the Convention. In spite of this progress, civil society reports show that this provision remains largely not applied, in good part due to gaps in the existing legislation, and due to the widespread failure to identify trafficking survivors during immigration and criminalisation enforcement.

7.1.a. Incomplete transposition of the provision under UK law

The non-punishment provision does not exist across UK legislation. Instead, the provisions in each of the UK's jurisdictions consists of a statutory defence. It is in the application of this defence where UK countries differ. In the Modern Slavery Act, which applies to England and Wales, the statutory defence allows the defendant to raise a defence in an attempt to avoid criminal liability.

In the past, the ATMG has noted that, although section 45 of the Modern Slavery Act 2015 introduces a defence for victims, including children, who are compelled to commit criminal offences, it can only be relied upon once the prosecution process has commenced. Therefore, it does not protect victims from being prosecuted in the first instance and is thus not compliant with the international definition of non-prosecution.²²²

The protection set in section 45 of the Modern Slavery Act does not extend to all offences. This has been recognised by a number of international actors, including GRETA who following their 2016 evaluation of the UK noted 'there is a list of more than 100 offences of various degrees of seriousness where the statutory defence cannot be used. GRETA notes that section 45 excludes the possibility of withdrawing prosecution and punishment for this wide list of offences and is concerned that this gives a rather narrow interpretation of the non-punishment principle.²²³ Under the Scottish provision, as reviewed by ATMG in their 2016 report, *Class Acts*,²²⁴ the Preamble to the Lord Advocate's Instructions illustrates the evolving nature of criminality, and explains that the statutory defence may be invoked in offences committed as part of the process of trafficking or as a consequence of trafficking. Paragraph 4 of the Preamble states that:

²²² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

²²³ Council of Europe Group of Experts on Action Against Trafficking in Human Beings (2016) 'Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by the United Kingdom', GRETA 2016(21). Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abc dc>.

²²⁴ See: http://www.kalayaan.org.uk/wp-content/uploads/2014/09/atmg_class_acts_report_web_final.pdf p.67.

“The list of offences which victims of human trafficking or exploitation may commit is constantly evolving. The most common types of offences which victims commit in the process of trafficking or exploitation include immigration offences and possession of false identity documents. The offences which victims commonly commit as a consequence of the trafficking or exploitation include the production or being concerned in the sale and supply of controlled drugs, shoplifting, theft by housebreaking, benefit fraud and offences linked to commercial sexual exploitation. Prosecutors should also be alert to the fact that victims of human trafficking or exploitation may themselves commit human trafficking or exploitation offences in relation to other individuals.” [Emphasis added]

On the principles of the non-punishment provision the Lord Advocate’s Instructions leave little room for doubt.

If there is sufficient evidence that a child aged 17 or under has committed an offence and there is credible and reliable information to support the fact that the child; (a) is a victim of human trafficking or exploitation and (b) the offending took place in the course of or as a consequence of being the victim of human trafficking or exploitation, then there is a strong presumption against prosecution of that child for that offence. If there is sufficient evidence that a person aged 18 or over has committed an offence and there is credible and reliable information to support the fact that the person; (a) is a victim of human trafficking or exploitation (b) has been compelled to carry out the offence and (c) the compulsion is directly attributable to being the victim of human trafficking or exploitation, then there is a strong presumption against prosecution of that person for that offence.

Recently, partners JustRight Scotland and TARA have recommended that this provision could be strengthened if there was also a defence which could be utilised if this first line of defence does not work.

ATMG understands there are several challenges for prosecutors and defence lawyers in applying the statutory defence. One significant issue is the lack of research and data on the use of the statutory defence. There is a lack of statistical data regarding investigations, prosecutions, convictions and compensation in relation to human trafficking.

Many individual agencies also collect data, which gives a confused and potentially misleading picture on the UK’s response to the issue. For example, the Ministry of Justice (MoJ) collects data on convictions and prosecution of trafficking, where the trafficking offence charged is the principal offence on the indictment. At the same time, the Crown Prosecution Service (CPS) collects data from its case management system, where cases involving a trafficking charge are flagged. Unfortunately, data is not collected on the when and if the s45 defence is invoked, an issue that ATMG and others consider in more detail below.

Overall, it is difficult to assess the frequency and the effectiveness of application of the provision. In 2018, An FOI request by the ATMG revealed that this type of data is collected by neither the MoJ nor the CPS.

Responding to the FOI request, the MoJ confirmed that it:

“does not hold data on the use of the defence in section 45 of the Modern Slavery Act 2015. Neither does Crown Prosecution Service data capture such information. Data on NRM referrals made during court

*proceedings is not collated centrally and could only be provided, through examination of individual NRM referrals and court transcripts, at disproportionate cost.*²²⁵

This lack of data makes it difficult to assess compliance with the non-punishment provision and the extent to which the UK guarantees victims their right not to be prosecuted. Similarly, it is difficult to evaluate whether effective use of this provision is enabling victims to see their trafficker(s) investigated.

7.1.b. Failure to identify trafficking survivors in law enforcement

Various respondents highlighted that officers in charge of criminal law and immigration enforcement frequently fail to identify trafficking survivors. In doing so, the prevent in practice the application of section 45 of the Modern Slavery Act. As IOM UK explain:

“As outlined below, recent research activities have indicated that there continue to be cases in which victims of trafficking have been punished for offences they may have committed as a result of their exploitation.²²⁶ While it is likely that there are numerous reasons for this, evidence suggests that the lack of identification of victims by the professionals they are in contact with in the immigration and criminal justice systems and poor application of the Section 45 Statutory Defence and/or restrictions on its use, continue to be key factors of concern.

In a 2017-2019 research study conducted in partnership with the University of Bedfordshire examining vulnerabilities to trafficking from Albania, VietNam and Nigeria,²²⁷ interviews were carried out with 21 Vietnamese nationals who had been returned from UK prisons or Immigration Removal Centres. All 21 interviewees provided detailed descriptions of the violent and exploitative journeys they had taken from Vietnam to the UK, as well as in-depth descriptions of their lives here, which often involved engaging in criminal activities (such as cannabis cultivation), either because they were compelled to do so or lacked any realistic alternatives. The interviewees also described how they had been detected by the authorities, prosecuted and convicted for the offences they had committed as a result of their exploitation, subsequently spending time in prison and being forcibly returned to Vietnam. In each case it appeared as though the indicators of trafficking and exploitation had not been detected or acted upon by any of the professionals that the interviewees had come into contact with while in the UK. Instead, they had all been treated as criminals and/or immigration offenders. While it is important to note that some of these individuals were describing their experiences prior to the introduction of Section 45 of the Modern Slavery

²²⁵ Ministry of Justice, Freedom of Information Request, submitted 11 May 2018. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-06-13/HL8619/>.

²²⁶ To IOM’s knowledge, the Government does not routinely publish any data on the number of victims of trafficking who are detained in prisons or immigration removal centres, as such it is difficult to gauge patterns or trends. However, a recent Freedom of Information request showed that 269 Foreign National Offenders detained under immigration powers between 2014 and 2018 received a positive Reasonable Grounds decision through the NRM. Of these, 35 subsequently received a positive Conclusive Ground decision. See https://www.whatdotheyknow.com/request/594260/response/1452276/attach/3/54835%20response.pdf?cookie_passthrough=1

²²⁷ Hynes, P. et al (2019), *‘Between Two Fires’: Understanding Vulnerabilities and the Support Needs of People from Albania, Viet Nam and Nigeria who have experienced Human Trafficking into the UK*, University of Bedfordshire and International Organization for Migration (IOM). View at: https://unitedkingdom.iom.int/sites/default/files/two_fires_footnotes_final_0.pdf

Act in July 2015 or in the months thereafter, this finding remains highly concerning and appears to represent a trend that continues, and one that particularly seems to affect Vietnamese nationals.

Through ad hoc monitoring of UK news media reports between 2017 and 2019 involving foreign nationals who receive custodial sentences after being found guilty of cannabis cultivation, IOM has also found multiple cases in which the status as a victim of modern slavery is acknowledged during sentencing, while the principle of non-punishment does not appear to have been applied. Two such examples are provided below:

□ *Two Vietnamese men were each given 12 month custodial sentences at Portsmouth Crown Court in April 2017 for cannabis cultivation despite the Recorder Nicholas Atkinson QC describing their circumstances as ‘an example of modern-day slavery.’²²⁸*

□ *In a case in May 2019 an Albanian man was given a 12 month custodial sentence for his involvement in cannabis cultivation despite the defending solicitor explaining that he had ‘been referred to Home Office department dealing with modern slavery.’ The Judge at Taunton Crown Court told the defendant, “You may have a defence under the Modern Slavery Act but Mr Mason [defending solicitor] has made it clear you wish to return to Albania as soon as you can... I am going to sentence you in a way that does that.”²²⁹*

These media reports and the aforementioned research study, indicate that Section 45 of the Modern Slavery Act was either little known or understood by the solicitors or judges in question, or inadequately applied. In the case of the Vietnamese nationals interviewed in the study where the exact nature of their offences was unknown, it is unclear whether the Section 45 defence had been excluded due to the offences committed being included in Schedule 4 of the Act (which contains an extensive and varied list of excluded offences). For example, it is common for a trafficked person, particularly those involved in cannabis cultivation, to be given a more controlling position by their trafficker over time. As a result, a trafficking victim who remains under the control of their own trafficker and is subsequently used by them to exert control over others, such as restricting their movements, cannot raise the Section 45 defence, even where the offence is committed as a direct result of their own exploitation.

Given the concerns noted above and wider evidence of continued convictions of victims of trafficking for offences they were compelled to commit, it is reasonable to assume that there are victims within the UK’s prisoner and immigration detainee population. Therefore, ensuring that there are appropriate systems and processes in place within prison and immigration detention facilities to detect and refer potential victims can act as further opportunities to uphold the non-punishment principle.

IOM has undertaken a desk-based review of over 180 inspection reports of prisons and young offender institutions conducted between January 2015 and July 2019 by Her Majesty’s

²²⁸ <https://www.portsmouth.co.uk/news/crime/raid-uncovers-400-000-cannabis-factory-at-havant-home-tended-by-trafficking-victims-1-7903483>

²²⁹ <https://www.somersetlive.co.uk/news/somerset-news/illegal-immigrant-who-came-uk-2829215>

Inspectorate of Prisons (HMI Prisons),²³⁰ as well as 14 inspection reports of immigration detention between February 2015 and June 2019. The purpose of the review was to understand the way in which HMI Prisons incorporates trafficking in its inspection framework and to learn about their findings on the types of responses taken to victims of trafficking who might be in such facilities.

HMI Prisons includes specific indicators related to trafficking in the Expectations²³¹ frameworks for men's prisons, women's prisons, as well as for children and those in immigration detention. It is worth noting that trafficking indicators appear against one Expectation for men's prisons and children's facilities, while they appear against 10 Expectations for women's prisons²³². The National Referral Mechanism (NRM) is referenced in the Expectations for women, children and immigration detention but it is not referenced in the men's prison Expectations.

Analysis of the inspection reports show that out of more than 140 reports of men's prisons, only four made any reference to the responses to potential victims of trafficking. By stark contrast, all fifteen inspection reports of women's prisons conducted since 2015 referenced the prison's response to potential victims of trafficking.

These are concerning findings which suggest that insufficient and inconsistent attention is being given to the issue of trafficking in male facilities. This is particularly problematic given the large proportion of male victims trafficked for the purpose of committing unlawful activities. For example, the Independent Anti-Slavery Commissioner has highlighted that the vast majority of Vietnamese adults trafficked for cannabis cultivation are male.²³³ The lack of attention and priority on trafficking in male facilities reduces the opportunities for male victims to be identified and referred to the NRM, further undermining the non-punishment principle for male victims of trafficking.

Of the four male prison inspection reports that made reference to trafficking, two highlighted inabilities of staff to identify and respond to potential victims. The report of HMP Chelmsford found, 'Staff did not have sufficient knowledge to identify victims of human trafficking.'²³⁴ The report for HMP Wandsworth noted 'There was insufficient awareness among staff about what to do if a prisoner said that they feared returning to their country and no awareness of human trafficking indicators and the National Referral Mechanism.'

There were similar references in the female prison reports, such as the inspection of Foston Hall (February 2019) which highlighted, 'little support was available for prisoners who had been

²³⁰ HMI Prisons is an independent inspectorate which reports on conditions for and treatment of those in prison, young offender institutions and immigration detention facilities.

²³¹ *Expectations* are the criteria used during inspections to assess the treatment of individuals and the conditions of the facilities in which they are held. These can be found here: <https://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/>

²³² The Expectations for immigration detention contain multiple references to human trafficking and the NRM in the sections for centres for men, women and children.

²³³ <http://www.antislaverycommissioner.co.uk/media/1159/iasc-report-combating-modern-slavery-experience-by-vietname-nationals-en-route-to-and-within-the-uk.pdf>

²³⁴ <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/10/HMP-Chelmsford-Web-2018.pdf>

*trafficked. Staff were unaware of these prisoners and did not understand the National Referral Mechanism.*²³⁵

*Of the fourteen inspection reports of immigration detention, there are four which do not include any reference to the response to potential victims of trafficking; however, all seven inspection reports conducted since 2017 do. Some of the reports contain similarly concerning findings regarding the lack of trafficking knowledge of staff who have most contact with potential victims, such as the Tinsley House (for male detainees) inspection report (April 2018), ‘Only Home Office staff knew about the national referral mechanism . . . Custody and health care staff did not, had not been trained in trafficking and had no awareness of trafficking indicators or reporting requirements.’*²³⁶

*In summary, a number of IOM’s recent activities indicate that victims of trafficking continue to be punished for their involvement in unlawful activities that they were compelled to do, suggesting that key gaps remain in the application of, and compliance with, the non-punishment provision. Improving training, guidance and processes for professionals in the criminal justice and immigration systems, about trafficking, the NRM and informing victims of their rights, is paramount. Strengthening understanding and application of the Section 45 Statutory Defence should also continue to be a priority, as well as a review of the impact of Schedule 4 restrictions on the use of this defence. The inspection regime for prisons and immigration detention facilities offers further opportunity for scrutiny and improvement of standards related to trafficking but further effort is required to ensure these are consistently applied across male and female facilities.*²³⁷

Hope for Justice expand on this:

“Our experience is that there are still significant failures to identify potential victims of modern slavery in early stages of investigation and criminal proceedings. HfJ have a number of cases where victims have already been prosecuted for offences such as driving without insurance or theft. The victim may not even be aware that they have been prosecuted or may have been too fearful to speak up during the process.

HfJ find that even though the CPS Guidance on Human Trafficking, Smuggling and Slavery on non-prosecution is relatively comprehensive and that all evidence should be taken into account there still is an over reliance on a victim entering the NRM system and receiving a positive conclusive grounds decision. This can leave cases in limbo, especially if there are lengthy delays in making NRM decisions. In addition, there are still too few criminal defence lawyers who have specialist knowledge and training. In addition, often there is over reliance on a positive conclusive

²³⁵ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/Wandsworth-web-2015.pdf>

²³⁶ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/08/Tinsley-House-Web-2018.pdf>

²³⁷ IOM UK submission.

grounds decision as evidence of the statutory defence without looking at the evidence holistically from all agencies."²³⁸

Several respondents highlighted that criminalisation of survivors is prevalent in drug enforcement. From the Human Trafficking Foundation:

"There is increasing concern in regards to "County Line Drug Networks" (CLDN) – which often involves the criminal exploitation of mainly British children and young adults, as well as adults with vulnerabilities. British children, groomed by criminals to transport drugs, while witnessing and sometimes directly experiencing significant physical or sexual abuse, are mostly criminalised.

The starting point for drug offences is with the person the police find the drugs on. There is no incentive for police to look beyond the scope of the arrest and find the criminal at the top, or examine what exists behind the crime in terms of exploitation,. Instead, with so many pressures on police, there is an incentive for the quick win of charging the child found with the drugs. One police force we met changed their approach and reduced violent crime, but they are in the minority. In most cases trafficked children are being criminalised, while the traffickers avoid justice.

*One recommendation to address this is to utilise a similar concept to *doli incapax* in respect of the scheduled offences under the MSA, by creating a schedule of drug offences or criminal exploitation more broadly, and using a form of '*doli incapax*'²³⁹ for these types of cases under the Act. This would shift the police investigation away from the child and onto perpetrators as it moves the burden of evidence onto police, compelling them to prove the child is not being exploited – and hence forces the investigation to focus on possible perpetrators behind the children, and explore the larger criminality behind the case, and target traffickers. It also would compel police to go down a safeguarding route in terms of the child.*"²⁴⁰

FLEX expand on system failings:

"Section 45 of the UK Modern Slavery Act 2015 states that a person is not guilty of an offence if they are compelled to do it due to a situation of slavery or to relevant exploitation. Yet, in many cases identified by Labour Exploitation Advisory Group, people forced into cannabis cultivation are only identified after having been convicted, served their custodial sentence and subsequently detained under immigration powers, facing deportation on the basis of their criminal conviction. While it is possible to initiate an appeal process to overturn their criminal conviction without a positive conclusive grounds decision, many victims are unaware of this right. Some victims are

²³⁸ Hope for Justice submission.

²³⁹ "Under the English common law the defense of infancy was expressed as a set of presumptions in a doctrine known as *doli incapax*. A child under the age of seven was presumed incapable of committing a crime. Children aged seven to under fourteen were presumed incapable of committing a crime but the presumption was rebuttable. The prosecution could overcome the presumption by proving that the child understood what they were doing and that it was wrong. In fact capacity was a necessary element of the state's case. If the state failed to offer sufficient evidence of capacity the infant was entitled to have the charges dismissed at the close of the state's evidence. *Doli incapax* was abolished in England and Wales in 1998,^[1] but persists in other common law jurisdictions" https://en.wikipedia.org/wiki/Defense_of_infancy

²⁴⁰ Human Trafficking Foundation submission.

wrongly advised by their legal representatives that they cannot appeal against their conviction, routinely many have plead guilty to the criminal offence. Entering a guilty plea does not ban victims from appealing against a conviction for a crime they were forced to commit as a result of their exploitation."²⁴¹

The West Midlands Anti-Trafficking Networks underscored that officials at the CPS are not applying the section 45 defence *ex officio* as frequently as they should.

*"The CPS have direct responsibility as part of their decision to prosecute whether the victim is a victim of trafficking or not. Therefore, the pathway for trafficked victims to be protected from prosecution can be taken and facilitated by the CPS who should raise the question of whether duress through exploitation has played a role in the criminal offence."*²⁴²

ATMG have identified a further challenge around s45 of the Modern Slavery Act is the concern over the interpretation of the term 'direct consequence' which is central to the defence. The Act does not define the term 'direct consequence' used in Section 45 (4)(b) and there is no further explanatory note. This was raised as a concern as part of the Ms. Haughey's Modern Slavery Act review, published in July 2016,[1] which also questioned whether the statutory defence is consistent with Article 8 of the Trafficking Directive.

The Modern Slavery Act review recommended that: "In respect of s45 of the Modern Slavery Act, which provides for a defence for slavery or trafficking victims who commit an offence, consideration should be given to clarifying and/ or enhancing the term 'direct consequence', and to clarifying the process by which s45 is raised and applied." [Rec 25] The ATMG agrees with this recommendation and urges immediate action to clarify this term, not just in CPS guidance but also more widely across the police and for other frontline professionals who come into contact with victims. The statutory defence in the Modern Slavery Act and in the Northern Ireland Act both contain a 'reasonable person test' i.e. whether a reasonable person in the same situation as the person charged with the offence and having the person's relevant characteristics would have no realistic alternative to doing the criminal act. 'Relevant characteristics' refer to age, sex and any physical or mental illness or disability. In Northern Ireland this test only applies to adult cases but in the Modern Slavery Act this test must also be applied to children. Throughout the Modern Slavery Bill debates the ATMG and others raised concerns about the inclusion of this reasonable person test, particularly in regard for children. Under international law, namely the UN Trafficking Protocol (the Palermo Protocol), the Council of Europe Trafficking Convention and the EU Trafficking Directive, all legally binding for the UK, the presence of any of "the means" – including compulsion – are irrelevant when defining a child as a victim of trafficking. However, the reasonable person test requires a juror to decide whether a reasonable child with relevant characteristics would have acted in the same way – and as such, inadvertently retains the need for a child defendant and victim to prove compulsion in their actions in order to access the protection of the statutory defence.

The Criminalisation of child trafficking victims is occurring despite CPS guidance that any crimes

²⁴¹ FLEX submission.

²⁴² West Midlands Anti-Slavery Network submission.

committed by child victims of trafficking must be considered in the context of their trafficking by prosecutors. Despite some legislation including defence for victims, cases involving children continue, which shows that the measures in place to prevent criminalisation of child trafficking are not proving to be effective. Between 2012 and 2017, more than 1,333 Vietnamese children were arrested, rather than being seen as potential trafficking victims.²⁴³ The reasons for arrest included drug offences, despite the known links with exploitation for cannabis cultivation. Such responses are serving to make child victims of trafficking more vulnerable, rather than offering them protection towards preventing re-victimisation.

ECPAT UK's research revealed:

“Trafficked children are often treated as defendants rather than victims in the UK justice system, resulting in their victimisation by the State as well as by their traffickers. The process leading to prosecution can be a deeply traumatising experience for trafficked children with significant long-term impacts, punishing them for being victims of abuse. Children who are treated as suspects are incredibly difficult to then engage as witnesses due to the inevitable erosion of trust, thereby reducing the potential impact of the Modern Slavery Act to secure prosecutions. Our understanding of the impact of this in practice is made more difficult by the fact that data on the use of the statutory defence is collected by neither the Ministry of Justice (‘MoJ’) nor the Crown Prosecution Service.”²⁴⁴

In addition, the statutory defence is not appropriate for children and not compliant with international legislation on child trafficking. The defence is based on the notion that a person is ‘compelled’ to commit the act and a ‘reasonable person’ would have no realistic alternative in the situation. A child who has been trafficked and enslaved would never ‘reasonably’ be able to consent to commit a crime and therefore cannot consent to be exploited, as explained in international law. The 2015 independent review of the Modern Slavery Act raised concerns about the statutory defence’s inconsistency with Article 8 of the EU Trafficking Directive. The logic as set out by the court on the reasonable persons test is to safeguard against “unscrupulous” use of the defence which lies within the application of the objective tests set out in Section 45(1)(d) (for persons over 18) and Section 45(4)(c) (for persons under 18).²⁴⁵

The inspection of policing responses to modern slavery and human trafficking also highlighted that inconsistent and ineffective identification of victims is failing to prevent the criminalisation of victims of trafficking.²⁴⁶ It found low awareness of the section 45 defence for victims of modern slavery who commit an offence, limited use of preventative powers and low numbers of notifications to the Home Office about potential victims. There is guidance for crown prosecutors in place to prevent children from reaching the point of criminalisation for crimes committed as a

²⁴³ Swerling G. (2018) ‘Police treat trafficked children like criminals’, *The Times* 19 March. Available at: <https://www.thetimes.co.uk/article/police-treat-traffickedchildren-like-criminals-hkczd9sgz>.

²⁴⁴ Anti-Trafficking Monitoring Group (ATMG). (2018). *Before Harm is Done: Examining the UK’s response to the prevention of trafficking*. Available at: <http://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

²⁴⁵ [R v Kreka and R v Gega \[2018\]](#)

²⁴⁶ [Her Majesty’s Inspectorate of Constabulary & Fire and Rescue Services. \(2017\). *Stolen freedom: the policing response to modern slavery and human trafficking*. Available at: https://www.justiceinspectors.gov.uk/hmicfrs/publications/stolen-freedom-the-policing-response-to-modern-slavery-and-human-trafficking/](#)

result of their exploitation, but cases of children being convicted continue, showing that the current guidance is not sufficient to ensure that children are protected.

The court of appeal has emphasised the duty of both prosecutors and defence lawyers to make proper enquiries in criminal prosecutions involving individuals who may be victims of trafficking.²⁴⁷ The CPS guidance states duties for prosecutors if they have reason to believe that the person is a victim of trafficking or slavery, including that they must make proper inquiries. Unfortunately, these are soft under the guidance and extend only to a prosecutor's duty to 'advise' law enforcement to investigate the trafficking and/or to make a referral to the NRM. Additionally, the guidance further conflates the definition for child victims under the Convention which excludes the 'means' section as it relates to children. The guidance states that in the context of drug offences 'the victims are often children, aged 14 to 17 years' yet it goes on to state 'Prosecutors should also be alive to the fact that, if a person, by joining an illegal organisation or a similar group of people with criminal objectives and coercive methods, voluntarily exposes and submits himself to illegal compulsion, he cannot rely on the duress to which he has voluntarily exposed himself as an excuse either in respect of the crimes he commits against his will or in respect of his continued but unwilling association with those capable of exercising upon him the duress which he calls in aid: R v Fitzpatrick [1977] N.I.L.R. 20. This interpretation contradicts the positive obligations imposed on states as defined in Ranstev to establish an adequate legal framework that contains the spectrum of safeguards to ensure the practical and effective protection of the rights of victims.

A UNICEF report found that there are "serious shortcomings in the implementation of the non-punishment principle in the UK, including few safeguards against arrest or prosecution at the earliest stages of the criminal justice process; very low levels of awareness among prosecutors, police, defence solicitors and frontline practitioners of the non-punishment protections for children that are in place; and little monitoring of the use of the presumption against prosecution or the statutory defence across the UK."²⁴⁸ This highlights that a change in the law is necessary and ECPAT UK recommends that the reasonable person test relating to the statutory defence in Section 45 of the Modern Slavery Act should not apply to children, to ensure that the statutory defence is capable of being applied to all offences committed that have a causal link to the exploitation and to ensure guidance is issued on the use of the non-prosecution principle for public authorities, aligned with international legal standards."²⁴⁹

7.1.c. Criminalisation of child trafficking survivors

²⁴⁷ [The Court of Appeal in R v O \[2008\] EWCA Crim 2835 case of a 17-year old child who was sentenced by the Crown Court to a period of imprisonment without reference to the relevant protocols by either the prosecution or defence, and without reasonable enquiries having been made as to the defendant's trafficking history. The Court of Appeal further emphasised this duty in L, HVN, THN and T v R \[2013\] EWCA Crim 991.](#)

²⁴⁸ [UNICEF UK. \(2017\). Victim not criminal: trafficked children and the non-punishment principle in the UK. Available at: \[https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf\]\(https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf\)](#)

²⁴⁹ ECPAT UK submission.

Criminalisation of child trafficking victims is occurring despite CPS guidance that any crimes committed by child victims of trafficking must be considered in the context of their trafficking by prosecutors.²⁵⁰ Despite some legislation including defence for victims, cases involving children continue taking place, which shows that the measures in place to prevent criminalisation of child trafficking are not proving to be effective. Between 2012 and 2017, more than 1,333 Vietnamese children were arrested, rather than being seen as potential trafficking victims.²⁵¹ The reasons for arrest included drug offences, despite the known links with exploitation for cannabis cultivation.

In regard to children, the ATMG believes the statutory defence is not appropriate and not compliant with international legislation on child trafficking. The defence is based on the notion that a person is ‘compelled’ to commit the act and a ‘reasonable person’ would have no realistic alternative in the situation. A child who has been trafficked and enslaved would never ‘reasonably’ be able to consent to committing a crime and therefore cannot consent to being exploited, as explained in international law. This point is made by Hope for Justice:

“Schedule 4 of the MSA contains an extensive list of offences, many of which are common offences victims commit as a result of their experience of modern slavery, for instance criminal damage, burglary, human trafficking, road traffic offences. This is particularly concerning in respect of children as they cannot consent to exploitation in ECAT. The schedule should reflect the more limited and serious exceptions in the common law defence of duress e.g. murder, attempted murder, treason involving the death of a sovereign.”²⁵²

Just as it has been pointed out above for adults, Unicef UK’s research showed that the investigative stage is the most critical with regard to the appropriate use of the Section 45 statutory defence. It is at this stage when the police, CPS and defence lawyer should be working together to identify and safeguard children who may have been trafficked as quickly as possible.²⁵³

(d). The legal framework in Scotland

In Scotland, the non-punishment provision is distinct. Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015 allows the principles of the no punishment and its practical interpretation to be detailed in the Lord Advocate’s Instructions, which in turn provides an easily understood set of guidelines for lawyers and non-lawyers.

In particular, the Lord Advocate’s Instructions require that in all cases where the suspect has been identified as a victim of human trafficking and exploitation they must be reported to the National

²⁵⁰ The guidance states that: “If the defendant is a child victim of trafficking/slavery, the extent to which the crime alleged against the child was consequent on and integral to his/her being a victim of trafficking/slavery must be considered. In some cases the criminal offence is a manifestation of the exploitation.” Crown Prosecution Service (2016) ‘Human trafficking, smuggling and slavery’. Available at: http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling.

²⁵¹ Swerling G. (2018) ‘Police treat trafficked children like criminals’, *The Times* 19 March. Available at: <https://www.thetimes.co.uk/article/police-treat-traffickedchildren-like-criminals-hkczd9sgz>.

²⁵² Hope for Justice submission.

²⁵³ UNICEF UK (2017) ‘Victim, not criminal: Trafficked children and the non-punishment principle in the UK’. Available at: https://www.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf

Lead Prosecutor for Human Trafficking and Exploitation for a final decision to be made. As highlighted in Hope for Justice's submissions, this is widely considered to be exemplary practice for monitoring and enhancing understanding of criminal practices, and it should be adopted in England, Wales and Northern Ireland:

*"In Scotland, whilst there is no statutory defence, there is Lord Advocates Instruction for Prosecutors When Considering Prosecuting Victims of Human Trafficking and Exploitation. The instruction provides that all the cases where human trafficking could be present should be referred to the lead national prosecutor. This could be a beneficial approach so that cases are looked at by a senior and specialist prosecutor."*²⁵⁴

According to UNICEF UK's research, there appears to be significant scope for flexibility in the application of the Lord Advocate's Instructions in cases concerning trafficked children. Important aspects of the policy and subsequent practice are that there is no reasonable person test to satisfy; there is no need for an NRM decision before engaging the non-prosecution principle because prosecutors are proactively establishing whether there is a case of child trafficking; and that the Instructions apply to all stages of the criminal justice process, including post-conviction.

7.2 Can persons who have breached national laws in the course, or as a consequence, of being trafficked have access to remedies for victims of trafficking, including State compensation?

Currently those with criminal offences would be able to access compensation under criminal, civil law and an employment tribunal. However as detailed above the government Criminal Injuries Compensation Scheme has a blanket policy provision of not providing compensation to those who have previous criminal offences. This can deny many victims compensation and is currently the subject of ongoing litigation.

²⁵⁴ Hope for Justice submission

8. Protection of victims and witnesses (Articles 28 and 30)

8.1. How are victims of THB protected in practice against potential retaliation or intimidation before, during and after legal proceedings? How is the assessment of the needs for protection performed and who recommends the application of the protection measures? Who is responsible of the implementation of the protection measures?

Civil society respondents consistently reported that much more could be done by the UK authorities in order to protect trafficking survivors against retaliation or intimidation by perpetrators. In practice, the police and other UK agencies have very limited measures in place to provide protection to victims or witnesses. The issue of who is responsible for protecting victims remains an open one, with victims often falling between the gaps of what different authorities see as their responsibility. As Unseen UK set out:

“Protection against intimidation will be hard to do in practice – protection needs would be assessed by the police and raised by those supporting a victim of THB or the victim themselves if able to. Implementation of protection measures ideally should be done in a multi-agency way – not sure if this happens?”

a) Presumed victims and victims of THB will have to report this threat or reality to a case worker or to police for action to be taken

b) Action that can be taken may be minimal especially if there is limited evidence or the individual reporting the incident has no recourse to support outside of the NRM. This means moving someone, witness protection mechanisms or accommodation and support available (outside of the NRM) are likely to not be available.

Unaware of a process or guidance/best practice to follow whilst a victim of THB is going through the CJS – would a victim of THB be able to access all usual remedies and support afforded to victims of crime or will this be dependent on their status in the UK?”²⁵⁵

Hope for Justice state that:

“Technically the police are primarily responsible for this. HfJ experience is that the focus of protection in practice occurs around investigation and criminal proceedings. Often there is little thought to the medium and longer term risks to the victims who are witnesses in cases including offender management when perpetrators are released. In HfJ experience victims can face ongoing threats from perpetrators and their wider criminal networks before, during and after proceedings including when perpetrators are released. If the witness has returned home the UK authorities have very little ability to protect the witness. In addition, in some counties you can only access welfare assistance in the particular place where you are from which means that witnesses may have to return to the place they were exploited. If the perpetrator is from that same area they also may return to the same area after serving a prison sentence and deportation. In HfJ’s experience

²⁵⁵ Unseen UK submission.

more needs to be done to assess the short, medium and long term risks to victims particularly as human trafficking involves well networked organised crime groups."²⁵⁶

For children, current practise dictates that if it is in the best interests of the child that a full criminal investigation be carried out, the police are responsible for that investigation, including any investigative interview (video-recorded or otherwise) with the victim.²⁵⁷

ECPAT provided evidence on this:

"Video-recorded interviews must be used to inform enquiries regarding significant harm under Section 47 of the Children Act 1989 and any subsequent actions to safeguard and promote the child's welfare, and in some cases, the welfare of other children.

All children are entitled to special measures in the criminal justice process that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses under the Youth Justice and Criminal Evidence Act 1999 (YJCEA). Young people victims of a relevant offence (sexual offence, an offence under section 1 of the Protection of Children Act 1978, an offence under section 160 of the Criminal Justice Act 1988, an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004) whose age is uncertain will be presumed to be under the age of 18 where there are reasons to believe that person is under the age of 18 therefore eligible to access special measures.

Currently, the UK has one 'Child House' called The Lighthouse in operation, which opened in October 2018 as part of a two-year pilot²⁵⁸ and is based on the Barnahus model and Child Advocacy Centres ('CAC') in the United States. This service is a first of its kind, following the identified significant gaps in the emotional and health support provided to children.²⁵⁹ It is designed as a child-friendly, multidisciplinary service for victims of Child Sexual Abuse and Exploitation (CSA/E). The service is available to children and young people in Barnet, Camden, Enfield, Haringey and Islington under the age of 18 and an extension of the service to 18-25-year olds with additional needs. The Lighthouse offers a significant example of best practice with regards to children's access to support and child-friendly justice, such as the provision of Achieving Best Evidence ('ABE') Interviews being conducted by a child psychologist rather than a trained ABE police officer, mental examination and sexual health support, therapeutic support for up to 2 years for the child, young person and carer and using the Lighthouse as a remote site for court evidence (location of live link, early out of court examination if the case goes to trial). Albeit the service is not available to all child victims of trafficking but only those who have been sexually abused and/or exploited, it is a promising multi-disciplinary model to support and protect

²⁵⁶ Hope for Justice submission.

²⁵⁷ Recommendation 99 of the Victoria Climbié Inquiry Report

²⁵⁸ See: <https://www.london.gov.uk/press-releases/mayoral/uks-first-child-houses-to-launch> and <https://www.thelighthouse-london.org.uk/>

²⁵⁹ Goddard, A. Harewood, E and Brennan, L. (2015) *Review of pathway following sexual assault for children and young people in London*. Available at: <https://www.england.nhs.uk/london/wp-content/uploads/sites/8/2015/03/review-pathway-cyp-london-report.pdf>

children, in accordance with most of the Council of Europe Guidelines for Child-Friendly Justice.

Special measures are not automatically available to children in other courts and tribunals. A judge must consider how to facilitate the giving of any evidence by a child in the Immigration and Asylum Tribunal as detailed in The Child, Vulnerable Adult and Sensitive Appellant Guidance (Presidential Guidance Note No.2 of 2010) and identify reasonable adjustments that need to be made to the hearing depending on the nature of a person's vulnerability. In ECPAT UK's experience, child victims of trafficking may access these and additional special measures in the context of asylum and age assessment challenges but they are highly dependant on the legal team representing the child and their sensitivity to request specific sets of special measures be implemented. Some judges may themselves raise the need if the child's representatives have not but this is not standard in all cases but dependent on the particular judge. There are cases known to ECPAT that highlight significant failings in the tribunal such as an age dispute hearing where the child's trafficker was brought in as a witness for the Local Authority disputing the child's age to give evidence. The child was made to sit in the same room with their exploiter, and they remained in the tribunal as the child themselves gave evidence.

In Northern Ireland, many have called for the introduction of these child house models. The Northern Ireland Commissioner for Children and Young People's submission to Sir John Gillen's Review recommended that Northern Ireland take forward the Barnahus model of child-centred justice for child victims of sexual violence and abuse.²⁶⁰ This approach meets the requirements of cross-examination through pre-recorded testimony led by a forensic interviewer and undertaken with minimal delay. The Committee on the Rights of the Child recommended that video-recorded interviews with child victims and witnesses be used in court as evidence rather than children attending in person and being subject to cross-examination."²⁶¹

In Scotland, support is provided by TARA (funded by the Scottish Government), support to report to Police Scotland and links with their National Human Trafficking Unit which assist with risk assessments and flagging concerns around safety of service users, and access to early legal advice.

TARA go on to state:

"Where possible we ensure that we are there as a 'supporter' role when women give a formal statement, but we have limited court experience at TARA due to low number of cases taken to court. The Vulnerable Witness Act (Scot) would come into place and we would advocate for the special measures available to VOTS provided by this. We have had some contact with the COPFS Victim Information team in cases where a survivor has returned to their home country but may be required to give evidence to a Scottish court case to proactively ask if we can provide emotional

²⁶⁰ Northern Ireland Commissioner for Children and Young People. (2018) *Advice to the Review of arrangements to deliver justice in serious sexual offences cases*. Available at: <https://www.niccy.org/publications/2018/september/07/review-of-sexual-offences-cases/>

²⁶¹ Committee on the Rights of the Child. (2016). Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, paras 45 and 81. Available at: <https://www.ohchr.org/en/countries/enacaregion/pages/gbindex.aspx>

support.”²⁶²

8.2. How do you ensure that victims are provided with realistic and practical information about the progress of the case and whether the perpetrator has been detained or released?

The UK has mechanisms in place to provide trafficking survivors with information on the case of their perpetrators, both within and outside the NRM framework. While acknowledging this, respondents reported that these mechanisms are rarely available in practice, with the resulting risk and distress for survivors.

JustRight Scotland and TARA in Scotland explain:

“This is varied but overall quite poor in our experience. We do utilise our links with the NHTU but often have to proactively ask if perpetrators have been released from custody and advise women of this where appropriate. Unfortunately, we do have a recent case where a woman was recovered by Police and referred to TARA. She wished to return to an EU country, and we assisted her to do so. She was referred to in country support (Gov and NGO) with her permission and she did engage with the support offered. However, the perpetrators were released, and we/she were not informed. We only became aware of this when she contacted us to advise that they had come into her place of work and she felt intimidated. Our response was limited from Scotland, but we ensured that the local NGO was aware and flagged our concerns to Police Scotland and her legal representative in Scotland.”²⁶³

In England and Wales, Hope for Justice explain:

“On release there is a scheme called the Victim Contact Scheme (VCS) if the person is a victim of a violent or sexual crime and the offender is sentenced to 12 months or more.”²⁶⁴ In practice, it is unclear as to whether the scheme includes modern slavery not related to human trafficking for sexual exploitation. Technically in its own right the Modern Slavery Act 2015 is classed as a violent crime and thus ought to be recognised. HfJ have tried to seek clarity on the remit of the scheme for victims of human trafficking who are subject to exploitation not of a sexual nature. In practice HfJ have seen very little information provided to victims on release which has caused significant distress when they have found this information out via a third party.”²⁶⁵

Unseen UK set out:

“Often find that this role falls to those agencies who are providing support to an individual, so this is largely within the timeframes of the NRM.

During someone’s time within the NRM support workers can advocate on the individual’s behalf (with permission) to follow up with law enforcement officers and others involved in their case.

²⁶² TARA submission.

²⁶³ JustRight Scotland and TARA submission.

²⁶⁴ Victim Contact Scheme sourced at <https://www.gov.uk/get-support-as-a-victim-of-crime>

²⁶⁵ Hope for Justice submission.

We find that information is not always given in a timely manner and that victims of trafficking are not always kept informed of the progress of their case. Adding to this the fact that many don't understand the legal and CJS this can make the whole experience frustrating.

For the individual involved this is a big thing for them, for law enforcement it can be one of many jobs and investigations they have going on – good practice would be weekly updates regardless of if anything has changed – relationship building with the victims of THB and keeping them informed and in the loop is really important and something that doesn't often happen. Staff do a lot of chasing to provide updates to those they are supporting.

Information directly offered to victims we have found to be limited and officers often prefer to communicate via support staff – this is hard when the messaging is not positive or if a case is being closed. Mixed messages and boundaries for support teams.”²⁶⁶

In addition, ATLEU cite how poor this provision is in practice:

“Where we have been instructed prior to or during the course of a criminal trial, it is common for victims to contact solicitor in civil case for an explanation of what is happening in the criminal process. Victims should have a guardian /advocates / liaison officer during the course of criminal proceedings to ensure that they can understand and actively participate.”²⁶⁷

8.3. How do you ensure respect for the victims' right to safety, privacy and confidentiality during court proceedings?

Hope for Justice explained that systems in this area are lacking and that while there is some cases scope to request restrictions be put in place, this requires specialist knowledge and advocacy so often doesn't happen in practice:

“Victims are entitled to access special measures including screens, video link pursuant to section 46 Modern Slavery Act 2015 as they are automatically considered intimidated witnesses. Victims who have been subjected to sexual violence are automatically entitled to anonymity but there is no automatic similar provision for victims of other types of trafficking such as trafficking for forced labour. An application could be made for anonymity under wider legislation for instance, applications for witness anonymity can be made pre-trial under sections 74 to 85 of the Coroners and Justice Act 2009 under certain circumstances. Applications can also be made in respect of reporting restrictions.”²⁶⁸In practice, HfJ have not seen applications around reporting restrictions or anonymity applied for victims of trafficking for forced labour.”²⁶⁹

²⁶⁶ Unseen UK submission.

²⁶⁷ ATLEU submission.

²⁶⁸ See sections 45 and 46 Youth Justice and Criminal Evidence Act 1999 (YJCEA)

²⁶⁹ Hope for Justice submission.

8.4. In how many cases were witness protection measures used for the protection of victims and witnesses of THB, including children? If witness protection measures/programmes are not applied to victims of trafficking, what are the reasons?

While some respondents were aware that there is Crown Prosecution Service Guidance on safeguarding children as victims and witnesses,²⁷⁰ no NGO had seen it implemented in practice.

8.5 When victim protection is provided by NGOs, how are NGOs resourced and supported to perform this function and how do the police and the prosecution co-operate with NGOs?

The UK government funds victim support through the Victim Care Contract. Other NGOs provide support via charitable funds. Many police forces recognise the benefits of working closely with voluntary organisations to ensure that victims are properly supported and therefore equipped to give evidence should they choose to do so. Modern Slavery Partnerships are one example of positive cross sector work. However, in spite of the government's commitment to adopt the Slavery and Trafficking Survivor Care Standards (2018) in the next Victim Care Contract, support often varies in practice and is dependent on local resources and individuals acting outside of their day jobs.

Hope for Justice explain how collaboration is often dependent on individual organisations:

“It depends what is classed as victim protection. HfJ consider victim protection includes the provision of holistic advocacy, care and assistance as prescribed by Articles 12 and 13 of ECAT to increase resilience and reduce risks of re-exploitation in addition to protection before, during and after the prosecution process. Operation Fort is a good example of multi-agency collaboration and in HfJ experience overall relatively good communication between the investigative team and NGO's working with the victim and victims. This in HfJ's experience isn't always the case. In addition, HfJ consider more can be done to assess short, medium and long term risks including information sharing around serious organised criminal groups which may pose an ongoing risk to the victim either in the UK or country of origin.”²⁷¹

Unseen UK highlight the limitations of the government funded care provided through the Victim Care Contract:

“Would the NRM count as protection? If so resourced via Victim Care contract but not sufficient and this would be problematic if specific protection services were needed as I am not sure they would be funded as standard.”²⁷²

²⁷⁰ Available at: <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses>

²⁷¹ Hope for Justice submission.

²⁷² Unseen UK submission.

8.6 How do you ensure that child victims of THB are treated in a child-sensitive way and are provided with protection before, during and after judicial proceedings in accordance with the Council of Europe Guidelines on Child Friendly Justice? Are interviews with children conducted in specially designated and adapted spaces by professionals trained to interview children? What measures are taken in order to ensure a limited number of interviews?

See answer to question 8.1.

9. Specialised authorities and co-ordinating bodies (Article 29)

9.1. What budget, staff and resources, including technical means, are put at the disposal of law enforcement bodies specialised in combating and investigating THB?

In recent years, there has been a commitment by the various UK Government's to develop and strengthen coordination between the bodies responsible for preventing and combating trafficking, including the establishment of specialised authorities and co-ordinating bodies. Despite this, the UK lacks an integrated approach and the roles of the actors implementing these measures is not clear.

Police Scotland have an well-established National Human Trafficking Unit based in the Scottish Crime Campus. In addition, TARA are aware that Scottish Police Divisions in Edinburgh and Glasgow have also established dedicated human trafficking and exploitation teams.²⁷³

The Mayor's Office of Police and Crime (MOPAC) has commissioned research to help tackle the issue of domestic servitude in London. The ultimate aim of this work is to develop locally based interventions aimed at raising awareness, encouraging discussion and ultimately driving action to reduce rates of domestic servitude within the Nigerian community in London.

Devon & Cornwall Modern Slavery Police Transformation Unit (MSPTU) is undertaking a key piece of national work that will seek to improve the police response and understanding of domestic servitude by way of an investigators guide. This guide, aimed primarily for police and law enforcement, will address a number of areas including; an understanding of the crime, barriers to victims coming forward and how to address this, as well as evidential considerations and the importance of engagement with partner agencies.

The Joint Slavery and Trafficking Analysis Centre (JSTAC). The government recognises that "a further aspect of preventing trafficking is to take tough action against organised criminals."²⁷⁴ To increase the risks for traffickers, governments must enhance their intelligence capabilities and ensure these efforts are coordinated. The Joint Slavery and Trafficking Analysis Centre was created "in order to deliver a single, authoritative picture of the threat posed by modern slavery and human trafficking to the UK and its interests overseas."²⁶ Made up of analysts from the NCA, police, UKBF, Immigration Enforcement (IE), HMRC and the GLAA, JSTAC mirrors a joint-working model used to gather intelligence on terrorism. JSTAC is an example of good practice in multi-agency working. It has seconded a 'national expert' to Europol to increase coordinated activity between UK law enforcement and their European counterparts.

The centre is also supported by the police's National Insight Team and regional analysts who form part of Regional Organised Crime Units (ROCU). Both produce thematic assessments and provide analysis to inform policing across the UK. While gathering intelligence on perpetrators who commit trafficking is welcome, a number of respondents were concerned about information

²⁷³ TARA submission.

²⁷⁴ HM Government (2011) 'Human Trafficking: The Government's Strategy', p. 3. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/human-trafficking-strategy_1.pdf

sharing between particular agencies for the purpose of immigration control, including Hope for Justice who stated:

*“HfJ cannot find clear data on this and given the nexus between human trafficking and serious organised crime it may well be difficult to clearly separate out data on resourcing. Police forces have individual budgets set and some have devoted more resourcing to the issue than others. For instance, the West Yorkshire Police and Greater Manchester Police have a unit to tackle modern slavery. Other forces do not have a specialist unit.”*²⁷⁵

Over the last five years, investment in funding and personnel for the Gangmasters and Labour Abuse Authority (GLAA) has increased significantly. However, this positive development has been marred by an increase in the scope of the GLAA’s own work, which has left it under-staffed, and by significant cuts to the budget of the criminal justice system.

9.1.a. Funding of the Gangmasters and Labour Abuse Authority

GRETA has repeatedly praised the GLAA and it is often cited as an example of good practice in the prevention of labour exploitation. Similarly, the ILO commended the GLAA in their report on regulating labour recruitment to prevent human trafficking and foster fair migration.²⁷⁶

However, the ability of the GLAA to tackle exploitation across the entire labour market depends on having resources available to make this enforcement truly effective. The increase in funding to the GLAA was allocated to the GLAA’s new police-style powers, rather than its licensing and regulatory activity. As noted by ATMG in 2018, *“the capacity of the GLAA is under pressure to proactively monitor and enforce the labour sectors that fall within its new remit. This also impacts on the potential of the GLAA to engage in effective intelligence gathering, conduct proactive investigations or monitor existing licensing holders.”*²⁷⁷

The shortcomings in funding for the GLAA have also been highlighted by FLEX

“It is FLEX’s view that the UK is not complying with article 29.1 by failing to adequately resource the GLAA and to guarantee independence to ensure the GLAA is “able to carry out their functions effectively and free from undue pressure”.

*The GLAA is responsible for investigating labour exploitation across the whole UK economy, having special police powers in England and Wales.*²⁷⁸ *The agency also manages a licensing scheme that regulates UK businesses who provide workers to the fresh produce supply chain and horticulture industry. The GLAA is a non-departmental public body sponsored by the Home Office. Since 2014/15 its resources have increased from £4.37m to £6.5m in 2018/19 and staff from 69 to 130. In mid-2016 its remit was significantly expanded to cover the whole UK labour market, rather*

²⁷⁵ Hope for Justice submission.

²⁷⁶ B. Andrees, A. Nasri, P. Swiniarski, *Regulating labour recruitment to prevent trafficking*, 2015, p.79. See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf.

²⁷⁷ Anti-Trafficking Monitoring Group (2018) ‘Before the harm is done: Examining the UK’s response to the prevention of trafficking’. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>.

²⁷⁸ <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

than acting solely as a licensing scheme operator in four sectors but this expansion was not met with a suitable increase in funding to undertake its new activities. Since its remit expansion, civil society organisations and trade unions have been calling for the GLAA to extend its successful licensing scheme to other high-risk sectors to help prevent, identify and remedy exploitation but this has not been prioritised by the agency. FLEX's report 'Risky Business: tackling exploitation in the UK labour market' found that the UK is falling markedly behind the ILO's recommended ratio of 1 inspector per 10,000 workers with only 0.4 inspectors per 10,000 workers.²⁷⁹ FLEX has repeatedly highlighted the disconnect between weakened labour inspection and enforcement and UK commitments to end modern slavery and to combat trafficking for labour exploitation in particular.

The UK continues to fail to guarantee independence between labour inspectorates and immigration enforcement, which is leading the GLAA to fail its core function of supporting vulnerable workers. When the GLAA identifies undocumented workers, during their own operations, they report information about individuals to the Home Office and participate in operations led by immigration enforcement, as well as invite immigration enforcement to their own operations, also. When migrants become fearful that reporting exploitation will lead to their arrest, detention and/or removal they choose not to disclose, exploitative employers are not identified and workers are denied access to support and justice they are entitled to under this Convention."²⁸⁰

The lack of firewall between labour enforcement bodies and the Home Office's immigration control function, renders the practice of operations, such as immigration raids under the guise of safeguarding and on reporting undocumented workers, punitive.

Furthermore, all workers need to have access to UK employment law. In practice this means that they must be able to report and challenge breaches at the early stages, before conditions deteriorate. These reporting systems must be independent of their employer and must not impact, or be dependent on, their immigration status. Representation and information on rights and options must be free and accessible. This means that workers must be proactively informed of their rights in a language they understand. Challenging abuse inevitably becomes more difficult when the worker is dependent on the employer for accommodation, information and immigration status, in addition to employment.

The former United Nations Special Rapporteur on the Human Rights of Migrants François Crépeau stated:

"unless there is a 'firewall' in place which prevents labour inspectors from communicating information about potential irregular migrants to immigration enforcement" undocumented workers will continue to be "very reluctant to report workplace violations to labour inspectors".²⁸¹

²⁷⁹ <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

²⁸⁰ FLEX submission.

²⁸¹ United Nations General Assembly (2014) 'Report of the Special Rapporteur on the human rights of migrants, François Crépeau', UN Doc. A/HRC/26/35. Available at: <https://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

Looking ahead, FLEX has raised concerns with the Home Office and the Department for Business, Energy and Industrial Strategy that current plans for the establishment of a Single Enforcement Body (SEB).

“The establishment of a SEB which would bring three UK labour inspectorates under a single agency, include “closer working with other enforcement partners, including [...] immigration enforcement”²⁸² and that therefore there is a significant risk that the SEB’s efficacy in supporting migrant workers and identifying employers who are not complying with employment law would be diminished.”²⁸³

9.1.b. Budget cuts in the judicial system

Furthermore, as noted in our joint response to question 5.5, the number of investigations, prosecutions and trials on trafficking cases remains disproportionately low in comparison with the number of reported cases. The ATMG has repeatedly noted that cuts to the criminal justice system over the past decade, which have been substantial, and lack of resources contributes to low prosecution and conviction rates of traffickers. Trafficking cases are complex crimes, often involving multiple victims and perpetrators, often international and may include many other offences such as fraud, assault or extortion.²⁸⁴

9.2 If your country has specialised units for financial investigations, financial intelligence units and asset and recovery units, please describe whether and how are they used in investigating and prosecuting THB cases. Which special investigation techniques do these units use? Which public and/or private bodies do these specialised financial investigation units co-operate with in relation to THB cases?

In general, civil society respondents were not familiar with financial investigation techniques in the UK. Kalayaan has anecdotal evidence that there are Crime and Financial Investigation teams within the UK’s Immigration Enforcement division of Home Office, and that they sometimes deal with survivors and presumed survivors of trafficking in human beings

²⁸² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf

²⁸³ <https://www.labourexploitation.org/publications/flex-response-beis-single-enforcement-body-consultation>

²⁸⁴ Anti-Trafficking Monitoring Group (2018) ‘Before the harm is done: Examining the UK’s response to the prevention of trafficking’. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>.

10. International co-operation (Article 32)

10.1. How does your country co-operate with other countries to enable victims of THB to realise their right to redress and compensation, including recovery and transfer of unpaid wages after they leave the country in which the exploitation occurred?

None of the respondents provided an answer to this question.

10.2. Has your country co-operated with other countries in the investigation and prosecution of THB cases through financial investigations and/or Joint Investigation Teams? Please provide statistics on such cases and examples from practice.

ATMG's 2017 Brexit report²⁸⁵ set out the importance of international cooperation and the potential impact of Brexit on these measures. Modern slavery, and in particular human trafficking, is predominantly a cross-border crime. Trafficking networks can span several countries or continents. Modern slavery victims are recruited and transported from one country to another to be exploited. Although numbers of UK nationals continue to rise, over 70% of potential victims of modern slavery were foreign nationals in the time period evaluated. Given the transnational nature of this crime, international cooperation in fighting it is crucial. The EU has adopted a collaborative and coordinated approach to combatting human trafficking, as well as other serious organised crimes, such as cybercrime.

Numerous institutions, organisations and partnerships have been established by the EU, such as Europol and Eurojust, to aid with information-sharing and cross-border cooperation for the purposes of security and law

The UK has negotiated the right to “opt-in” to EU measures related to criminal justice and security, such as the European Arrest Warrant, so that it can decide on a case-by-case basis whether it is in the national interest to do so. If it does not choose to opt-in, it is not bound by the EU measure in question.

Use of JIT in a successful human trafficking case in July 2015:

11 defendants were sentenced for the trafficking of at least 250 women from Hungary to be sexually exploited in 50 brothels in London and Peterborough. The women they exploited were forced to hand over up to half of their earnings. One of the defendants, Zsolt Blaga, 38, was jailed for 14 years for trafficking offences and two rape offences. Other offences that the defendants were convicted of included conspiracy to traffik and conspiracy to control prostitution. In total, the gang were sentenced to a total of 60 years' imprisonment. The arrest and prosecution of these defendants was made possible by the joint working between the Crown Prosecution Service (CPS), the Metropolitan Police Service (MPS), and the Hungarian authorities, who in 2013 established a Joint Investigation Team (JIT) through Eurojust. Eurojust funding and support enabled the JIT partners

²⁸⁵ Anti-Trafficking Monitoring Group (2017) 'Brexit & the UK's fight against modern slavery'. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

to work closely over a period of almost 3 years to gather the necessary evidence to build a case strong enough to ensure the defendants were convicted. This support facilitated strategy and planning meetings between UK and Hungarian police and prosecutors, enabled witness statements to be obtained from vulnerable witnesses across Europe, paid for interpreters, and facilitated the planning and execution of simultaneous arrests in each country. When the defendants were located and arrested in Hungary, European Arrest Warrants (EAW) were issued which allowed them to be extradited to the UK to stand trial. In the absence of a JIT being created, the authorities would have had to make repeated requests for Mutual Legal Assistance (MLA), which would have been time-consuming given the complex nature of the case.²⁸⁶ See CPS press release, ‘11 sentenced in one of largest sex worker trafficking cases prosecuted in London’, 16th July 2015.

In addition, Modern Slavery Annual Report of October 2019 details overall law enforcement efforts tackle the issue at pages 14 – 20.²⁸⁷

This is further compounded in the case of children. with ECPAT highlighting:

“The UK’s decision to leave the European Union poses a risk to children’s rights in the UK, as well as specific risks in regards to children at risk of exploitation. A paper prepared by the Anti-Trafficking Monitoring Group outlines these concerns in more detail.²⁸⁸ Currently, the nature of EU membership means that where national law is silent on the implementation of specific, positive obligations contained in an EU directive, the provisions of the directive may become directly applicable nonetheless. In other words, individuals could still rely on those unimplemented provisions before the national courts. Brexit jeopardises that possibility. Without the full transposition and protection of the rights contained in the EU Trafficking Directive at the point of leaving the EU, child victims of trafficking in the UK will be unable to rely on EU law directly and will have more limited protection under domestic law. Even for those measures that have been transposed, the terms of the Withdrawal Bill allow the Government to modify parts of the directive which do not conform with domestic legislation without further parliamentary scrutiny.

It is also unclear whether the UK will continue to have access to cross-border intelligence-sharing programmes that support child protection and safeguarding.²⁸⁹ Access to cross-border agencies and agreements will terminate in the event of a no-deal Brexit. These agencies and agreements are critical for the purposes of safeguarding children across borders which include Europol, Eurojust, European Arrest Warrant, European Criminal Records Information System (ECRIS), European Protection Order, second-generation Schengen Information System (SIS II) and Supplementary Information Request at the National Entries (SIRENE bureaux) channel. EU

²⁸⁶ Crown Prosecution Service (2015) ‘11 sentenced in one of largest sex worker trafficking cases prosecuted in London’, 16 July 2015

²⁸⁷ HM Government (2016) ‘2019 UK Annual report on Modern Slavery’. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf

²⁸⁸ Anti-Trafficking Monitoring Group (2017) ‘Brexit & the UK’s fight against modern slavery’. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

²⁸⁹ Ibid.

*national children in the UK who are at risk of exploitation are also made more vulnerable due to uncertainty around their immigration status.*²⁹⁰

10.3 How many mutual legal assistance requests and/or European Investigation Order have you made in THB cases and what was their outcome?

As above.

10.4. What forms of international co-operation have proven to be particularly helpful in upholding the rights of victims of trafficking, including children, and prosecuting alleged traffickers?

Historically, there have been a number of international cooperation arrangements that have proven particularly helpful in upholding the rights of victims of trafficking. ATMG researched these in our 2017 Brexit report, as aforementioned.

From the Scottish perspective, *“Police Scotland and TARA have established good links with our Romanian equivalents following the Scottish Government funding a visit in April 2018. TARA now has clear links with ANITP and ADPARE and have noted improved consent to be referred and engagement with support in Romania for women who wish to return voluntarily. This means that our own return risk assessment and safety planning is further enhanced by our links with colleagues in country and assists their own risk/safety and support planning.”*²⁹¹

The UK currently has access to a range of EU databases and data-sharing mechanisms which play a crucial role in law enforcement activities. A few of the key data-sharing tools are listed below:

- European Criminal Records Information System (‘ECRIS’):²⁹² ECRIS is a secure electronic system for the exchange of information on convictions between EU Member States. It provides judges and prosecutors with easy access to the criminal records history of an individual in a different Member State, thereby removing the possibility that they can escape justice by moving country.

- Schengen Second Generation Information Services (‘SIS II’)²⁹³:

SIS II is a database of live alerts regarding individuals and objects of interest to law enforcement (include EAW targets). Its main purpose is to help preserve internal security in the Schengen States in the absence of internal border checks.

²⁹⁰ ECPAT UK submission

²⁹¹ TARA submission.

²⁹² 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

²⁹³ Schengen Acquis, Schengen Agreement Application Convention.

- Prüm Decisions²⁹⁴:

These decisions have granted the UK access, through EU membership, to national databases containing DNA profiles, fingerprints and vehicle registration data across the EU. Their purpose is to simplify and increase the efficiency of EU-wide intelligence gathering processes, and encourage greater sharing of information.

Europol is the European Police Office, and human trafficking is one of its priority crime areas and an EMPACT10 (European multidisciplinary platform against criminal threats) priority, for which a multi-annual strategic and operational plan has been devised. The UK currently plays a key role in Europol and is heavily reliant on its services in its law enforcement activities. In December 2016, Brandon Lewis, the Minister for Policing and the Fire Service stated that Europol provides, “a vital tool in helping UK law enforcement agencies to co-ordinate investigations involving cross-border serious and organised crime”, further noting that, “About 40% of everything that Europol does is linked to work that is either provided or requested by the United Kingdom.”²⁹⁵ In evidence to the House of Lords EU Sub-Committee in December 2016, the National Crime Agency stated “membership of Europol or an alternative arrangement” as its most important priority among all the Justice and Home Affairs (JHA) measures that the UK would potentially have to leave behind upon exiting the EU.²⁹⁶ Whilst it is likely that the remaining EU countries will want the UK to have a continuing role in Europol, the current standing that the UK enjoys as an EU Member State i.e. having a strategic role in Europol’s management and in the setting of its organisational priorities, is uncertain at this time.

Maintaining a leading role in Europol whilst staying outside of the jurisdiction of the Court of Justice (CJEU): The UK Government has made clear that with the introduction of the Repeal Bill it intends to bring an end to the jurisdiction of the CJEU, which acts as the EU’s ultimate arbiter of matters of EU law.

However, Europol is accountable to EU institutions and recognises the jurisdiction of the CJEU. As noted by the House of Lords EU Sub-Committee, there will therefore be practical limits on the extent that the UK and remaining EU Member States can collaborate on police and security matters “if they are no longer accountable to, and subject to oversight and adjudication by the same supranational institutions, notably the Court of Justice of the European Union.”

Furthermore, if a revised agreement on justice and security is signed between the EU and the UK (as a non-EU member), the CJEU will continue to have jurisdiction to interpret this treaty. The competence of the CJEU extends to interpreting any treaties the EU signs with non-EU countries. The UK Government has stated that it may propose establishing a bespoke adjudication authority, to avoid the competence of the CJEU, however this would have to be agreed to by the remaining 27 Member States. - Data protection standards: Membership of Europol, and other EU bodies and

²⁹⁴ Council Decision 2008/615/JHA and Council Decision 2008/616/JHA.

²⁹⁵ UK House of Commons (2016), Official Report, European Committee B, 12 December 2016; c. 5-7. Available at: <https://goo.gl/YnmRo>

²⁹⁶ UK House of Lords (2016) ‘Brexit: future UK-EU security and police cooperation’, European Union Committee, 2016. Available at: <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldcom/77/77.pdf>

measures, will require that the UK remains subject to EU data protection laws that it will no longer shape. To retain membership of these bodies and continue sharing information with its EU counterparts, the UK will also have to adhere to broadly equivalent data protection standards to those in the EU, keeping pace of developments on an ongoing basis. These considerations, regarding the jurisdiction of the CJEU and EU data protection standards, will be of relevance to all other criminal justice and security measures which are anchored in EU law.

Eurojust, the EU's Judicial Cooperation Unit, plays a key role in supporting EU efforts to tackle human trafficking, most crucially through facilitating and funding Joint Investigation Teams (JIT). They also have the added value of enabling law enforcement authorities to gather and exchange information and evidence, in real-time, without the need for the use of traditional channels of mutual legal assistance (MLA), which are known to be slow and often ineffective.²⁹⁷

Encouragingly, the Modern Slavery Innovation Fund (MSIF), launched in 2017, funded 10 organisations working to reduce the prevalence of trafficking and exploitation, particularly in countries from which victims are trafficked to the UK. This includes research projects by the International Organization for Migration (IOM) and the University of Bedfordshire, such as their study 'Vulnerability' to Human Trafficking: A Study of Vietnam, Albania, Nigeria and the UK. The research explores the risks associated with unsafe migration. Similarly, Anti-Slavery International and ECPAT UK have implemented a project focused on understanding the vulnerabilities of Vietnamese nationals along migratory routes in Europe.²⁹⁸

ATMG's 2018 research found that this funding marks a significant step forward in attempts to gain insights on child trafficking from abroad, which, in turn, can assist in targeted prevention in origin countries. Respondents welcomed funding focused on Vietnam, with one describing it as a good "first step" in scoping the socio-economic factors and vulnerabilities that exist there. Some of the funded projects seek to fill current knowledge gaps, including around education and work opportunities for children and young people. Another positive aspect is the regional specificity of the funding. One of the project's recipients working in Vietnam noted that the UK Government's focus is now on the main provinces affected, whereas previously they looked at the country as a whole. This was felt to be a significant step forward. One interviewee stated that the funding was "strategically dispersed," with "lots directed towards Vietnam" when instead it could have been more evenly distributed across other priority countries. Two of the funded projects focused on are one led by CORAM and UNICEF UK and the other led by Anti-Slavery International, ECPAT UK and Pacific Links Foundation, although the latter project has both adult and child-focused elements.

One funded project, led by CORAM and UNICEF UK focuses on research, capacity building and policy. This involves interviews with victims and other stakeholders in Vietnam, household surveys to understand the prevalence of exploitation and beneficiary surveys for victims receiving

²⁹⁷ Anti-Trafficking Monitoring Group (2017) 'Brexit & the UK's fight against modern slavery'. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

²⁹⁸ Anti-Trafficking Monitoring Group (2018) 'Before the harm is done: Examining the UK's response to the prevention of trafficking'. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>.

support. Another funded project, co-led by Anti-Slavery International, ECPAT UK and Pacific Links Foundation, involves a range of activities focused on prevention. ECPAT UK partnered with Animage Films to produce a short animation, *The Secret Gardeners*, which highlighted vulnerabilities of Vietnamese children being trafficked to the UK.

This short film was used to raise awareness in the UK and with at-risk communities in Vietnam. The project also involved youth consultations with at-risk children in Vietnam to understand what they perceived were the risks. Vietnamese young people who were victims of trafficking in the UK were also consulted. This information will be incorporated into broader field and desk-based research on the vulnerabilities of children trafficked from Vietnam to the UK, to inform prevention work with regard to child victims of trafficking from Vietnam. There were divergent views from participants about the effectiveness of different approaches to prevention work in Vietnam. There was a general perspective that more research was vitally needed, but more mixed opinions on awareness-raising as an effective approach. Some suggested that raising awareness is a positive intervention as it helps change perspectives on child trafficking as a form of child abuse, rather than just a migration issue. Others were critical that awareness raising activities may be limited and potentially problematic.

Respondents provided additional anecdotal accounts of the ways in which the UK authorities do conduct and support international co-operation, which might be used as good practice examples.

West Midlands Anti-Slavery Network:

“Contacting embassy staff and consulates of other countries in the UK have proved useful. Some consulates have explained the procedure for survivors to prove their identity and travel back to their own country.

I believe West Midlands Police work alongside partners across Europe to uphold rights of victims and support each other in prosecutions where possible. I have previously been informed that West Midlands Police often visit victims in other countries to support them and support prosecutions.”²⁹⁹

Hope for Justice provide some examples:

“Good examples of international cooperation are detailed within the Modern Slavery Annual Report 2019 at pages 37 – 42.³⁰⁰ HfJ have benefited from funding from the Modern Slavery Innovation Fund for work on prevention in Ethiopia.”³⁰¹

ECPAT provided the following evidence in relation to children:

“At its core, effective cooperation is essential to prevent and respond effectively to the exploitation of children. However, current policy and legal frameworks in the UK are significantly lacking,

²⁹⁹ West Midlands Anti-Slavery Network submission.

³⁰⁰ Modern Slavery Annual Report 2019 sourced at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf

³⁰¹ Hope for Justice submission.

frontline responses are insufficient and cross-border cooperation needs considerable improvement.

The European Guardianship Network is a project that started in September 2018, funded by the European Commission and managed by Nidos, and aims to develop a network of institutions and agencies who work in the area of guardianship for unaccompanied and separated children. The vision of the European Guardianship Network is to create an inclusive and supportive environment which will enable members to contribute to the development of effective and consistent ways of delivering high quality, child rights-based and accessible guardianship services. The Network will be a welcoming and enabling forum for the development of best practice that will put the rights and best interests of separated and unaccompanied children at the heart of its work thus leading to better outcomes for children and the guardianship services who work with them. The Network has great potential to have a key role in improving the cross-border cooperation between guardians and other actors, including in cases of Dublin transfers, trafficking, exploitation and disappearances but currently, in England, Wales and Northern Ireland the guardianship service is not a member of the European Guardianship Service highlighting the current priority which is to develop effective partnerships within the country and between devolved administrations, which has been hindered by the lack of roll-out nationally across England. The service has, as of yet, been unable to develop capacity beyond the UK's borders to effectively safeguard children. Scotland's guardianship service is a member."³⁰²

1. Family reunification

“Unaccompanied children in Europe may be reunited with family members through a European Regulation known as Dublin III, which establishes the method for deciding which signatory state should process a claim for international protection. Under this Regulation, signatory states shall try to identify the family members of unaccompanied children present in other signatory states. In practice, children accessing transfers through Dublin III experience significant delays mainly due to either human resources constraints or complicated and exceedingly lengthy administrative practices and evidentiary processes.³⁰³ Evidence shows that there is a lack of prioritisation of the best interests³⁰⁴ of the child and uneven interpretation³⁰⁵ of legal provisions.³⁰⁵ Other tools for family

³⁰² ECPAT UK submission.

³⁰³ See: https://www.theguardian.com/world/2019/mar/31/calais-child-refugees-hunger-strike-uk-transfer-delay?utm_source=ECRE+Newsletters&utm_campaign=c4ce5c313c-EMAIL_CAMPAIGN_2019_04_01_12_39&utm_medium=email&utm_term=0_3ec9497afd-c4ce5c313c-422328957

³⁰⁴ EASO. (2019). *Practical Guide on the best interests of the child in asylum procedures looks at the implementation of the best interests of the child in Dublin procedures*. Available at: <https://www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf>

³⁰⁵ Safe Passage. (2018). *Caught in the Middle*. Available at: <http://safepassage.org.uk/wp-content/uploads/2019/03/Caught-in-the-Middle-Unaccompanied-Children-in-Greece.pdf>

reunification may also exist, for example through Central Authorities³⁰⁶ provided for in the Brussels IIa Regulation³⁰⁷ however Member States are not currently making full use of them.

These long delays, uncertainty of the outcome of the reunification process or the rejection of family reunification requests leave children extremely vulnerable to going missing in order to undertake their own migration plans which have led to all forms of exploitation, as found by a study carried out by ECPAT UK and Missing Children Europe in 2019.³⁰⁸ Family Reunification under Dublin for children to be transferred to the United Kingdom following Brexit is uncertain, leaving children in other EU member states highly vulnerable to exploitation and other forms of abuse. Europol situation report published in October 2018³⁰⁹ states that children in migration are at higher risk of exploitation and that they are likely to be increasingly targeted.

2. Providing safe and legal ways for children to move from one country to another

Other children in migration might not have any family members or anyone with parental responsibility for them within Europe. Currently, unaccompanied children will have limited means to access safe and legal options to move between EU Member States. Solidarity and cooperation is essential, such as in the case of the United Kingdom, where after significant public pressure, the government committed, under Section 67 of the Immigration Act 2016 (**the Dubs Amendment**), to accept a specified number of unaccompanied children from within Europe, where they are at significant risk of exploitation. However, this agreement is currently limited, and due to uncertainty around the future of Brexit, cross-border cooperation between the UK and the EU remains unclear. In the meantime, unaccompanied children as young as 13 have been identified in Italy as child victims recruited into sexual exploitation and child labour who in the absence of safe and legal channels report exploitation and abuse on their journeys, risking their lives in traumatic and often fatal crossings which may also lead to recruitment into various forms of exploitation.

Cross-border cooperation has a crucial role in preventing children in migration from being exploited, by reducing the occurrence of the said push factors, for instance through better information sharing upstream of the identification and registration processes, hence speeding up procedures. Indeed, the identification of child victims of trafficking is particularly complex and there are significant obstacles to their identification. Research shows that identification and disclosure³¹⁰ are rarely single events, instead, they are staggered over time and will only occur

³⁰⁶ As mentioned in the European Commission Communication on the Protection of Children in Migration (2017).

³⁰⁷ Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p. 1–29.

³⁰⁸ Duran, L. and Vierset, L. (2019). *Interact: Towards a more efficient cooperation across borders for the protection of children in migration from trafficking and exploitation*. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=118849be-152f-40f5-b62e-c186eebae58b>

³⁰⁹ Europol. (2018). *Criminal networks involved in the trafficking and exploitation of underage victims in the European Union*. Available at: <https://www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu>

³¹⁰ Disclosure by a child or young person who has been trafficked takes time. Details are rarely available when they first become known to a public authority. Research shows that disclosure of trauma, abuse or exploitation

when the child has a trusted, secure relationship with a practitioner. Significant barriers to the disclosure of abuse by children in migration may include fear of retribution, debt bondage, spiritual abuse, fear of arrest, fear of deportation and immigration detention or an overwhelming feeling of shame. For these reasons, children are unlikely to disclose their exploitation on initial encounters with a public authority and practitioners may be unaware of pertinent information, which may aid identification, held by professionals in other Member States through which children travelled.

3. Information sharing and children in migration

There are significant legal and structural gaps as well as unclear procedural obligations in the United Kingdom to protect children in migration. Like dominoes, these ineffective or inexistent procedures may render children increasingly vulnerable to exploitation or fail to identify a child who has been exploited and provide them with the support they require to recover from trauma.

Within the context of child protection, information sharing has been recognised as vital to safeguard and promote the welfare of children. The General Data Protection Regulation (GDPR)³¹¹ places duties on organisations and individuals to process personal information fairly and lawfully. These regulations are not a barrier to sharing information, where the failure to do so would cause the safety or wellbeing of a child to be compromised. Similarly, human rights concerns, such as respecting the right to a private and family life would not prevent sharing where there are real safeguarding concerns.

Unfortunately, there is a legitimate fear amongst professionals working with children in migration that information sharing between agencies can be used for the purposes of immigration enforcement. Practices of this kind have led to the use of data in the context of health, policing and education[16], such as the agreement from December 2016 where the UK Department for Education shared data from the National Pupil Database, collected through the School Census, with the Home Office for immigration enforcement purposes. In the UK, the national legislation that sets out the duties under GDPR is the Data Protection Act 2018. This legislation contains an exception for data sharing under ‘immigration control’. It is well documented that fear of immigration and law enforcement is consistently used to control children in exploitation by threatening deportation and/or imprisonment if the child does not comply or reports their abuse. Similarly, professionals working with children may fear that reporting a missing child might lead to immigration enforcement, detention or transfer to another country once the child has been found. It is essential that a firewall is in place between immigration enforcement, child protection and other services when handling the data of children in migration, and also that it is clearly communicated to the child and the stakeholders responsible for their protection, especially in light of the recent EU regulation on the Interoperability of the EU Information Systems.

often only occurs after a relationship of trust has been built up between the practitioner and the child or young person.

³¹¹ Data Protection Act 2018 Schedule 2, Part 1, paragraph 4.

10.5. What international co-operation measures are in place to ensure protection and assistance to victims on return from your country to their countries of origin following their participation in criminal proceedings?

There is still very little known about what happens to trafficked persons once they leave the UK. The UK's current framework for returning victims to their countries of origin suggests that the Government does not fully understand these risks. Understanding would be improved if data on the number of voluntary and forced returns of trafficked people were collected. At present, this data is not published, suggesting that the UK is not monitoring the returns of victims, therefore it is unable to determine the success of the programme in preventing re-trafficking.

The Government should commit to introducing repatriation programmes that address the specific needs of victims and are linked to assistance and support in both destination and source countries to provide the highest level of protection from re-victimisation. In their submissions to this review, NGO respondents highlighted very significant concerns regarding issues such as the use of informal avenues to return trafficking survivors, and the lack of access to the Voluntary Returns Scheme, which provides financial support to survivors returning to their country of origin, especially for homeless persons and for survivors from countries that fall outside the ERRIN.

Human Trafficking Foundation provide an account of the current system-wide shortcomings:

“The Foundation has concerns regarding the lack of structure around returning victims of trafficking to their countries of origin. The Foundation wrote a report for the Romanian Parliamentary Group combatting Human Trafficking and was concerned to hear from statutory and non-statutory organisations that the UK was considered one of the most challenging countries in terms of returns.

One concern was that some UK statutory and non-statutory organisations were not using formal avenues to return victims. As a result, even though there is a programme to support returned victims in Romania - some victims were missing out on this support by being returned via informal avenues, and sometimes not linked to any services at all. The UK needs to raise awareness of the transnational NRM referral process across all agencies.

Even more worryingly, one stakeholder said victims of trafficking, who were forced into being homeless, were treated as beggars and not being recognised as trafficked at all but just sent home. However, even when a victim was recognised as a potential victim of trafficking, the Foundation heard that if a survivor wanted to return home to Romania or elsewhere, the agencies refused to allow the survivor to go through the UK's NRM or receive the accompanying short-term support, with support service providers “refusing to support [them]. They are saying that the NRM is for people who want to remain in the UK and is not a repatriation service.”

Another organisation said, “Police asked [us] for support for two Romanian potential victims who had experienced labour exploitation. They wanted to make a referral [into the NRM] but were advised the men were not eligible as they did not want to stay in the UK. The police had nowhere to house the men while return arrangements were made.”

The UK has a voluntary returns scheme that helps support victims of trafficking who want to return

to their country of origin and provides them with £1000. However the Foundation was told of a 'Catch-22' situation because victims could only access the money and support if they went through the NRM. But if a victim wanted to return they were being barred from entering the NRM.

The broad concern that the UK sent victims of trafficking back with no support was raised several times. The Romanian anti-trafficking agency provided an example where one survivor was returned who was 42kg and was in very unsuitable clothing for the weather. Stakeholders said the UK should create a minimum standard of services and support provided to victims before being returned.

Organisations stated that many UK organisations wanted survivors to be sent back immediately, to avoid providing support. However best practice returns require a risk, health and needs assessment and for a plan to be made prior to their return, to ensure the survivor isn't returned to a place where they may be at risk. However these checks entail approximately four days and so the UK should provide support for victims during this time who want to go back and not just return them immediately. Instead we were told that sometimes agencies in Romania are informed just "hours before they arrive here."

*There was also a repeated suggestion that there should be a protocol around a minimum standard of what information is shared with services abroad. Romanian NGOs said UK NRM service providers refuse to share any data, such as the survivor's medical details, story and legal history. As a result they often have to carry out medical tests again as well as ask for the client's story again, which can re-traumatise the survivor.*³¹²

IOM UK provided additional evidence, stating:

"While the VRS webpage³¹³ does not provide detailed information about how victims of trafficking are supported after their return, IOM understands from engagement with Immigration Enforcement that in most cases, victims of trafficking receive a cash-card containing a pre-loaded value of £1000 (for EU/EEA nationals) or £2000 (for non EU/EEA nationals). If the victim returns to a country covered by the European Return and Reintegration Network (ERRIN), reintegration assistance may be provided through an in-country partner, however, it is unclear what kind of assistance is provided and if any monitoring takes place. It should also be noted that the ERRIN programme does not provide assistance in any of the countries of origin of the top five most referred nationalities in the NRM in 2018 (excluding the UK), namely: Albania, Viet Nam, China,

³¹² Human Trafficking Foundation submission.

³¹³ IOM previously provided assisted voluntary return and reintegration (AVRR) assistance to victims of trafficking in the UK. Between 2002 and 2011 this was in the framework of a broader UK-government funded AVRR programme for asylum seekers and irregular migrants. Between 2011 and 2019 (July) this was through ad hoc projects and activities which focused specifically on victims of trafficking, such as the CARE Project (Coordinated approach for the reintegration of victims of trafficking), funded by the EC, and more recently, the TaNGO project for Romanian victims of trafficking, funded by the Swiss Agency for Development and Cooperation.

Romania and Sudan.³¹⁴ Furthermore, it is not clear whether the UK will continue to be part of ERRIN once it exits from the European Union.”³¹⁵

10.6. What international co-operation measures are in place to protect and assist victims of THB for the purpose of sexual exploitation through online streaming where the perpetrator is a national or habitual resident of your country and elements of the crime have occurred in your country’s jurisdiction?

Respondents provide an overview of the measures currently in place for this purpose. For instance, Hope for Justice submit the following answer:

“There may be a variety of measures which could be used in these cases depending on the circumstances of the case. Generally, actions committed online which would constitute a criminal offence is illegal if committed offline and through an interactive online service. Examples of criminal offences which may be relevant would include, but not be limited, to the following: -

- *Sections 127 (1) and (2) of the Communications Act 2003 - an offence of sending a message which is grossly offensive, indecent, obscene or menacing by means of a public electronic communications or causes a message to be sent (maximum penalty of 6 months imprisonment and/or a level five fine).*
- *Section 1 Malicious Communications Act 1988 - creates an offence to send any letter, electronic communication or other article to another person that is indecent, grossly offence of conveys a threat with the intention to cause distress (maximum penalty of 2 years imprisonment).*
- *Section 2 of the Obscene Publications Act 1959 - which applies to material in hard copy, over the internet or broadcast (maximum penalty 5 years imprisonment).*
- *Protection of Children Act 1978 – prohibits creation or distribution of indecent photographs of children in whatever form. This would include encouraging or assisting the making of indecent images e.g. where an adult is coercing a child to create images (maximum penalty 10 years).*
- *Section 62 Criminal Justice Act 1988 – it is an offence to possess a photograph as detailed above (maximum penalty of 5 years).*
- *Section 62 Coroners and Justice Act 2009 it is an offence to possess prohibited images of children (certain types of pornographic and non-photographic images of children i.e. cartoons and computer generated images) (3 year maximum sentence).*

³¹⁴ According to correspondence received from Immigration Enforcement in November 2019, the ERRIN countries are: Afghanistan, Armenia, Bangladesh, Brazil, Ethiopia, Gambia, Ghana, India, Iraq, Morocco, Nepal, Nigeria, Pakistan, Russian Federation, Sri Lanka, Ukraine

³¹⁵ IOM submission.

- *Protection from Harassment Act 1997 captures a wide range of behaviours including harassment and stalking (sentencing depend on the seriousness of the offence which would a maximum of 6 months imprisonment and/or fine for a minor offence or under the more serious section 4 offence of 5 years imprisonment with an unlimited fine. Also there is an offence of breaching a restraining order which could carry up to 5 years imprisonment.*
- *Sexual Offences Act 2003 details a range of offences which relate to adults and children.*
- *Serious Crime Act 2015 created an offence of possession of a paedophile manual which criminalises specifically the possession of material which provides advice and guidance on how to abuse children sexually (maximum sentence of 3 years). ”³¹⁶*

ECPAT UK focus on contexts of child sexual abuse:

“International co-operation agreements are in place to coordinate responses and manage joint investigations for on-line facilitated child sexual abuse such as cases using streaming services. The measures in place to assist victims is limited (if not in the United Kingdom) to children being able to pursue offenders for compensation. Victim support provisions will be given to children in the territory, but no provision is in place to offer recovery support outside of the UK. The WePROTECT Global Alliance to End Child Sexual Exploitation Online represents the most comprehensive global initiative to establish coordinated and comprehensive national responses to the on-line sexual exploitation of children. ”³¹⁷

³¹⁶ Hope for Justice submission.

³¹⁷ ECPAT UK submission.

11. Cross-cutting questions

11.1. What steps are taken to ensure that victims of THB have equal access to justice and effective remedies, irrespective of their immigration status and the form of exploitation?

Survivors deprived of a minimum of stability and welfare are in many cases too distressed, or too fearful of public authorities, to access justice and effective remedies. In the last few years the UK government has intensified, by its own accord or as a result of litigation, the length and content of the support provided to victims, but in many cases it is still insufficient.

Access to legal aid is not dependent on immigration status, therefore it appears there is equal access to justice and remedies. However, accessing legal aid is likely to be difficult for non-English speakers and those required to obtain and provide documents from abroad. Legal Aid provisions also require victims to demonstrate that they have attempted to fund their claim by other means before seeking legal aid. The LAA previously accepted that language barriers and indeed poor mental health meant that this was not possible. However, victims are now finding applications for funding being refused on the basis that

Hope for Justice describes many of the underlying factors of instability:

“There are significant issues in enabling victims to access justice and effective remedies including regularised immigration status. In effect, when a victim receives a positive conclusive decision this doesn’t really mean very much in practice despite the fact that Article 12 ECAT doesn’t time limit support. This in HfJ’s experience this lack of stabilisation means that victims struggle to make decisions to access remedies such as ongoing holistic support and whether they wish to cooperate with a police investigation and/or pursue a criminal complaint. This becomes more problematic if victims are either forced to return home or wish to return home with no long term ongoing support in the country of origin.

NRM Cliff Drop and Issues with NRM Adult Support Provision

HfJ have long advocated that support provision should not be limited to a 45-day recovery and reflection period. This is because, in HfJ’s experience, short support provision does not allow victims to stabilise and recover from their situation. In addition, the UK’s international obligations e.g. pursuant to the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and EU Directive (Directive 2011/36/EU) do not have time limits for holistic support.

*HfJ have seen persistent issues with victims rendered homeless out of the NRM safe houses or at some point when leaving the system. This is often owing to a lack of regularised immigration status on receipt of a conclusive grounds decision they are a victim. In addition, HfJ have seen victims evicted from the NRM safe houses owing to behavioural issues. In June 2019 a judicial review case was brought against the government in respect of provision of care. In the case of *NN v Secretary of State for the Home Department* [2019] EWHC 766 (Admin) (28th March 2019) (20th June 2019)³¹⁸ the Secretary of State for the Home Department conceded that legislative or other*

³¹⁸ Sourced at: <https://www.freemovement.org.uk/government-to-drop-45-day-time-limit-on-support-for-trafficking-victims/> (a copy of the order is available on request).

measures whose adoption is contemplated by Article 12 [ECAT] are necessary to assist victims of trafficking in their recovery, may vary from individual to individual and cannot be limited by time alone. Guidance was issued on 27th September 2019 by the Home Office detailing a new system.

Whilst this concession is very much welcome, HfJ have concerns about the capacity of the VCC to manage the extra needs based system and it is unclear whether extra resourcing including financial resourcing will be provided to the VCC for this. The NRM VCC appears to be at significant levels of capacity with the extra numbers of victims being identified year on year. HfJ have noticed a trend of more victims in the NRM appearing to be evicted from the VCC for behaviour issues whereas in previous years they would have been transferred to another provider. In addition, some victims with more complex needs are being refused entry into the NRM VCC including UK nationals and are being advised that local authorities will have to meet their needs as they are too high for the VCC. Often victims do not neatly meet criteria for local authority housing and community care assistance (often due to immigration status or not meeting a specific local authority criteria). Without an independent advocate rigorously advocating for their complex international rights, HfJ have concerns that the most vulnerable victims will slip through the gaps.

The NRM VCC should be resourced to meet the individual and specialist needs of all types of victims regardless of complexity of need.

Victims have also voiced concerns about resourcing, support and the capacity of the NRM to meet needs. For instance, many organisations and survivor organisations such as Survivor Alliance have submitted evidence directly to the Home Affairs Select Committee Enquiry into Modern Slavery around victim care issues with information directly from survivors or representing the experiences of survivors. This can be found at <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2017/modern-slavery-inquiry-17-19/publications/>.

Issues with Provision of Leave/EU Settled Status Scheme

Whilst EEA nationals currently residing in the UK can apply for the EU Settled Status Scheme, if victims receive pre-settled status then they are currently only entitled to very limited welfare support. It does not currently appear that they can additionally apply for discretionary leave to remain (DLR) as a victim of human trafficking on the basis of cooperation with the police, pursuing a compensation case and/or personal circumstances. Without DLR it's likely that many victims with pre-settled status many end up homeless and destitute at some point when they have left the NRM system without the safety net of DLR. In addition, more widely in our experience if victims are applying for leave on the basis of personal circumstances this is restrictively applied and doesn't take into account the wide circumstances including risks of re-exploitation as detailed within the Explanatory Report to ECAT. HfJ considers that Brexit will intensify these issues and the lack of ability to obtain long term regularised status and a potential future short term visa regime will put victims at risk of re-exploitation.

Lack of Victim Rights in Domestic Law in England and Wales

Whilst Scotland and Northern Ireland have placed the NRM system including basic victim rights into domestic legislation, England and Wales have not and statutory guidance on identification and victim support remains outstanding. The failure to place basic victim rights into domestic law in HfJ's experience causes victim to fall through gaps in systems e.g. adult social care, housing and welfare particularly pre NRM and post NRM. For instance, victims often don't neatly fit the criteria for housing and adult social care assistance without arguing complex international rights. Many local authorities do not have an understanding of victim needs, international rights and have no specialist commissioned services. Local authorities also often gate keep cases due to issues of austerity particularly if a victim does have no recourse to public funds owing to their immigration status. The lack of clarity is resulting in costly judicial reviews surrounding the UK government's failure to comply with the international rights of victims. Lord McColl currently has a private members bill aiming to place victim support in primary legislation.³¹⁹ (...)

Access to services.

If victims are able to stay in the country a lack of regularised status on conclusive grounds decision can limit access to local authority support including welfare benefit assistance, housing and community care assistance. This inhibits recovery and reintegration.³²⁰

11.2 What steps are taken to ensure that criminal, civil, labour and administrative proceedings concerning victims of THB are gender-sensitive?

Since 2015, the UK authorities have published a limited number of guidance documents regarding gender and certain dimensions of the criminal justice system. However, civil society respondents pointed out that no UK authority, including the UK labour market enforcement authorities, has adopted no specific policy regarding the gendered aspects of trafficking in human beings. This is supported by the respondents below.

Whilst measures can be taken to ensure a victim can give evidence this would not extend as far as specifying characteristics of the Judge, which would otherwise offend against the principle of open justice. Where an application to the Criminal Injuries Compensation Authority is determined by the First – tier Tribunal then it would be possible for a victim to refuse a single sex panel

Several respondents pointed out that at the moment there is no separate, gender-sensitive strategy explicitly concerning trafficking in human beings. *“None, proactively – recent wording in guidance from HO relating to gender-sensitivity was poor.”³²¹* FLEX agreed with this diagnosis:

“UK labour market enforcement agencies have yet to adopt gender-sensitive strategies to prevent and identify potential victims of trafficking, with this lens often being pushed outside of prevention strategies despite its vital role. In his oral evidence to the Women and Equalities Committee

³¹⁹ Modern Slavery Victim Support Bill 2019 HL sourced at <https://services.parliament.uk/bills/2019-20/modernslaveryvictimsupport.html>

³²⁰ Hope for Justice submission.

³²¹ Unseen UK submission.

inquiry on enforcing the Equality Act³²², then Director of Labour Market Enforcement, Sir David Metcalf was asked “To what extent has the Equality Act [in which gender is a component] been part of your strategy for improving the enforcement of workers’ rights?” to which he responded, “Hardly at all...”. In the same session, he stated “although I know a little about the Equalities Act—not least because the wonderful secretariat managed to give a good briefing on it yesterday—I do not know very much about it.” The DLME is responsible for coordinating and setting the priorities of the Gangmasters and Labour Abuse Authority, the HMRC National Minimum Wage Team, the Employment Agency Standards Inspectorate. Equally, the Health and Safety Executive, which falls outside the remit of the DLME, does not see tackling or investigating sexual harassment as part of its duties despite the impact of harassment on workers’ health and despite having an explicit remit to tackle work-related violence.”³²³

Hope for Justice described the current CPS and judicial documents concerning the gender aspects of the criminal justice system.

“Currently the CPS have a Guidance Document on Violence Against Women and Girls which is part of a wider strategy recognising that certain offences disproportionately affect women.³²⁴ In addition, key agencies who provide support to victims are committed to equality and diversity including within service provision.³²⁵ There is an Equal Treatment Benchbook produced by the Judicial College in 2018 producing guidance for the judiciary on equal treatment. This includes around gender at chapter 6.³²⁶ In addition most advocacy services commit to ensuring equality and diversity within these services and in compliance with the Slavery and Trafficking Survivor Care Standards.”³²⁷

11.3. What steps are taken to ensure that procedures for obtaining access to justice and remedies are child-sensitive, readily accessible to children and their representatives, and give weight to the child’s views?

While progress has been done over the last years, especially in Scotland and Northern Ireland, there continue to be major concerns that the NRM does not provide clear, additional benefits to the children it identifies as victims of trafficking. Budget cuts, a lack of central funding available nationally for specialist care of trafficked children, and the so-called “hostile environment” to irregular immigration, also contribute to a general failure in protecting and safeguarding children.

11.3.a. The Independent Child Trafficking scheme in England and Wales

³²² <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/enforcing-the-equality-act-the-law-and-the-role-of-the-equality-and-human-rights-commission/oral/98875.pdf>

³²³ FLEX submission.

³²⁴ <https://www.cps.gov.uk/legal-guidance/violence-against-women-and-girls-guidance>

³²⁵ <https://www.victimsupport.org.uk/more-us/about-us/equality-diversity-and-inclusion>

³²⁶ <https://www.judiciary.uk/wp-content/uploads/2018/02/equal-treatment-bench-book-february2018-v5-02mar18.pdf>

³²⁷ Hope for Justice submission.

The UK authorities introduced children-specific language in the Victim Code, and have created several support services especially for children.

“Currently the Victim Code has specific chapters on working with children and young people. Victim Support have specific services for young victims of crime called Youandco.³²⁸ In addition victims may be able to access a specialist independent advocacy service in some areas including the government Independent Child Trafficking Guardianship Scheme.

There is also information on the victim code which is designed to be easy read for children and young people as well as information available through Youandco.”^{329 330}

However, a major issue is the absence of a full rollout of the Independent Child Trafficking Guardian scheme in England and Wales. Without it, a positive NRM decision does not lead to any material benefit for the child in regard to care, immigration status or criminal justice experience. This was highlighted by Care:

“Child victims of trafficking are also not adequately supported, as the Independent Guardians scheme is yet to be rolled out to the whole of England and Wales, and Scotland. Northern Ireland, on the other hand, has fully rolled out the scheme. CARE is concerned that the cut off for guardian support beyond the age of 18 leaves young adults vulnerable. We recommend that the Government implements the scheme to allow Guardians to work with victims beyond the age of 18, when needed. The Government should allow Guardians in Northern Ireland and England and Wales to be involved in decisions about children’s asylum claims, in the same way as Scottish Guardians.”³³¹

11.3.b. Lack of funding and resources

Central Government funds an annual £9m contract for the delivery of specialist support in England and Wales for adult victims. Yet there is currently no central funding available nationally for the specialist care of trafficked children who are instead supported by local authority children’s services. Under the austerity agenda, funding to children’s services has been drastically cut, which has serious implications for child victims of trafficking. In particular, cuts are falling on prevention, training and early intervention services for children; the services that can help prevent children from becoming vulnerable to exploitation and trafficking.

A continuing strategy by the Government to create a so-called ‘hostile environment’ aimed at deterring irregular migration to the UK has had a detrimental impact on trafficked children who are non-UK nationals.

³²⁸ <https://www.youandco.org.uk/>

³²⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf

³³⁰ Hope for Justice submission.

³³¹ Care submission.

There are well established failings by local authorities in protecting and safeguarding children. Trafficked children in the UK have a very high risk of going missing from the care system, and being re-trafficked.³³² Obtaining accurate data on child trafficking (and those children who go missing) continues to be a challenge due to the way in which child protection is devolved and thus overseen at a local level by local authorities.

11.4. What steps are taken to ensure that private entities take steps to prevent and eradicate trafficking from their business or supply chains and to support the rehabilitation and recovery of victims? What options exist for victims of trafficking to access effective remedies from businesses implicated in human trafficking?

The 2015 Modern Slavery Act introduced for the first time the obligation, for certain corporations with a turnover of over \$36 million per year, to publish an annual statement explaining what steps have they taken in order to tackle trafficking in human beings in their operations and supply chains. While acknowledging that this development has pushed many businesses into reflecting more thoroughly about these issues, the general sense across civil society respondents is that the overall rate of compliance with this obligation is excessively low, in part due to the absence of sanctions in case of a failure to comply.

As noted in September 2019 by several UK NGOs working in corporate accountability,³³³ the Modern Slavery Act has succeeded in bringing about promising action by some companies, particularly in certain consumer-facing sectors, and by some investors that are scrutinising their portfolios. However, the race to the top that the Act was aiming for has not taken place. An estimated 40% of eligible companies are not complying with the legislation at all, and a significant percentage of those who are complying are doing the bare minimum. In a nutshell, the law appears to have created a two-tiered reality, which separates companies taking genuine action from those doing basic compliance, or no compliance at all.

In May 2019, the Secretary State for the Home Department presented to the Parliament an independent review of the 2015 Modern Slavery Act that acknowledged the failings shortcomings of the supply chain transparency provision.³³⁴ In particular, it stated the following:

“The Modern Slavery Act was merely the beginning of a fightback, and implementation is as important as legislation. We have identified, for example, severe deficiencies in how data is collected in this area. Similarly, there needs to be greater awareness of modern slavery and consistent, high quality training among those most likely to encounter its victims. Without these changes, the impact of the Act will be limited. Through the Act, the UK became the first country in

³³² ECPAT UK and Missing People (2018) ‘Still in Harm’s Way’. Available at: <https://www.ecpat.org.uk/still-in-harms-way>

³³³ Available at: https://www.antislavery.org/wp-content/uploads/2019/09/TISC-Consultation-Response_FINAL_160919.pdf.

³³⁴ Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

the world to introduce pioneering transparency in supply chains requirements, leading to thousands of large businesses taking action to identify and eradicate modern slavery from their supply chains. The Report recommends putting teeth into this part of the Act so that all businesses take seriously their responsibilities to check their supply chains.”

FLEX developed this point:

“The Modern Slavery Act 2015 contains a requirement on businesses with a turnover of \$36 million or more per year and that provide products or services in the UK to publish an annual statement explaining what steps, if any, they have taken to tackle trafficking and slavery in their operations and supply chains (Section 54). To date, compliance with this legislation has been extremely poor, despite compliance only requiring businesses to i) publish the statement annually; ii) ensure it is signed by a director and approved by the board; and iii) linked from their homepage of their website. Additionally, there is currently no requirement on what these statements must contain, though there is guidance. As such, this piece of legislation has improved some corporate practices and enhanced transparency of supply chains where businesses have taken the initiative to map and publish them, but it has not ensured companies are obliged to take meaningful action. The UK government reviewed the Act in 2019 and has since consulted on measures to strengthen Section 54, such as making content of statements mandatory and imposing sanctions on non-compliant companies. However, none of these vital improvements have yet been introduced. Moreover, even with these improvements, we consider that other forms of legislation and regulation are needed. In ‘Seeing Through Transparency: Making Corporate Accountability Work for Workers’, FLEX explained how joint liability laws and limitations on the number of tiers in supply chains are just two of several innovative policies that ought to be introduced.”³³⁵³³⁶

Unseen UK expanded on this issue:

“No use of the sanctions within Section 54 to date. Non-compliance of 3,600+ companies.

Independent pathways to work schemes established – uptake lower than expected due to V of THB not having recourse, access to work, ability to work (post trauma) – no government backed/supported scheme in place.”³³⁷

Following an independent review, the Government has committed to strengthening the supply chain transparency requirements within the Modern Slavery Act. While the full contour of the review is hard to define at the moment, it is possible (but in no way guaranteed) that it will include the creation of a Government registry of statements, as demanded by NGOs and others, as well as mandatory reporting requirements, a single reporting deadline, and extending the scope of the Act to cover the public sector.

This has also been noted by Hope for Justice:

³³⁵ <https://www.labourexploitation.org/publications/seeing-through-transparency-making-corporate-accountability-work-workers>

³³⁶ FLEX submission.

³³⁷ Unseen UK submission.

“HfJ’s experience is that following enactment of section 54 of the Modern Slavery Act 2015 businesses have become more aware of these issues and there is with some businesses a willingness to work to prevent human trafficking within supply chains. We understand the government are committed to reviewing the current legislation on transparency in supply chains and making this more robust. They are working through recommendations made by an Independent Review of the Modern Slavery Act. The final report was published in 2019.³³⁸ The government have expressed their commitment to addressing transparency within the supply chains of government agencies. In September 2019 the government announced new measures to ensure that government agencies are free from supply chains including new guidance, a digital tool and training.³³⁹ We understand they are in the process of drafting their first Modern Slavery Statement which will be published shortly. The government have also committed to developing a central reporting mechanism for modern slavery statements. This is crucial as without this the government cannot easily identify those who are non-compliant with the legislation and take action. Nor can wider organisations including consumers easily access information as to what companies are doing about the issue so such action is welcome. A number of non-governmental organisations such as HfJ have launched initiatives to support businesses in improving responses utilising frontline practitioner experience. For instance, HfJ launched Slave Free Alliance in 2018 a social enterprise and membership initiative which also provides direct services to businesses to assist them with their response.

There is still more to do in terms of giving section 54 teeth in terms of non-compliance and requiring businesses to do something and not just issue a statement. In addition, more work needs to be done in terms of business engagement with remediation. This is complex as transparency in supply chains covers multiple jurisdictions. Slave Free Alliance have produced a remediation guidance and toolkit for its members to support these efforts as well as providing advice and support to businesses.”³⁴⁰

The reform of the reporting requirements was also mentioned by FLEX:

“Public procurement was not included in the original Modern Slavery Act 2015’s provision on supply chains. However, in 2019 it was announced that this reporting requirement would be extended to some public bodies, though the size and type of public sector organisations that will be brought into scope is yet to be decided.”³⁴¹

In June 2019, a coalition of UK NGOs working on corporate accountability prepared a briefing on the items that should be included in the forthcoming review of the Modern Slavery Act.³⁴² These include a genuine enforcement mechanism (i.e. sanction) beyond the current injunction provision; as well as the publication of a list of all companies under the scope of the Act so that they can be

³³⁸ See in particular recommendations on pages 45 – 47

<https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

³³⁹ Sourced at <https://www.gov.uk/government/news/new-measures-announced-to-make-sure-government-supply-chains-are-free-from-modern-slavery>

³⁴⁰ Hope for Justice submission.

³⁴¹ FLEX submission.

³⁴² Available at: <https://www.antislavery.org/wp-content/uploads/2019/06/Modern-Slavery-Act-Review-Debate-Briefing.pdf>

held publicly accountable.

Lastly, the Lumos submission pointed out that the UK statutory guidance makes no reference to “orphanage trafficking”, which is a significant risk for tourism, travel, and volunteering companies.

*“Unfortunately, this guidance does not currently reference the issue of ‘orphanage trafficking’. This is in contrast to the Australian Commonwealth Modern Slavery Act guidance,³⁴³ published in 2018, which gives the example of how Australian travel companies may have this form of exploitation in their supply chains through orphanage tourism, tours and ‘voluntourism’. A specific case study is provided to explain how this might manifest. The guidance is explicit in its explanation of orphanage trafficking, stating: “*The worst forms of child labour can occur in a variety of contexts and industries. This may include orphanage trafficking and slavery in residential care institutions...”*

Additionally, the risk of ‘orphanage trafficking’ is listed as a risk factor in the table of risk indicators for companies: “The sector involves direct engagement with children, including through orphanage tourism and other forms of ‘voluntourism’ (including through companies’ social investment and corporate social responsibility programs).”

There is no equivalent recognition of the prevalence, risk and required response for UK companies in any UK guidance on supply chains, or in any other UK guidance generally on modern slavery. Lumos believes this is a grave oversight that means the risk for tourism, travel and volunteering companies – as well as relevant businesses that may partake in orphanage support and trips via their corporate social responsibility programmes – is not directly referenced and recognised. In our experience, the majority of companies are not aware of the risk of ‘orphanage trafficking’ in their supply chains and so this oversight means exploitation will continue to go unreported and not be tackled.

For this reason, Lumos is urging the UK government to follow Australia’s lead and specifically recognise this emerging form of exploitation in its supply chains guidance. This would help to raise awareness of ‘orphanage trafficking’ but also help to ensure that UK business is not contributing to the problem, whether knowingly or unknowingly, thus helping to prevent the exploitation in the first place.”³⁴⁴

11.5 What legal, policy and practical measures are taken in your country to prevent and detect situations where corruption facilitates human trafficking and infringes the right of victims of THB of access to justice and effective remedies? Please provide information on any known or proven cases of corruption or related misconduct of public officials in THB cases and any sanctions issued.

³⁴³ <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>

³⁴⁴ Lumos Foundation submission.

None of the respondents provided an answer to this question.

Part II – Country-specific follow-up questions

12. Please provide information on new developments in your country since GRETA’s second evaluation report concerning:

12.a. emerging trends of trafficking in human beings (new forms of exploitation, new recruitment methods, vulnerable groups, gender-specific aspects of trafficking, child trafficking).

Civil society respondents described several developments concerning the trafficking of human beings in the UK over the last years. These contributions have been classified in three sections: developments in high-risk sectors; vulnerable groups and new forms of trafficking; and developments child trafficking.

It is important to note, that there has been a Significant increase in Scotland for NRM referrals in recent years. A significantly proportion of Vietnamese adult and child PVOTs across all exploitation types in Scotland than the UK, provisionally counted as two-hundred and eighteen, in total for year 2019 compared to sixty-six, in 2018. Police Scotland and other stakeholders are undertaking dedicated work to better understand this trend

12.a.a. Developments in high-risk sectors

Hope for Justice provide a comprehensive description of the most common forms of exploitation associated to human trafficking within the United Kingdom.

“National Referral Mechanism (NRM) data from quarter 3 which is July – September 2019. During this period there were 2,808 potential victims entered into the NRM system of these 60% claimed to be adults, 40% children.³⁴⁵ This is a 61% increase in identification of potential victims from the same quarter in the previous year and thought to be as a result of increased awareness particularly around cases involving “county lines.” The most common type of exploitation for adults and children was labour exploitation which includes criminal exploitation.³⁴⁶ In the NRM third quarter report the most common nationalities referred into the NRM were UK (1st); Albania (2nd); Vietnam (3rd); China (4th); Romania (5th) which is the same as the 2018 NCA Summary Report of 2018.³⁴⁷

Sectors in the UK HfJ consider at high risk include but are not limited to the following:

- Garment industry*
- Construction*

³⁴⁵ National Referral Mechanism data from 1st July – 30th September 2019 page 1 sourced at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850824/national-referral-mechanism-statistics-quarter-3-2019-july-to-september.pdf

³⁴⁶ Ibid see also figure 2 page 5

³⁴⁷ Ibid see also National Crime Agency Statistics End of Year Summary 2018.

- *Hospitality (including cleaning and catering)*
- *Domestic work*
- *Car Washes*
- *Nail Bars*
- *Waste Management*
- *Logistics and warehousing (including packaging)*

However, our experience is that those who are high risk, outlined but not limited to the list below, will often transfer employment between sectors:

- *Minimum wage roles*
- *Low skilled employment*
- *Migrant workers (including migrant women)*
- *Temporary work (including zero hours' contracts)*

*A recent report entitled *The Unheard Workforce* documenting the experiences of Latin American migrant workers in cleaning, hospitality and domestic work illustrates this point. The report noted of the 326 cases supported by the Employment Rights Advice Service, numerous labour abuses were noted, including, but not limited to, the following vulnerable groups, which illustrates that enforcement may not be working well:*

- *Over half of the workers faced breaches to their contracts (62%)*
- *Unlawful deductions were the most common type of abuse (46%)*
- *66% experienced bullying or unreasonable treatment as regular occurrences*
- *11 cases of suspected trafficking for labour exploitation were identified*
- *41% experienced discrimination, harassment or unreasonable treatment*
- *21% were not provided with written contracts and 20% were not provided with payslips*
- *20% experienced illegal underpayment of the National Minimum Wage*
- *Health and safety issues were present in 25% of the cases³⁴⁸*

The voices of the workers behind the statistics is insightful yet concerning:

³⁴⁸ The Unheard Workforce: Experiences of Latin American Migrant Women in Cleaning, Hospitality and Domestic Work July 2019 see page 3 sourced at <http://www.lawrs.org.uk/lawrs-research-launch-the-unheard-workforce-experiences-of-latin-american-migrant-women-in-cleaning-hospitality-and-domestic-work/>

“Being a domestic worker is dangerous, your bosses almost own you. They brought you to the country so you feel like you owe them, but they treat you like a slave. You work as a cleaner, cook, nanny, receptionists....you do it all, and they pay you £30 a day. It’s crazy.”³⁴⁹

“Working for these sectors is like being in a gigantic sinister cycle of abuse – you just go in circles. You work at one place and then another, and then you are left with no explanation and less money.”³⁵⁰

Through its front line work, HfJ have identified the supply of labour e.g. through employment agencies as a high risk area. Our experience is that serious organised criminals are utilising and infiltrating agencies to facilitate modern slavery. HfJ have identified that serious organised criminals are particularly targeting employment agencies who are poor at resilience checks and adequate screening of new workers. One recent case that HfJ were involved in, based in the West Midlands (Operation Fort),³⁵¹ was described as the largest modern slavery case in Europe to date (please note the BBC report and Panorama documentary in the endnotes includes interview of two victims who were supported by HfJ and illustrate the tactics in a typical type of forced labour case involving EEA nationals that HfJ identify). This involved a serious organised crime group using multiple agencies and various types of exploitation in several industries. The case and many others highlight the entrepreneurial way exploiters operate in the market place. HfJ/Slave Free Alliance are now assisting many of the companies involved in this case to increase their knowledge and assist their development of policies and practices to prevent exploitation in the future.”³⁵²

The West Midlands Anti-Slavery Network highlight two industries in which trafficking has increased in the last years.

“The infiltration of traffickers within translation services has been a new trend. County lines appear to have been evident since the last GRETA evaluation.”³⁵³

Lastly, Lumos expand on the situation of orphanage trafficking in the United Kingdom.

“The emerging form of child exploitation known as ‘orphanage trafficking’ is being increasingly recognised globally, including being referenced in the explanatory memorandum to the Australian Modern Slavery Act, as well as in the accompanying guidance.

A growing body of evidence shows that children are trafficked into orphanages, often using false promises of education and food. In some instances, the documents are doctored effectively creating ‘paper orphans’. Children may be groomed to pretend they have no family or forced to perform for volunteers and visitors. These ‘orphanages’ are profit-making ventures and exist to attract the lucrative international flows of volunteers, donations and other funding. This is

³⁴⁹ Ibid see page 8

³⁵⁰ Ibid see page 4

³⁵¹ See reports sourced at www.antislaverycommissioner.co.uk/news-insights/dame-sara-thornton-comments-on-the-exposure-of-uks-largest-modern-slavery-network/; <https://www.bbc.co.uk/news/uk-england-birmingham-48881327> and Panorama documentary sourced at <https://www.bbc.co.uk/programmes/m00085r7>;

³⁵² Hope for Justice submission.

³⁵³ West Midlands Anti-Slavery Network submission.

trafficking in children disguised as ‘care’ for orphans. Children may also be trafficked into orphanages for other forms of exploitation, such as sexual exploitation, child labour or domestic servitude. Additionally, a lack of basic child protection procedures in many residential institutions creates an environment that can be taken advantage of by those with harmful intentions.

There is a growing trend for citizens of wealthier nations, including the UK, to visit, volunteer in and donate to residential institutions in the global South. Many institutions are set up simply to provide volunteering experiences and to receive donations, rather than to help children who do not have families, which is effectively acting as a driver for family separation and trafficking. Traffickers are actively recruiting children to fill ‘orphanages’ by deceiving or coercing vulnerable parents into giving up their children.

Well-intended volunteering, donations and aid provided to institutions have created a multi-million dollar industry. This creates a demand for children to be trafficked into residential care institutions, and props up child protection and care systems that rely on residential institutions, which deliver poor outcomes for children.

This phenomenon has been documented in various country profiles of the US Trafficking in Persons report, including in a dedicated section on child institutionalization and trafficking³⁵⁴ in 2018. This states:

“Institutional complicity can even extend to the practice of recruiting children for the facility. “Child finders” travel to local villages or communities—often those affected by war, natural disaster, poverty, or societal discrimination—and promise parents education, food security, safety, and healthcare for their children. Instead of fulfilling those promises, many orphanages use the children to raise funds by forcing them to perform shows for or interact and play with potential donors to encourage more donations. Orphanages have also kept children in poor health to elicit more sympathy and money from donors.”

In light of the growing body of evidence and increasing awareness of the exploitation, the UK Foreign Office recently amended its official Travel Advice to include reference to the link between orphanage ‘voluntourism’ and child exploitation³⁵⁵ to help ensure UK citizens avoided inadvertently contributing to child exploitation whilst travelling and volunteering.

In the recent independent review of the Modern Slavery Act (England & Wales) 2015, the UK Government accepted a recommendation that it should produce policy guidance to assist interpretation of the Act in relation to new and emerging forms of exploitation, including ‘orphanage trafficking’. However, despite accepting this recommendation in July 2019,³⁵⁶ it is yet to issue any guidance that references ‘orphanage trafficking’ or the wider risk of children being trafficked into and out of care institutions.

³⁵⁴ <https://www.state.gov/child-institutionalization-and-human-trafficking/>

³⁵⁵ <https://www.gov.uk/guidance/safer-adventure-travel-and-volunteering-overseas#volunteering>

³⁵⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf

There is currently no reference to ‘orphanage trafficking’ in any UK guidance or in its Modern Slavery Strategy, which means the issue has been overlooked. There is an urgent need to raise awareness of this ‘hidden harm’ and how the UK contributes to the problem, directly and indirectly.

Lumos is urging the UK Government to ensure it recognises all forms of exploitation, specifically ‘orphanage trafficking’ and the wider risk to children in institutional care, in its law, policy, guidance, strategy and campaigns.”³⁵⁷

12.a.b. Vulnerable groups and new forms of trafficking

Hope for Justice describe some new forms of trafficking, and how they relate to especially vulnerable populations.

“In terms of sex trafficking, HfJ consider there was a shift some years ago in the UK with the use of online platforms such as Adultwork. Traffickers can keep victims very mobile (just needing a photograph and a mobile telephone with an online profile). They can then be moved from residential property to property (pop up brothels). In addition there are reports of use of hotels and holiday rental properties.³⁵⁸ This flexibility makes sex trafficking more difficult to detect.

Ongoing risks and vulnerabilities HfJ see with adult victims trafficked within the UK and from countries of origin include (but are not limited to) the following: -

- *Mental health issues, including childhood trauma;*
- *Bereavement;*
- *Marital breakdown;*
- *Diagnosed or undiagnosed learning disabilities or learning difficulties;*
- *Alcohol or drug misuse;*
- *Unemployment, risk of unemployment and/or insecure employment;*
- *Homelessness or risk of homelessness, e.g. the victim is homeless and targeted because of this or they have lost their job and are at risk of homelessness;*
- *Outstanding arrest warrant or criminal record in country of origin.*

In particular, in the case of Operation Fort traffickers were recruiting people from outside prisons. This can be a successful tactic by traffickers as it plays into the hands of hostile immigration policies.-If victims with previous convictions are identified and entered into the NRM, they are at risk of removal and deportation because of previous convictions. These risks are present

³⁵⁷ Lumos submission.

³⁵⁸ See reports <https://www.theguardian.com/society/2019/oct/17/police-warn-somerset-holiday-home-owners-over-pop-up-brothels>; https://www.bbc.co.uk/news/video_and_audio/headlines/43873248/police-tackling-rise-in-pop-up-brothels

regardless of whether they are cooperating with the police. This was a significant issue in the case of Operation Fort with victims HfJ were assisting at risk of extradition and deportation. With the assistance of legally aided public law solicitors, in many of the cases actions of the state including placing victims in detention were ruled to be unlawful.

In HfJ's experience, victims are often exploited in multiple ways for instance a victim of forced labour is also often subject to financial exploitation including (but not limited to) bank fraud; mobile telephones and laptops; welfare benefit fraud as well as criminal exploitation e.g. forced begging, shoplifting. In addition, in some forced labour cases victims are also subjected to domestic servitude and sexual exploitation.

HfJ are seeing increased trends of using social media and online platforms to recruit victims.

HfJ are seeing a trend of the nexus between trafficking, forced marriage and domestic servitude.”³⁵⁹

Overseas Domestic Workers that travel to the UK under a six-month ODW visa remain an important vulnerable group. In 2016, the UK introduced a rule establishing that ODWs referred to the NRM after their initial six-month visa has expired do not have the right to work whilst they wait for a Conclusive Grounds decisions. Kalayaan's research³⁶⁰ has shown that this rule, which was introduced without a prior impact assessment, is highly arbitrary, can prevent vulnerable survivors from entering the NRM, and increases the risk of re-trafficking. In a recorded message, the UN Special Rapporteur on Contemporary Forms of Slavery Urmila Bhoola has urged the UK government to review this.

12.a.c. Child trafficking:

Hope for Justice provide an overview of the ongoing trends in children trafficking in the UK.

“There are continued concerns in the UK over the nature and extent of child criminal exploitation, especially children being groomed and coerced into transporting and supplying drugs across the UK on behalf of organized gangs. A report by the Children's Society “Counting Lives – Responding to Children who are Criminally Exploited” (July 2019) notes the following trends:

- The criminal exploitation of children can take many forms. It can include children being forced to work in cannabis factories, being coerced into moving drugs or money across the country, forced to shoplift or pickpocket, or to threaten other young people.*
- Children can be targeted for exploitation through face-to-face interactions or online through social media and other platforms. Criminal groups can hijack*

³⁵⁹ Hope for Justice submission.

³⁶⁰ Kalayaan (2019) ‘Dignity, not Destitution: The impact of differential rights of work form migrant domestic workers referred to the National Referral Mechanism’. Available at: http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf

popular culture such as music videos to entice young people into criminal exploitation.

- *Any child can be at risk of exploitation but some vulnerabilities place children at greater risk. These include: growing up in poverty, having learning difficulties, being excluded from school or being a looked after child.*
- *Going missing from home or care is an indicator of potential exploitation. Children in care go missing more frequently than other children and are more likely to be found outside of the boundaries of their home local authority.*
- *Older adolescents are more likely to be recorded as having been criminally exploited but there is evidence that primary school age children – as young as seven – are targeted. There can be a lack of recognition of criminal exploitation affecting younger children and so the opportunity to protect children under the age of 10 can be missed.*
- *Gender, age, ethnicity and background can all affect the way in which professionals do or do not recognise young people as victims, or at risk, of criminal exploitation. This can then affect the response they receive.*
- *Criminal exploitation often happens alongside sexual or other forms of exploitation.*^{361 362}

ECPAT UK highlight that sexual exploitation of male children remains largely invisible:

*“In the UK, despite an increasing focus on child sexual exploitation following the cases in Rochdale, Rotherham and Oxford, the focus has remained primarily on the risk to girls – paralleling the invisibility of male victims among children who are exploited. Research conducted by The Children’s Society into the sexual exploitation of boys who are foreign national children highlighted the significant barriers these children face in the identification of abuse. There is a high level of concern among organisations working with children to the degree which boys have failed to feature in policy and practice decision-making around sexual exploitation. There are complex, ingrained and inter-related gaps linked to deep personal identity issues for boys around their masculinity and sexuality which prevent disclosure, sexual exploitation remaining hidden after other forms of exploitation where identified in boys such as labour and criminal exploitation and the unwitting professional blindness of some workers to indicators of exploitation in boys due to the gendered expectations about the context for sexual exploitation.”*³⁶³

³⁶¹ Childrens Society Report Counting Lives – Responding to Children Who are Criminally Exploited July 2019 page 5 sourced at <https://www.childrenssociety.org.uk/sites/default/files/counting-lives-report.pdf>

³⁶² Hope for Justice submission.

³⁶³ ECPAT UK submission.

12.b. The legislation and regulations relevant to action against THB (e.g. criminalisation of THB, identification and assistance of victims of THB, recovery and reflection period, residence permit, supply chains, public procurement);

Notwithstanding the UK authorities' explicit determination to tackle trafficking in human beings through the framework set up by the 2015 Modern Slavery Act, several respondents pointed out that other political and legislative initiatives, such as the criminalisation of work under an irregular migration status, or Brexit, have had a serious detrimental impact on the situation of trafficking survivors.

In July 2017, the ATMG produced a briefing on the impact of Brexit on the UK's fight against modern slavery,³⁶⁴ highlighting that a significant proportion of the UK's legislation on working rights, and on the rights of trafficking survivors, stem directly or are closely linked to EU normative. At the same time, Brexit might result in the UK being cut off from European security and criminal justice cooperation mechanism.

Civil society respondents have reported how the mere prospect of Brexit has led to an increased vulnerability of European workers in unregulated and low-pay sectors, as well as an surge in the distrust of UK institutions. For instance, FLEX submit the following:

*“The Brexit referendum has led to an increase in vulnerability for European workers in unregulated and low-paid sectors. Although no changes have yet been made to the rights or status of EU migrant workers in the UK, uncertainty and confusion as to the immediate impact of the referendum result and what future rights and status will look like for EU workers is already creating increased vulnerability to exploitation among these workers. A high level of anxiety around status has been evidenced by a huge increase in demand for advice services from migrant community organisations; one London migrant organisation demand for advice services increased by 734% following the UK's vote to leave the EU. Those anxious about the immediate and future consequences of the referendum result were concerned about its impact on immigration status and labour rights. This uncertainty had an immediate impact at work, with frontline migrant organisations receiving multiple cases of workers calling for advice because they were being told by colleagues or employers that they were ‘not a legal worker any more’”.*³⁶⁵

Hope for Justice take a similar view:

*“HfJ have seen, with the uncertainty around Brexit, an increased reluctance of EEA national victims to enter the NRM system for fear of removal and deportation which has always been a trend with non EEA nationals.”*³⁶⁶

FLEX also highlighted other policy developments that negatively impacted the situation of workers in, or at risk of, exploitation in the UK:

³⁶⁴ Anti-Trafficking Monitoring Group (2017) 'Brexit & the UK's fight against modern slavery'. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

³⁶⁵ FLEX submission.

³⁶⁶ Hope for Justice submission.

“Frontline and migrant organisations have been identifying cases of trafficking in formal sectors of the economy, such as construction, hospitality, cleaning and domestic work.

The ‘offence of illegal working’, part of the UK’s hostile environment for undocumented migrants, acts as a major driver of exploitation and barrier to justice, as exploitative employers are able to use threat of immigration and criminal repercussions towards workers who challenge precarious working conditions, propagating impunity for cases of human trafficking for labour exploitation. Undocumented workers disclose being afraid to report cases of abuse and exploitation to relevant authorities for fear of being penalised and for believing that, due to their immigration status, they do not have the right to justice. (...)

A recent study commissioned by the Independent Anti-Slavery Commissioner has shown that the homeless population in Britain is extremely vulnerable to exploitation. This vulnerability is compounded for EU nationals by threat of removal, and makes them much more likely than UK nationals to enter unsafe work and end up in situations of exploitation.”³⁶⁷

To date, in England and Wales, the Government have not implemented s49 or 50 of the Modern Slavery Act. The Home Office Modern Slavery Unit originally coordinated a drafting group for the guidance which met during 2016. Many stakeholders gifted a significant amount of time and expertise to this process. There was criticism of the process but also concern when it ended in 2016 with no clear plans or timeframe for the production of the guidance.

On 8 November 2018, the High Court of England and Wales issued a judgment in the Case of AM and K v SSHD, in which it ruled that the March 2018 decision of the Home Office, to cut weekly benefits to asylum-seeking victims of trafficking, was unlawful. The amount of income provided to trafficking victims who were seeking asylum in the United Kingdom had been decreased from £65 per week to £37.75 per week because of this cut. Following the judgement, the Home Office was under an obligation to reverse the decrease. Further evidence is provided in s.12.c.

In the same judgment, the court also held the Home Office responsible for failing to issue statutory guidance on the support that should be provided to victims of trafficking and slavery, despite being required to do so by the 2015 Modern Slavery Act.

Consequently, a new version of the draft guidance was shared by the Home Office and seen by a small number of stakeholders in December 2018 bore no resemblance to the most recent draft worked on by the original Home Office coordinated drafting group and determined that it did not draw off this work.

A letter, drafted by ATMG, The Human Trafficking Foundation, Anti-Slavery International, Ashiana, ECPAT UK, ATLEU, Survivor Alliance, Love 146, the Snowdrop Project, Equality Now, CARE, BAWSO, Palm Cove Society, The Voice of Domestic Workers, Hope for Justice, the Sophie Hayes Foundation and Unseen set out concerns as follows:

“Reforms to the NRM which were announced in October 2017 included a commitment to:

³⁶⁷ FLEX submission.

'lay regulations under section 50 of the Modern Slavery Act 2015, and issue statutory guidance under section 49 of the Modern Slavery Act 2015, setting out the support to which victims are entitled'.

Stakeholders have repeatedly inquired as to when guidance will be issued and the process for this.

*In November 2018, the newly formed Victim Support Task and Finish group within the Modern Slavery Strategy and Implementation Group (MSSIG) were invited by the Modern Slavery Unit (MSU) within the Home Office to comment on draft 'interim' guidance. The group was told, during a meeting on the 14th November that in response to the High Court judgement *K and Anor, R (on the application of) v Secretary of State for the Home Department (2018)* the Home Office would be publishing 'interim' guidance 'before Christmas' (2018). There was unanimous concern from those present at the meeting; while attendees welcomed the prospect of long overdue statutory guidance, attendees could not see that it would be possible to draft and publish guidance which would be fit for purpose within the proposed timeframe. The MSU explained that the interim statutory guidance would cover the following;*

- a. indicators,*
- b. support entitlements,*
- c. decision making process-how victims are identified*

Producing statutory guidance is a substantial piece of work which should cover multiple sectors. Many of us were involved in the updating of the Slavery and Trafficking Survivor Care Standards 2018 which only covered one section of the above (support victims receive) which took almost a year to update. These concerns were raised during the MSSIG Victim Support Task and Finish Group meeting and the group agreed that commenting on the guidance could not be a 'project' for the group as the group had no control over and had significant concerns regarding the parameters for the work.

We agreed with the MSU that they would share the draft guidance with members of the group any other stakeholders who could decide individually if they wanted to comment. This group has been clear that our involvement in this process and in disseminating information about the guidance to relevant stakeholders does not constitute any endorsement or undermine our objections to the rushed and non-consultative process. We have been clear that there needs to be public consultation and a far greater listening to experts and professionals who work to support victims or who may come into contact with victims.

Consultation

There has not been public consultation on the interim/temporary guidance. The Home Office assert that the MSA 2015 does not oblige them to consult. We disagree that the absence of an obligation in the MSA means there is no obligation to consult at all, and assert that there are international obligations to consult, for example Article 35, Council of Europe Convention for Action Against Trafficking in Human Beings to which the UK is a signatory. In any case, given the importance of the guidance which seeks to identify, protect and support victims of a serious crime and the UK's

*claim of world leadership in this area it would be sensible to make use of the expertise available and any human rights-based approach should consult with survivors of slavery, those who will be affected by the guidance.*³⁶⁸

This was followed by a letter from the UN Special Rapporteur also wrote to the UK Government on this matter.³⁶⁹

In August 2019, a further letter was written by ATMG and other actors, restating our commitment to working with the government to produce high quality policy and guidance.³⁷⁰

12.c. the institutional and policy framework for action against THB (bodies responsible for coordinating national action against THB, entities specialised in the fight against THB, national rapporteur or equivalent mechanism, involvement of civil society, public-private partnerships)

The Convention requires states to develop frameworks in a coordinated and holistic manner. The UK has developed its legislative and governance frameworks considerably since 2013. However, in England and Wales, respondents noted that these measures appear to lack coordination and overall strategy, both regionally and nationally.

Since the last round of evaluation, there have been several developments in the policy framework for action against trafficking in each UK jurisdiction. In Scotland, the Government has four dedicated Working Groups to support the implementation of their Human Trafficking Strategy 2017-2020.

The institutional and policy framework development is generally reported to have been as a result of either strategic litigation against the Government or in response to new primary legislation being introduced by Peers in the House of Lords.

The office of the Independent Anti-Slavery Commissioner is set out in Part 4 of the Modern Slavery Act, Sections 40-44 and has jurisdiction across the UK.

The first office holder was Kevin Hyland who was in post from 2014 – May 2018. He was appointed ‘designate’ Commissioner before the Act’s entry into force in March 2015 and his office officially commenced in July 2015. His first strategic plan was published in October 2015, covering the period 2015-2017. In it he set out his priorities with his first and foremost priority being to ‘drive improved identification of victims and enhanced levels of immediate and

³⁶⁸ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/written/95055.html>

³⁶⁹ here

<https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5cd4465753450a878c0e1d14/155741551646/3/Cov+letter+MSU+guidance+25.4.19.pdf>

³⁷⁰

<https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5d6e3f89be3d8f0001b4f793/1567506313695/Updated+Letter+for+Stat+guidance+-+Final+%28002%29.pdf>

sustained support'. His other priorities were: law enforcement evaluation, partnerships, private sector engagement, and international collaboration.

Kevin Hyland resigned in May 2018, citing a lack of independence from Government to carry out his duties. On 22 February 2019, it was announced that Dame Sara Thornton would be appointed Independent Anti-Slavery Commissioner.

The Commissioner's role expanded in the course of the Modern Slavery Bill's passage through parliament, developing from one that focused solely on the effectiveness of the law enforcement response in England and Wales to one that encompassed the 4 'Ps' (prevention, protection, prosecution and partnerships), working across the whole of the UK. Significant pressure was mounted on the Government to expand the role and strengthen its independence in statute. The difference between the Government's intention for the role and the expectations of external stakeholders was highlighted during the pre-legislative scrutiny period. Both Frank Field's Modern Slavery Review¹⁴ and the report of the Joint Committee on the draft Modern Slavery Bill took evidence from a wide range of NGOs, independent experts and statutory bodies, including European national rapporteurs (on human trafficking) and other UK Commissioners. The resulting reports from both scrutiny committees reiterated and supported the calls by witnesses that the Commissioner should have a clear statutory framework of independence and a broad mandate, in line with other European national rapporteurs.

Despite the role's eventual expansion in functions and geographical remit as a result of this parliamentary pressure, and the inclusion of the word 'Independent' in the role's title, the Government remained steadfast that the Commissioner is distinct from a national rapporteur. This role, it stated, would continue to be performed by the Interdepartmental Ministerial Group (IDMG) on Modern Slavery, previously the IDMG on Human Trafficking. The then Minister for Modern Slavery, Karen Bradley MP, stated in the Public Bill Committee³⁷¹ debates:

'We have talked about the rapporteur-type function and it is worth pointing out that the Anti-Slavery commissioner will not be the UK national rapporteur. That role remains with the interdepartmental ministerial group. The commissioner has a specific role and remit in strengthening our law enforcement response, but the role of the rapporteur, as set out in the EU directive, is fulfilled by that group, and it is important for that to be clear and for the Committee to be aware of it.'

The role of National Rapporteur (or equivalent mechanism) is set out in the Trafficking Convention & Directive.

The Trafficking Convention's Explanatory Report uses the Dutch National Rapporteur as an example as to how the role could function: "The institution of a national rapporteur has been established in the Netherlands, where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an

³⁷¹ See:

<http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/140911/am/140911s01.htm>

annual report to the Parliament containing its findings and recommendations” (paragraph 298). The importance of the role of national rapporteur lies in its monitoring and oversight function, to assess trafficking trends as well as the impact of the State’s anti-trafficking work. Having access to the relevant data collected on human trafficking allows the national rapporteur to objectively monitor whether government actions are resulting in improved outcomes.

Currently, the Home Secretary is the UK National Rapporteur.

Whilst the Independent Anti-Slavery Commissioner is not intended to be the UK’s national rapporteur, some of the role’s functions are akin to that of one. For instance, the Commissioner can undertake research into particular issues and hold investigations and can make recommendations to public authorities. The Commissioner also has the powers to request particular public authorities, listed in Schedule 3, to cooperate with her office, through, for instance, the provision of data. His UK-wide remit allows him to look across all of the different jurisdictions, enabling him to have a holistic understanding of modern slavery and the work being undertaken to tackle it across the UK. There are ways though in which the Commissioner falls short of being a rapporteur. Despite being physically located outside of the Home Office and being able to appoint his own staff, the Commissioner still sits under the control of the Home Office, and must consult with Government Ministers on his work plans. It is yet to be seen whether the Commissioner will be freely able to report on government failings in his annual reports should he encounter them in the course of his work. The importance of a rapporteur’s independence, both perceived and actual, was highlighted by the incumbent Dutch National Rapporteur, Corinne Dettmeijer-Vermeule, in her oral evidence to the Joint Committee on the draft Modern Slavery Bill.

‘First, in my view, independence is quite an important element. Why is it so important? If you worked for the Government, you could not pull off what I did with my research ... my independence also makes for trust between the NGOs and the governmental institutions. I am not an NGO. NGOs are extremely important in this field, but for a rapporteur it is better to keep some distance. I do not look at individual cases; I have a helicopter view ... the effectiveness lies in the independence and the in-between role that I have.’

Another fundamental difference between the mandate of the UK Anti-Slavery Commissioner and a national rapporteur is in data collection and analysis. The offices of the Dutch and Finnish national rapporteurs act as a central repository for relevant data on victims and perpetrators submitted by NGOs and statutory authorities, including from the police and judiciary. This data is then analysed by the rapporteur to identify victim/perpetrator trends and gaps in the state’s antitrafficking response. Eva Biaudet, the then Finnish national rapporteur²⁰, explained this further in her evidence to the Joint Committee: ‘We gather police protocols, court sentences, pre trial investigations and decisions from the victims help and assistance system. We also gather information from NGOs.

This information is reliable as such, but to be able to understand the phenomenon of trafficking, the national rapporteur puts the information together and actually looks at what is not there and at what lies behind the numbers... We are trying to focus on what is not there: “What is it that

we miss?” For instance, we have found on several occasions that in Finland women, particularly foreign women, in prostitution are very poorly identified by the police, the courts and the health system for many reasons. Then we go in and try to see what are the reasons and what could be the thing that would improve identification there, and we try to give recommendations, and work together with the authorities.’

The independence of a rapporteur is central to their data collection function; NGOs and statutory authorities need to know that their data will be used objectively and sensitively when they entrust it to the rapporteur.

In 2019 the UK Government held a review of the Modern Slavery Act. This was not a full review, instead it focused on key areas of the Act, one of them being the role of the Anti-Slavery Commissioner.

ATMG welcomed the opportunity to contribute to the review on the operation and effectiveness of how to ensure the independence of the Anti-Slavery Commissioner. Our submission focused on the following three points: restrictions of the independence of the Commissioner, the role and functions of a national rapporteur and strengthening the Commissioner’s role.

In summarising the coalitions key points, we noted:

The Commissioner must still seek prior approval from the Home Secretary, the Scottish Ministers and the Department of Justice in Northern Ireland on his/her activities and areas of focus, recruitment of staff and annual reports may also be subject to redaction before they are laid before Parliament and published.

The Commissioner is not given access to data held by the NCA or the police, rendering any true analysis impossible. As a result of this, the Commissioner cannot be effective in ensuring the Government is accountable in preventing trafficking in human beings.

The Modern Slavery Act does not provide the Independent Anti-Slavery Commissioner with the independence to monitor the UK’s overall performance. The role is also unable to enforce the implementation of anti-trafficking measures, as is a key requirement of a rapporteur.

The UK currently does not have a rapporteur as envisaged by the Convention and the Directive. Instead, the Home Secretary is responsible for producing a report to meet the obligations under international law. While the Home Secretary oversees many preventative counter-trafficking measures, they cannot fulfil all the necessary requirements of a rapporteur as outlined above, because they are not independent from the UK Government.

It should also be noted that the recruitment for the current Commissioner was on-going during the review, and the review findings, published in May 2019. The Government did not pause the appointment of Dame Sara Thornton to allow time for any changes in policy or legislation to be implemented in line with her appointment.

The review recommended that “the Government should respect the IASC’s statutory independence and that the IASC’s role should be to advise and hold the Government to account, on modern slavery, and promote co-operation between different groups. The Review also

recommended that the IASC's focus should be primarily on tackling modern slavery domestically."

The Government stated that it "broadly accepts these recommendations. The Government agrees it would be helpful to have greater clarity about the IASC role in international work and agrees there needs to be a balance between domestic and international engagement."

To address this, the Government created a government international envoy on modern slavery.

The Review recommended that "the IASC role should be sponsored by a Secretary of State other than the Home Secretary."

The Government did not agree with this recommendation.

The Review recommended that the IASC appointment should be subject to additional scrutiny, including through a Pre-Appointment Hearing with a Parliamentary Select Committee.

The Government response:

Dame Sara Thornton was appointed in accordance with the Cabinet Office's Governance Code for Public Appointments and the Government will continue to ensure that this is adhered to in future recruitment rounds. It was not possible at the advanced stage of the recruitment to introduce pre-appointment scrutiny for the appointment, as the Review recommended. However, the Government has committed to consider whether the role meets the criteria for pre-appointment scrutiny for future recruitment.

The Review recommended that the Commissioner should appoint an advisory panel to inform her work, and the Government agreed with this, however it did not agree that this board should be statutory.

The Review made practical recommendations about how the office of the IASC could work more effectively. These included issues such as ensuring the IASC has adequate access to data; ensuring the IASC has a clear, multi-year budget and an agreed process for budget revisions; and that the IASC should have a clear complaints procedure in place.

While the Government accepted some of the review's recommendations, it stated the following:

"We agree that the IASC's budget should be agreed on an indicative multi-year basis for the duration of each Spending Review period, as with all Government budgets, multiyear budgets would be indicative. Similarly, we agree there should be a process for complaints to ensure the IASC's accountability and protect the IASC from unjustified allegations. A procedure for complaints that concern the work of the IASC and her office has been developed and published on the IASC website. A separate procedure will cover complaints about the personal conduct of the IASC.

To implement these recommendations, the Home Office has worked with the IASC to develop a Memorandum of Understanding. This sets out how the Home Office and the IASC will engage on these issues to ensure that there is a clear understanding of respective roles and responsibilities. The Review also made a recommendation requiring the Government to respond to public reports made by the IASC, and for the IASC to seek to attend and give evidence to relevant select committees if the Government does not take on board the IASC's

recommendations. The Government agrees that in future it will provide a response to the IASC's reports published in line with her strategic plan. Select Committees may choose to discuss the IASC's reports and ask the IASC to give them evidence.³⁷²

In 2017, the UK Government announced a range of reforms to the NRM for both adult and child victims. To date, almost all the reforms are yet to be implemented, either in full or partially, with the remaining being redacted due to further policy changes and also litigation. ATMG review a number of the reforms in this submission, however it should also be noted that following sustained advocacy by a number of civil society actions, as well as our research in 2013 that found "*Dramatic differences in the number of positive NRM decisions granted by the two Competent Authorities (CAs) exist*",³⁷³ the Home Office have now removed decision making from the National Crime Agency. The only body that takes decisions on all trafficking cases as of 2019 is the single competent authority.

The lack of implementation around policy reforms displays poor coordination on the part of the UK Government in building an effective framework to combat trafficking in human beings.

Overall, the responses provided by civil society confirm this view. "*General lack of strategy and effective updates from the HO. Modern Slavery Implementation Groups not working to hold Government to account and work happening in silos with little cross-sector involvement.*"³⁷⁴ In a similar sense, FLEX highlight the tension between the government's anti-trafficking goals, and its determination to create a hostile environment for undocumented migrants.

"Despite having its remit extended from licensing four labour sectors to cover labour conditions in the whole UK labour market, the Gangmasters and Labour Abuse Authority has seen a modest increase in its funding and staff to deal with its new responsibilities, only £2 million.

The Home Office, same body responsible for leading on immigration enforcement, is the only first responder available in immigration detention centres. Findings by the Labour Exploitation Advisory Group show that a focus on detention and removal of undocumented migrants is hampering the UK's efforts to identify victims of trafficking prior to and during consideration for detention. Once they are detained, victims face a number of additional barriers including: insufficient training on identification of human trafficking indicators for both UK Visa and Immigration and Immigration Removal Centre staff; limitations to the support provided to vulnerable people within detention, and the Home Office's practice of weighing immigration control factors against the risk of someone's physical or mental well-being being worsened by detention."³⁷⁵³⁷⁶

³⁷² See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf pg. 5-8

³⁷³ See: Hidden in Plain Sight, ATMG, 2013, https://www.antislavery.org/wp-content/uploads/2017/01/hidden_in_plain_sight.pdf

³⁷⁴ Unseen UK submission.

³⁷⁵ FLEX submission.

³⁷⁶ <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

The absence of a holistic approach to addressing modern slavery is also evident in the lack of funding for survivors.

“CARE is concerned about the level of support and assistance currently provided to potential and confirmed victims in the UK. The recently published guidance on providing further support to victims in England and Wales who have received a positive Conclusive Grounds decision is a step forward in acknowledging the need to support victims beyond the National Referral Mechanism (NRM), but there are significant questions about how it will be implemented and the funding that is being made available. To access further support and remain in the UK, victims must apply for special discretionary leave to remain, which is only available in a narrow range of circumstances. However, the lack of statutory support in England and Wales means that victims remain vulnerable. Discretionary support for confirmed victims is available in Scotland and Northern Ireland but it is not clear if this is sufficient to meet the European Convention requirements.”³⁷⁷

FLEX also noted that lack of publicly available information on the number of trafficking survivors in immigration detention.

“Throughout 2018 and 2019, Labour Exploitation Advisory Group members sought to gather information on the number of victims of human trafficking in immigration detention to which the Home Office stated it does not record this data. However, a series of Freedom of Information requests submitted between April and July 2019 uncovered that the Home Office does record this information, and that they are able to process it in an accessible way, although they do not guarantee the data is up to the standard of Official Statistics. Findings show that in 2019, 1,256 victims of human trafficking had received positive reasonable grounds decisions either before or while in detention, a significant increase compared to 2017 when 410 victims were detained.³⁷⁸ It also showed that from January 2016 to December 2018, the Home Office has enforced the removal of 30 victims of human trafficking with positive conclusive grounds decisions. The lack of transparency resultant from the failure to collect and publish important information, even when requested, obstructs the development of proper evidence-based policy, and reduces Home Office accountability towards victims of human trafficking. To promote accountability, the Home Office should regularly publish data on the number of victims in detention as well as the outcome of their cases.”³⁷⁹

12.d. the current national strategy and/or action plan for combating trafficking in human beings (objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results).

Civil society respondents only noted that the UK national plan has not been updated since 2014, however, the production of a Strategy by Scottish Ministers is enshrined in the Human Trafficking and Exploitation Act 2015 and an annual update is provided to the Scottish

³⁷⁷ CARE submission.

³⁷⁸ <https://afterexploitation.com/2020/02/14/1256-potential-trafficking-victims-detained-last-year/>

³⁷⁹ FLEX submission.

Parliament. The Scottish Government is currently consulting on a further Strategy moving forward. They have undertaken to consult with a wide range of stakeholders and, as the 2017/2020 Strategy, will include survivors' voices by means of a dedicated consultation with them.

12.e. recent case law concerning THB for different forms of exploitation

On some occasions, the courts of the UK have been an important actor in pushing back against certain policies adopted by the UK government that aimed to restrict the rights of trafficking survivors. Two relevant cases in that regard are *Gega v Regina*, which was heard and decided by the Court of Appeal in 2018, as well as *K and AM, vs SSH*, a robust judgment that found the decision of the Home Office to cut weekly benefits to asylum-seeking victims of trafficking was unlawful. The rate was previously set at £65 per week and was dramatically cut by 42%. As well as other litigation, there was also a judicial review challenge to the limitation of recovery support to 45 days, which was settled by the UK government in June 2019.

As noted by the ATMG in 2018,³⁸⁰ in the *Gega v Regina* case the Court of Appeal (Criminal Division) issued an important judgement on the application of the statutory defence. While the Modern Slavery Act established a statutory defence (non-punishment provision), it did not state where the burden of proof lies. The CPS issued guidance on the application of the defence, placing the burden of proof on the defendant. However, in *Gega v Regina*, the court established that the burden of proof is on the prosecution where the defendant raises the defence of being a victim of trafficking.

The judicial review case concerning the limitation of recovery support to 45 days is described in the British Red Cross's submission.

*“Following a successful judicial review challenge, in June 2019 the UK government conceded that support for recognised victims of trafficking cannot be limited by reference to how long the individual has been supported. The Home Office conceded that the 45-day policy is incompatible with the European Convention on Human Trafficking and must be replaced with a ‘needs-based’ system. The government accepted that support should be provided in reference to the individual’s needs rather than by any reference to how long the individual has been supported.”*³⁸¹

³⁸⁰ Anti Trafficking Monitoring Group, Submission on the Modern Slavery Act review in reference to s45. Available upon request.

³⁸¹ [1] [2019] EWHC 766 (Admin) [Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2019/766.html>]. For further information see: Duncan Lewis, ‘Home Office concedes that their 45 day policy for providing support for victims of trafficking is unlawful (28 June 2019)’. [Available at: [https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory__\(28_June_2019\).html](https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory__(28_June_2019).html)]

The Home Office subsequently announced the Recovery Needs Assessment (RNA) Guidance.³⁸² This introduces the possibility for support workers contracted under the Victim Care Contract to apply for up to six months of continued support for people who have a positive CG decision if they have “ongoing recovery needs arising from their modern slavery experiences”. Requests for continued support can only be made by support workers contracted under the Victim Care Contract who are required to fill out an RNA form, detailing specific ongoing recovery needs and recommendations for continued support for a maximum of six months. The Single Competent Authority then decides on whether and for how long any continuation of support will be granted.

As the RNA process was introduced in September 2019, it is not year clear what the impact has been. However, we do not believe that providing support for an extra six months will be enough for people exiting the NRM.

According to the findings from our STEP pilot project, survivors of trafficking continue to need support for at least 12 months after they leave the NRM. This support needs to be flexible, sufficiently resourced, and tailored to respond to the variable needs of survivors, which can intensify during changes of situation or accommodation.”³⁸³

However, the courts have not sided against the government in all cases. This is evidenced by FLEX’s reference to the Court of Appeal decision in the EM v SSH case.

“The Court of Appeal decision on EM v SSH Ruled that potential victims of trafficking can have their needs met under articles 11(2) and (5) of the EU Anti-Trafficking Directive while in immigration detention, despite evidence of the long-term negative impact of detention on vulnerable adults, high risk of retraumatisation for victims of trafficking and lack of appropriate counselling and psychological support within immigration detention centres.”

³⁸² Recovery Needs Assessment [Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834857/recovery-needs-assessment-v1.0ext.pdf]

³⁸³ BRC submission.

13. Please provide information on measures taken in your country in respect to the following recommendations made in GRETA’s second evaluation report:

13.a. prevent human trafficking for the purpose of labour exploitation, including by reviewing the overseas domestic workers visa system and the work contracts of domestic workers employed in diplomatic thresholds.

Migrant domestic workers in the UK continue to suffer from widespread abuse, exploitation, trafficking and forced labour. As reported by the civil society contributors, the Overseas Domestic Worker visa (ODW visa) increases vulnerability to these abuses by restricting migrant domestic workers to a non-renewable six-month visa, against the recommendations of an independent review commissioned by the Government, which renders the right to change employer inaccessible in practice. The Government has acknowledged the vulnerabilities of domestic workers to trafficking and domestic servitude at the time of the Modern Slavery Act, but it has failed to put any so-called protection measures in place.

Kalayaan note the following:

“Current Overseas Domestic Worker Visa is directly in conflict with its stated aim to prevent modern slavery from taking place within the UK. “The visa is issued for a maximum of six months on the basis that the worker will be accompanying or joining their employer in the UK. The visa only permits an individual to work as a domestic worker (this work includes child care, elderly care, cooking and cleaning)” and is not renewable. “In order for the ability to change employer to be meaningful in practice, workers need to be able to renew their visa. Seeking new employment with only weeks left in which they can legally remain within the UK is very difficult: few employers wish to hire a worker for care-focused tasks when there is such a short window of availability. Despite this tension, the Government implemented the right to change employer yet chose not to implement visa extensions.”³⁸⁴

In July 2019, the Financial Times³⁸⁵ reported that the UK government was set to drop any existing plans to introduce anti-slavery and anti-trafficking safeguards for persons using an ODW visa, as it had failed to find a contractor to run the meetings in which workers would be informed of their rights. Kalayaan report that it has sought updates on this matter in vain, and that safeguards should be put in place whilst a decision on the tender is awaited.³⁸⁶

IOM UK expand on the same topic:

“During the passage of the Modern Slavery Bill, concerns were raised by Parliamentarians, NGOs and other organisations about the risk of abuse and exploitation of overseas domestic workers by

³⁸⁴ Kalayaan submission. and found here: http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf

³⁸⁵ Wright R. (2019) ‘Ministers set to drop plans to safeguard overseas domestic workers’. *Financial Times* 12 July. Available at: <https://www.ft.com/content/c17b0812-a419-11e9-974c-ad1c6ab5efd1>

³⁸⁶ See Kalayaan (2019) ‘Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group (MSSIG) Prevent meeting. Available at: <http://www.kalayaan.org.uk/wp-content/uploads/2019/09/Briefing-MSSIG-meet-11-September.pdf>

their employers whilst in the UK. The Government commissioned James Ewins QC to undertake an independent review of the visa route which resulted in a series of recommendations. One of the recommendations was to introduce information and awareness sessions for overseas domestic workers and Tier 5 private domestic servants which would be mandatory for all workers who are present in the UK for more than 42 days, to enable victims of abuse to be identified or to self-identify, and to empower them to take steps to leave their abusive employers.³⁸⁷

This recommendation is supported by research from Kalayaan (a specialist domestic worker NGO in the UK) which highlights that many domestic workers are not in control of their UK visa application process and have very little knowledge about the terms of their visa, or their rights and entitlements once in the UK. Kalayaan has also highlighted anecdotal evidence that an information leaflet which was produced by UK Visas and Immigration to be distributed to all potential domestic workers at Visa Application Centres about their employment rights in the UK and how they can access advice and information if they experience abuse or exploitation while in the country, is not being systematically distributed, making the information sessions all the more necessary.

The Home Office undertook a consultation with potential providers of these information sessions in early 2018, which included the opportunity to comment on the draft requirements of a request for proposals. Kalayaan set out a detailed set of minimum standards for the design and delivery of the information sessions in March 2018.³⁸⁸ IOM also provided comments to the Home Office on the draft bid requirements which made a number of key suggestions, such as:

- making the sessions mandatory (in line with the recommendation made by James Ewins QC) to increase the likelihood of domestic workers in situations of trafficking and modern slavery attending an information session and being identified;*
- allowing for travel costs and other related expenses for the domestic workers to participate in the sessions to be reimbursed; and*
- ensuring that costs associated with any safeguarding requirements could be covered in case a worker disclosed a situation of exploitation or abuse but could not be referred to appropriate support on the same day as a session.*

A request for proposals for an independent provider to deliver the information sessions was opened in June 2018, closing the following month. An estimated 3000 to 4000 domestic workers were considered to have been eligible to attend a session during the six months of the intended pilot. Despite recommendations provided through the consultation process, the instructions to bidders confirmed that the sessions would not be mandatory. In addition, no funding for travel

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODW_V_Review_-_Final_Report_6_11_15_.pdf

³⁸⁸ Available here: <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Minimum-standards-for-ODW-information-meetings-15-03-2018.pdf>

*costs/other expenses could be provided as part of the pilot.*³⁸⁹

*In July 2019, in response to a question asked by Vernon Coaker MP (then Chair of the All-Party Parliamentary Group on Human Trafficking) about steps taken to ensure that overseas domestic workers are informed of their rights as workers in the UK, Caroline Nokes (then Minister of State for Immigration) responded that: “The Government is currently running a procurement exercise to identify a provider of the information sessions for Overseas Domestic Workers. The results of this tendering exercise will be released in due course”.*³⁹⁰

*However, at the time of writing, no results have been released. As such, the recommendation from James Ewins QC’s independent review has yet to be implemented, more than four years after its publication. This limits the chances of victims of abuse being identified or being able to self-identify, and to empower them to take steps to leave their abusive employers.”*³⁹¹

FLEX have also highlighted that following Brexit, a shift towards a more restrictive immigration system is likely to increase risk of exploitation.

“Aiming at dealing with the need for workers in agriculture following the UK’s exit from the European Union, the UK has implemented a temporary migration programme in horticulture (Seasonal Workers Pilot). Programmes of this nature are high risk for exploitation, including trafficking in human beings. Lessons from comparable programmes around the world reveal that migrants moving for work under temporary schemes are more vulnerable to labour abuse and exploitation. This is integral to the design of these schemes, as short visa timeframes and long cooling-off periods prevent people from integrating. They are also prevented from building up the skills, knowledge and networks that promote resilience to exploitation, or moving into jobs with better wages and working conditions. The Seasonal Workers Pilot also restricts participants from working outside the agricultural sector which limits their ability to leave abusive situations. Given these workers will likely be coming to the UK to do low-wage work and are therefore unlikely to have accrued savings in their home country, it is expected that many will need to take out loans in order to cover the costs of travelling to the UK and paying the visa fee and other associated costs of migration. As seen on other such schemes, the pressure to pay back debts and earn back on investments within a limited timeframe drives exploitation, including debt bondage. FLEX report, ‘The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper’³⁹², provides evidence of historical and contemporary schemes

³⁸⁹ IOM, with a national partner, submitted a bid to deliver the sessions which included both a face-to-face and online offering for domestic workers who could not afford the time or costs of attending in person (given that reimbursement of travel costs was not permissible). The bid also included a detailed safeguarding and referral process in case any issues of abuse or exploitation were disclosed during an information session. Since November 2018, no correspondence has been received by IOM from the Home Office regarding the outcome of the request for proposals, despite multiple requests.

³⁹⁰ See <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2Clords&use-dates=True&answered-from=2019-05-01&answered-to=2019-08-16&uin=275676>

³⁹¹ IOM UK submission.

³⁹² <https://www.labourexploitation.org/publications/risks-exploitation-temporary-migration-programmes-flex-response-2018-immigration-white>

comparable to post-Brexit plans that have seen instances of abuse and exploitation.”^{393 394}

13.b. monitor the impact of the statutory requirements on transparency in supply chains.

As noted in our answer to question 11.4, the 2015 Modern Slavery Act required large corporations to comply with certain transparency obligations regarding their programmes to address the risk of modern slavery in their direct operations, and within their supply chains. Despite this progress, civil society respondents reported that non-compliance is widespread, and that the government has taken no measures to monitor the impact of this new set of obligations. For instance, FLEX note:

*“Low compliance with Section 54 of the Modern Slavery Act and the failure of government to apply sanctions to non-compliant companies led to many calls for improvements. As such, in 2019 the government announced it would introduce a state-run repository of modern slavery statements which will ensure all statements are in one place and easy to find by stakeholders. This will also aid monitoring of which companies have or have not complied. Government has also procured a list of those companies which it believes to be in scope of Section 54, although this list is not being published because it is not considered totally accurate by government. However, it is using this list to write to companies to raise their awareness of their obligations and it has also contracted a UK NGO to undertake an audit of compliance and quality, which is currently underway. This audit was originally due to take place in spring 2019 so is behind schedule. These elements pertain to monitoring compliance with Section 54; this is distinct from monitoring impact of Section 54; to date, the government undertakes no substantive, publicly available monitoring of the impact of Section 54 on transparency and whether it has led to meaningful improvements.”*³⁹⁵

13.c. ensure the victims of trafficking are provided with adequate support and assistance, according to their individual needs, beyond the 45-day period covered by the National Referral Mechanism

The Modern Slavery Act, unlike its counterpart legislation in Scotland and Northern Ireland, does not contain provisions regarding victim support for adults. Rather, under Section 49 of the Act, the arrangements for identifying and supporting victims are to be set out in guidance to be issued by the Secretary of State, which may be revised from ‘time to time’.

As noted by several UK anti-slavery NGOs in January 2020,³⁹⁶ the process of drafting and consulting on the Section 49 guidance over the past four years has been highly problematic and adhoc in nature, characterised by delays and a lack of transparency. In January 2019, three UN

³⁹³ <https://futuresofwork.co.uk/2019/07/31/the-uks-future-migration-system-denying-migrant-workers-humanity/>

³⁹⁴ FLEX submission.

³⁹⁵ FLEX submission.

³⁹⁶ Available at: <https://www.antislavery.org/wp-content/uploads/2020/01/Submission-HRC-modern-slavery-in-UK-Jan20.pdf>.

Special Rapporteurs wrote to the Government “*concerning what appears to be an inadequate implementation of the Modern Slavery Act; in particular the ineffective and insufficient consultation with civil society organisations on a statutory guidance on trafficking in persons.*”³⁹⁷ At the time of writing, the Section 49 Guidance on victim care has not been published.

In September 2019, and as a result of the judicial review case described in question 10.5, the UK government decided to lift the existing 45-day limit to NRM support. Even after this positive change, all civil society responses highlighted that there are very significant gaps in the scope and length of the protection and support provided to trafficking survivors. Without long-term support, survivors face a high risk of destitution and re-exploitation, and are unlikely to be able to access justice and effective remedy. This is explained in detail in The British Red Cross’s submission:

“Victims of trafficking in the UK are not provided with adequate support and assistance, beyond the 45-day period covered by the NRM.

Being recognised as a survivor of modern slavery doesn’t come with an automatic entitlement to further specialist support, which would help people to recover and rebuild their lives. This lack of longer-term support – and the statutory barriers that exist – leave survivors of trafficking and exploitation in vulnerable situations. Survivors who do not have secure immigration status are particularly exposed, since they are not eligible for many forms of welfare support. They can face homelessness and destitution, and be at risk of re-trafficking and exploitation. Current support for people who have exited the NRM following a conclusive grounds decision is insufficient to allow a person to rebuild their lives and recover from their trafficking experiences.

Longer term support

Currently, trafficked people are not afforded a real opportunity to recover from the trauma they have experienced, as even those who receive a positive conclusive grounds decision are only supported for 45 days before they lose accommodation and support. This is particularly the case for people who are recognised as having been trafficked, but have an insecure immigration status. In most cases people in this situation will have no recourse to public funds.

For those who have received a negative conclusive grounds decision, the ‘move-on’ support is limited to just 9 days. In our experience this results in trafficked people being at risk of further harm, and of being drawn back into exploitative or abusive situations. Such a short time frame of support for people who have received a negative conclusive grounds decision also poses a significant barrier to launching judicial review or reconsideration processes. People struggle to rebuild their lives and overcome the trauma they have faced without a longer period of support.

In our experience, trafficked people who do not return to their country of origin following a CG decision are likely to need sustained professional support to access legal advice, housing, health care and employment in order to regularise their status and integrate successfully. At present the post-decision support after a person has exited the NRM is wholly insufficient and inconsistent to

³⁹⁷ UN Special Rapporteurs on the situation of Human Rights Defenders, on contemporary forms of slavery, and on trafficking in persons (2019), Letter to the UK Government. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24281>

achieve these aims. For those people who wish to return to their country of origin following their exit from the NRM the situation is often complex and lacks transparency. It should be noted that only people with a positive conclusive grounds decision are entitled to assisted voluntary return. With often limited resources and information about the contexts to which people are being returned, those tasked with providing support are not currently set up to guarantee the safety of the trafficked person. (...)

Recommendations for longer-term support

According to the findings from the STEP pilot project, survivors of trafficking continue to need support for at least 12 months after they leave the NRM. This support needs to be flexible, sufficiently resourced, and tailored to respond to the variable needs of survivors, which can intensify during changes of situation or accommodation. All the people supported through STEP required one-on-one casework support, from a specialist caseworker, to help them access the support and services they need. To be effective, support must be co-ordinated between different statutory and non-statutory agencies, and the survivor should be at the heart of decision-making. The STEP survivor group had high mental health needs, and the findings highlighted difficulties in getting appropriate mental health treatment within a reasonable timeframe. Survivors were placed on long waiting lists before they could receive the support they needed. For survivors in asylum accommodation, these long waits could then be compounded if they had to move area, when they would find themselves starting from scratch again in a new location.

The British Red Cross continues to recommend that the following should be considered and implemented in the reform of longer term support for victims of trafficking:

Personalised and needs-led support. After receiving a positive conclusive grounds decision, people should receive support tailored to their individual needs to help them rebuild their independence and resilience. As a minimum, there should be one-on one support delivered by specialist staff for at least 12 months – with the flexibility to extend, based on a transparent and accessible process and criteria.

Insecure immigration status. Survivors should be protected and given security, through the grant of immigration status of at least 30 months.

Timely access to secure and settled housing. People who have been found to be survivors of trafficking should be able to access secure, appropriate long-term accommodation.

Care pathways for those with negative conclusive grounds decisions. People leaving the National Referral Mechanism with a negative conclusive grounds decision should have a care pathway in place to help them access advice and support services.

For further information on survivors' needs and experiences after the National Referral Mechanism, please see our full report Hope for the future: Support for survivors of trafficking

after the National Referral Mechanism'. ”^{398 399}

CARE expand on this topic:

“In October 2017, the Government announced new changes on the time periods victims would receive "support for in England and Wales beyond the minimum 45-day Recovery and Reflection period (Recovery Period).⁴⁰⁰ The announcements included:

- places of safety for adult victims for the first three days after they are identified by public authorities, before they make a decision about whether they want to enter the NRM. #
- An increase in the “move-on” period for confirmed victims of human trafficking from 14 days to 45 days, giving confirmed victims a maximum of 90 periods.
- An increase in the “move-on” period for individuals confirmed not to be victims of human trafficking from 2 days to 9 days.

On 27 September, the Government published new guidance on the scheme to provide support to confirmed victims in England and Wales that is dependent on an individual’s needs by providing a recovery needs assessment (RNA)⁴⁰¹ and possibly some additional time in the Victim Care Contract (VCC) with the aim of transitioning a victim to alternative services. This guidance was published in response to the case of NN and LP vs SSHD, in which the Home Office (HO) conceded that providing confirmed victims of trafficking support for only 45 days was unlawful and incompatible with Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings.⁴⁰² The scheme came into effect on 30 September.

A support worker carries out the RNA and identifies any ongoing recovery needs with the objective of “integrating or reintegrating victims into a community and establishing longer-term stability in a timely manner by helping victims to transition into alternative services outside of the VCC, where possible”. The RNA is an additional assessment for victims on top of the Reasonable Grounds and Conclusive Grounds assessments, which are subject to long delays, for a transition to services (funding unclear). There are bureaucratic layers to the process, which do not appear to support better decision making for victims; nor does the process give the victim a right to appeal any

³⁹⁸ British Red Cross, ‘Hope for the future: Support for survivors of trafficking after the National Referral Mechanism’. [Available at: <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/human-trafficking-and-modern-slavery/hope-for-the-future.pdf>]

³⁹⁹ BRC submission.

⁴⁰⁰ Hansard, House of Commons, 27 October 2017, <https://hansard.parliament.uk/Commons/2017-10-26/debates/D9B8BD1A-F0D6-42D5-9490-741950800859/ModernSlaveryAct2015#contribution-610D0DCA-1C21-4E54-974B-99C3204314F6>

⁴⁰¹ Home Office, Recovery Needs Assessment (RNA), Version 1.0, September 2019 <https://www.gov.uk/government/publications/recovery-needs-assessment-rna-process-guidance>

⁴⁰² Duncan Lewis, SSHD curtailing support for confirmed victims of trafficking - NN v Secretary of State for the Home Department [2019] EWHC 766 (Admin) (28 March 2019) (20 June 2019), [https://www.duncanlewis.co.uk/Reported_Case/SSHD_curtailing_support_for_confirmed_victims_of_trafficking_NN_v_Secretary_of_State_for_the_Home_Department_\[2019\]_EWHC_766_\(Admin\)_28_March_2019_\(20_June_2019\).html](https://www.duncanlewis.co.uk/Reported_Case/SSHD_curtailing_support_for_confirmed_victims_of_trafficking_NN_v_Secretary_of_State_for_the_Home_Department_[2019]_EWHC_766_(Admin)_28_March_2019_(20_June_2019).html)

decisions on support.

Confirmed victims will receive a minimum of 45 days “move-on” support. The RNA assessment will determine how much, if any, extra support is required under the VCC contract, with a maximum of 6 months at time. Once the support ends, the support worker can repeat the RNA to determine whether further support is needed for a further period of 6 months.

Each victim in the RNA has a tailored transition plan with the aim of ensuring the victim receives services from the VCC only until they can move on to other services or there is no need for services. By definition this is further temporary support, not a new phase of recovery. However, a need is considered met under the guidance if the person is on a waiting list for treatment/counselling or signposted to a service, even if this does not mean the person has received the support they need in the 6 month period. The RNA does not guarantee a support worker for longer term assistance in navigating the systems victims need to access once they have left the VCC services.

The RNA repeatedly mentions that support will only be offered to confirmed victims for needs arising from their ‘modern slavery experiences’. This implies that the RNA will try to distinguish between needs arising from before and after the victim’s modern slavery abuse. This is problematic because victims of trafficking often have pre-existing needs which made them vulnerable to exploitation initially. The narrow focus of support increases the risk that highly vulnerable people with ongoing complex needs will be exited from support into destitution or re-trafficking.

The Modern Slavery (Victim Support) Bill put the needs of victims at the centre and ensures that there is assistance to restore the dignity, health and opportunities that their abusers took from them. The Bill, in summary, would enshrine victims’ entitlement to support when first referred to the authorities through the National Referral Mechanism (NRM) (i.e. before a person is confirmed as a victim of modern slavery) and create a statutory duty to provide support to confirmed victims of modern slavery for a period of 12 months to aid their long-term rehabilitation. The new Bill had its first reading on 13 January. There have been similar Bills in the last two sessions of Parliament.^{403 404}

The University of Nottingham’s Rights Lab conducted a cost benefit analysis of the Modern Slavery (Victim Support) Bill and found that had the Bill been implemented in 2017, it would have had a net direct and indirect benefits and savings of between £10.4m and £25.1m and likely a greater number of unquantifiable benefits.⁴⁰⁵ The Government is yet to publish guidance and regulations on identifying and supporting victims which are required by sections 49 and 50 respectively of the Modern Slavery Act (2015).⁴⁰⁶ The RNA guidance published does not substitute

⁴⁰³ Modern Slavery (Victim Support) Bill [HL] 2019 <https://publications.parliament.uk/pa/bills/lbill/2019-2019/0044/20044.pdf>

⁴⁰⁴ Modern Slavery (Victim Support) Bill [HL] 2017 <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0211/180211.pdf>

⁴⁰⁵ University of Nottingham Rights Lab, The Modern Slavery (Victims Support) Bill A Cost-Benefit Analysis, 2019 <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/mseu/mseu-resources/2019/august/the-modern-slavery-victim-support-bill-a-cost-benefit-analysis.pdf>

⁴⁰⁶ Modern Slavery Act (2015) <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

for the guidance or regulations. (...)

While the new RNA guidance is a recognition that victims of modern slavery need ongoing support, it does not address the fundamental issues facing victims: the need for stability, certainty over their circumstances (including their immigration status) and long-term support.

There is no regulatory impact assessment accompanying the RNA so it is not clear whether this proposal is value for money. Will providing this sort of assessment and, where needed, additional time in the VCC, provide positive economic outcomes for the Government and for victims?

There is no mention of whether any of these services to which victims will be referred will be funded by the Government nor whether victims will be publicly funded after leaving the VCC. Without this, it is likely to leave victims vulnerable.

In Scotland, victims with a positive Reasonable Grounds decision receive a 90 day 'reflection and recovery' period, which is twice as long as England and Wales. If the victims then receive a positive Conclusive Grounds decision, the period of support and assistance comes to an end. It is then at the discretion of Scottish Ministers to provide any additional support and assistance as they deem appropriate under section 9(3)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015.

*Like Scotland, **Northern** Ireland also has a discretionary power to grant confirmed victims further support under Section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. A recent report reveals that the number of victims in Northern Ireland who have received the discretionary support between 2016 and 2019 is 16.⁴⁰⁷ Calculations shows that not all of those who are confirmed as victims of trafficking are given further support. It can be expected that a similar situation exists in Scotland, where the numbers given discretionary support after a positive conclusion grounds decision was 17 cases receiving ongoing support by TARA (the Trafficking Awareness Raising Alliance) at the start of March 2019.⁴⁰⁸*

	2016/17	2017/18	2018/19
Number of adults referred to the NRM from NI	27	21	35
Estimated positive conclusive grounds decisions	10-13	7-10	12-17

⁴⁰⁷ Report pursuant to section 3(12) of the Northern Ireland (Executive Formation etc) Act 2019 - use of discretionary powers to provide assistance and support under section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829467/To_publish_online_report_pursuant_to_3_12_-_Human_Trafficking.docx.pdf

⁴⁰⁸ Scottish Government June 2018, Human Trafficking Exploitation Strategy: second annual progress report

13. Measures taken in the UK following GRETA recommendations

<i>Number of people supported under section 18(9)</i>	3	6	7
<i>Estimated % of people with +CGD supported</i>	33-23%	80-60%	56%-42%

*Based on calculations from the NRM End of Year Summaries which make the assumption that between 2013-2017, the % of referrals that result in a positive conclusive grounds decision varies between 35.5% and 47.8% for adults in England and Wales. See paragraph 9, page 7 of the University of Nottingham’s The Modern Slavery (Victim Support) Bill: A Cost Benefit Analysis.*⁴⁰⁹

Hope for Justice highlight that lack of support after the 45-day period can increase the likelihood of re-exploitation of victims.

*“HfJ see an ongoing trend of victims being placed at risk of re-exploitation owing to the short period of time that they receive support within the National Referral Mechanism and ongoing fractures within systems such as housing, community care and welfare systems. In particular, HfJ consider that Universal Credit may be placing very vulnerable victims at risk of destitution, homelessness and further exploitation including financial exploitation.”*⁴¹⁰

While acknowledging the Government’s recent progress in providing support beyond the 45-day period, the Human Trafficking Foundation also underscore several concerns regarding this new policy.

“The HTF has previously written extensively to GRETA in the past on the lack of long-term support post NRM and concerns within the NRM itself. The HTF welcomes the decisive and positive steps by Government to adopt the Care Standards and award the CQC as inspectorate. It also welcomes the judgement that requires support to be needs-led not time limited which led to the Government’s publication of the Recovery Needs Assessment guidance (RNA).

However concerns remain, for example in terms of the RNA – The Single Competent Authority has the final say on whether the needs demonstrated by the support worker in the assessment are sufficient to justify extending support yet Home Office decision makers are a) not qualified to make this assessment and b) have never met the client and are not in a position to make that judgement if they were qualified. The RNA references the provision of accommodation being ‘for those requiring a high level of security’ – this seems to be changing goalposts as accommodation should be with the purpose of providing recovery and reflection, not emergency provision for highest need cases. Temporary housing is listed as suitable accommodation for service users exiting. i.e. being in unstable accommodation does not seem to be sufficient need to have an extension granted. This means a survivor will be at high risk on exit of re-trafficking and destitution. We know for example that even those who had housing for 6 months secured post-NRM later become destitute without long term security and a caseworker. ‘ It will generally be

⁴⁰⁹ CARE submission.

⁴¹⁰ Hope for Justice submission.

sufficient for the victim to be placed on a waiting list for counselling or CBT to treat ongoing mental health conditions...’ – this clearly places victims of trauma at severe risk, as it in practice means the SCA could within guidelines exit someone without any support in place. Survivors in the majority of cases need support to engage with counselling/ CBT from a trusted support provider. Moreover, once in CBT/counselling, trauma can for a time seem more prevalent due to unearthing trauma and a survivor will be at increased risk. The RNA also doesn't recognise that recovery is not linear and that someone being seemingly 'fit' to exit on one day will be the next. Yet surely there needs to be some checks built in for everyone over at least the course of the next year.

The HTF also had concerns regarding the Guidance. The second draft produced by the MSU in 2019 was a significant improvement and we welcome the MSU's incorporation of many points. However while this current draft has more content on housing and accommodation duties and processes, there are still significant gaps in relation to pre-NRM housing and also No Recourse to Public Funds. The guidance could also be clearer in distinguishing who is responsible for what, since the HTF sees regular battles between the NRM and councils on who should take responsibility for a survivor's housing. There also needs to be more clarity between what the expectations are of a First Responder (e.g. In encountering or working with a potential victim of trafficking) and the responsibilities of the FR organisations - for example, internal referral pathways and protocols

The adoption of the care standards in the next contract and the inclusion of the CQC seems like a vital and welcome step in the right direction. However we are concerned that when the vast majority of survivors are in outreach not safe house accommodation, under the current plan, their accommodation won't be included in the CQC inspections.”⁴¹¹

Unseen UK expand on these concerns:

“Long-term support is still an issue of contention in a UK context. Clarity over who is responsible to deliver support post 45 days is unclear and the Government are appearing to pass this duty and responsibility onto Local Authority agencies – this is not clear in relation to an established pathway of care nor who funds this support. Whilst LA are well positioned to support V of THB in relation to housing and needs under the Care Act they are not specialists in THB nor do they receive additional funding to support his vulnerable group of individuals. There is the potential central government are passing the buck. Long term support post 45 days will need to come with changes of other laws and entitlements including access to work and immigration status being linked to the NRM and CG decision. Brexit and Conservative gov. make this is unlikely.

Passing the buck frequently occurs between services – forget we are dealing with a person

R 2018/19 meant that the Government were prevented from removing anyone from support until they had developed a needs assessment to ensure that removal of people from the system wasn't arbitrarily based on days in service or a CG decision but on need. Recovery Needs Assessment has been put into place – will be part of new victim care contract. Waiting to see how this works

⁴¹¹ Human Trafficking Foundation submission.

but to date not impressed with the system and the way it approaches need appears arbitrary – for example: supported needed with budgeting refused as Citizens Advice can provide this. Appears to be a way of looking at needs of V of THB and suggesting why the Gov. should not provide this support – not holistic and not understanding of what support is needed and how to deliver.

New Victim Care contract extends care and support (pre NRM, post NRM) – welcomed but unsure what this will look like and if it will be effective/meet needs.”⁴¹²

In relation to children, The UK has a duty under Article 14 and Article 16.2 of the EU Anti-Trafficking Directive to take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child. International obligations under General Comment 14 to the UNCRC state that a child’s best interests must be assessed and taken into account as a primary consideration in all actions or decisions that concern them.

ECPAT expand on this further:

“However, at present, there is no established formal process for implementing this legal obligation. As UNICEF’s report shows, it requires a multi-agency and above all a child protection response.⁴¹³ A best interest determination process leading to a durable solution would ensure careful consideration is given to each child’s best interests with regard to any returns process that takes place.

The UK is obligated under the UNCRC and the EU Directive to provide this ‘durable solution’ or long term sustainable arrangement for children.⁴¹⁴ Currently, many identified child victims face significant challenges in the asylum system⁴¹⁵ and asylum refusal rates for these children have increased[4]. If they have not been granted refugee status, these children are granted limited leave to remain in the UK (Unaccompanied Asylum Seeking Child or UASC leave), which lasts until they are 17 ½. There is a lack of services and support provision for young people at this transition age (18-21), which is compounded when there is uncertainty as to whether a child will be able to remain in the UK or not.

The uncertainty of their immigration status and lack of a stable long term solution leads to further vulnerability. Some young people are forced into destitution after being discharged from services. Some intentionally choose to disengage from statutory services at 18 because of fear of detention and forced removal, making them more likely to end up in exploitative conditions. Some even reach out to underground networks as a result.

The uncertainty and delays that young people face in both the trafficking and asylum processes

⁴¹² Unseen UK submission.

⁴¹³ UNICEF. (2015). *Achieving a Durable Solutions for Trafficked Children*. Available at: https://downloads.unicef.org.uk/wp-content/uploads/2016/01/Unicef_DurableSolutions_ExecSummary.pdf?_ga=2.251870282.279355555.1531214147-375590463.1511369688

⁴¹⁴ EU Directive Against Trafficking in Human Beings, Article 14 and 16.2.

⁴¹⁵ Finch, N. (2017). *Lighting the Way*. ECPAT. Available at <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=1dcfdd01-44fd-4b0f-90c3-ccb36649a80>

could be considered cruel, inhuman or degrading treatment. There are also long delays for children receiving both decisions. There is a distinct lack of scrutiny and human rights-based risk assessment for child victims who are returned to their country of origin as young adults. There are no monitoring procedures in place, meaning that there is no understanding of whether further exploitation has occurred. For EEA national children, there is less clarity on a child's rights and legal status with regard to the returns procedure. Research has shown that decisions on returns are often made on an ad hoc basis, with the potential for mistakes to be made.

*The Northern Ireland Commissioner for Children and Young People's (NICCY) advised on the draft Modern Slavery Strategy 2018-2019 to measure long term outcomes for children who have access to a Guardian (not simply numbers of children), including immigration outcomes and outcomes for young people supported in aftercare. We welcome the Modern Slavery Strategy 2019-2020 which states the intention to 'measure number of children, and young people in aftercare, supported by HSCTs and through the HSCB' but reinforce the need in the whole of the UK to measure long-term outcomes for young people."*⁴¹⁶

13.d. ensure the child victims of trafficking benefit from the assistance measures provided for under the convention, including safe and appropriate accommodation.

All NGO responses to this question pointed out that there are significant gaps in the provision of care and support for child survivors. The Modern Slavery Act established new mechanisms for ensuring that the rights and needs of trafficked children are met, but the UK authorities have failed to put into effect important provisions such as section 48, which requires that every trafficked children is supported by an independent child trafficking advocate. In Scotland, respondents noted that a range of agencies in Scotland have long argued that NRM procedures are not fit for purpose for children and that such procedures should be devolved and based on existing child protection systems.

The reality is that the NRM is currently not fit for purpose for child victims, as it does not lead to any tangible or material support and is not based within the child protection system, which is managed by local authorities. Local authorities are required to provide critical support to children, such as appropriate accommodation, but several respondents make clear that this support is frequently insufficient, putting children at risk of re-exploitation.

CARE provide an overview of the several shortcomings in the existing framework:

"Some trafficked children have the support of an independent child trafficking advocate (ICTA), now referred to as Independent Guardians. The law stipulates that all child trafficking victims should receive the support of a guardian, under section 48 of the Modern Slavery Act 2015. However, this section has not been brought into effect. The Government has been operating the Guardians scheme first as a pilot and then introduced in several areas, but this scheme has not been fully rolled out in England and Wales. CARE has urged the Government to prioritise the full

⁴¹⁶ ECPAT UK submission

roll out and bringing section 48 into effect. Currently two thirds of local authorities in England and Wales still do not have access to the scheme.⁴¹⁷ Using National Crime Agency statistics for the number of children referred to the NRM by local authorities and by police forces in England,⁴¹⁸ we calculate that approximately 87% were referred in areas outside the ICTA scheme.⁴¹⁹ The National Crime Agency does not publish data regarding the location of children referred by NGOs or national Government agencies such as UK Visa and Immigration.

CARE has also suggested changes to the length of support received once the child turns 18. An interim assessment of the Independent Child Trafficking Advocates scheme found that over half of the children referred to the ICTA service were aged 16 or 17 at the time of the referral.⁴²⁰ This means that a significant number of children will turn 18 years old before the expiry of the maximum period of support offered under the scheme (18 months) and quite possibly before all the necessary advocacy work has been done. The move to adulthood for a young person who has few support systems can be daunting, especially if they are in a foreign country. The young person faces changes in the provision from a local authority and changes in their immigration status, which leaves them especially vulnerable. The transition to adulthood has been described as “a particular risk factor for likelihood of child victims of modern slavery and unaccompanied asylum seeking children going missing.”⁴²¹ Given the risks of re-trafficking set out above, we believe that there is a need for an ongoing role for the ICTA as a consistent and trusted supporter to help a young person manage the transition to other services successfully and protecting them from going missing. CARE recommends that the Government implements the scheme to allow Guardians to work with victims beyond the age of 18, when needed, and for longer than the 18 months the Government allows a victim to have a guardian, as needed. The Independent Review of the Modern Slavery Act made similar recommendations.⁴²²

A similar scheme operates in Scotland. A recent consultation on its implementation has taken place.⁴²³ The statutory scheme in Northern Ireland is successfully operated by Barnardo's NI.⁴²⁴

⁴¹⁷ House of Commons Official Report 9 October 2018 Vol. 647 Col. 81WH

⁴¹⁸ Section 48 and the ICTA scheme will extend only to England and Wales, and the whole of Wales is one of the early adopter sites covered by the ICTA scheme

⁴¹⁹ Of 1,961 children referred to the NRM in England in 2017, NCA statistics suggest that just 259 were referred by local authorities or police forces in the ICTA areas. NCA data does not record the location of referrals made by other first responders, so there are likely to be some additional children referred by those agencies in areas where the ICTA scheme operates. Nevertheless, we do not expect that to significantly change the general distribution in which the majority of potential child victims in England are not covered by the ICTA scheme.

⁴²⁰ Keeble, J. Fair, A. & Roe, S. An assessment of Independent Child Trafficking Advocates Interim findings Home Office Research Report 101 July 2018, Paragraph 4.1.2

⁴²¹ Cordis Bright Local authority support for non-EEA migrant child victims of modern slavery Research Report December 2017 Department for Education Home Office paragraph 4.3

⁴²² Independent Review of the Modern Slavery Act 2015: Final Report https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

⁴²³ Scottish Government, Consultation on Independent Child Trafficking Guardians, <https://consult.gov.scot/looked-after-children-unit/independent-child-trafficking-guardians/>

⁴²⁴ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, Section 21, <http://www.legislation.gov.uk/niu/2015/2/enacted>

However, there are inconsistencies in the involvement of Guardians in decisions about children's asylum claim across Northern Ireland, Scotland and England and Wales. For example, Scottish Guardians are included in decision making about the child during best interest determination. Scottish Guardians are also included in a child's UASC case review. CARE recommends that due regard is also paid to Guardians in England and Wales and Northern Ireland during the asylum process.

ECPAT's report Still in Harm's Way found that in 2017, 27 per cent of all identified or suspected victims of trafficking went missing from care, which was 244 of 910 children. The Modern Slavery (Victim Support) Bill⁴²⁶ requires Local Authorities to take all reasonable steps to provide accommodation for trafficked children that prevents the risk of re-trafficking. This provision was included in the Bill introduced in the previous Parliamentary session and will be included in the new session.”⁴²⁷

Hope for Justice underscore the need to continue supporting survivors once they become eighteen years old:

“There are only pockets of specialist provision for children and few specialist aftercare facilities unlike the provision for adults. The government has committed to rolling out the Independent Child Trafficking Guardians Scheme which is currently in some areas of the UK and in our experience an important scheme. However, when a victim reaches 18 years of age they are no longer able to obtain assistance under the scheme and HfJ's experience from referrals into HfJ adult Independent Modern Slavery Advocate service is that, without ongoing advocacy, these highly vulnerable young people can slip through gaps in services placing them at risk of re-exploitation. Such issues were highlighted in an evaluation of the early adopter sites for the Independent Child Trafficking Guardians Scheme.⁴²⁸ The evaluation recommended that this issue needed to be looked at further before there is national roll out of the scheme.”⁴²⁹

Under the austerity agenda, funding for the local authorities that are in charge of the welfare and needs of trafficked children has been heavily reduced, which has serious implications for child victims of trafficking. Several responses submitted by respondents confirm this point. For instance, Human Trafficking Foundation evidences:

“Unlike other first responders in statutory organisations, local authorities also have duties around

⁴²⁵ Health and Social Care Board, Independent Guardian Service for separated and trafficked children launched, 2018 <http://www.hscboard.hscni.net/independent-guardians/>

⁴²⁶ Modern Slavery (Victim Support) Bill [HL] 2019, Section 4 <https://publications.parliament.uk/pa/bills/lbill/2019-2019/0044/20044.pdf>

⁴²⁷ CARE submission.

⁴²⁸ Home Office Evaluation of Independent Child Trafficking Guardians Early Adopter Sites Final Report July 2019 sourced at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819723/evaluation-independent-child-trafficking-guardians-final-horr111.pdf

⁴²⁹ Hope for Justice submission.

housing, safeguarding and support.

For children, all support is provided by local authorities.⁴³⁰ Furthermore the NRM structure for adults presumes that local authorities will in many cases be able to provide housing and/or support prior to and following the NRM recovery and reflection period. Yet no additional funding has been provided to councils, outside of the pilots,⁴³¹ and so most local authorities' housing and safeguarding teams simply refuse to support victims.

The Care Act mentions slavery. However its eligibility criteria means that the majority of victims are not entitled to support even if they are at clear risk of re-trafficking or destitution. Even when a survivor does warrant support, councils are often not prepared.⁴³²

When skilled lawyers are involved, housing and support tends to be more likely to be provided⁴³³ but most survivors may not have access to an advocate or NGO to ensure their rights are met. As a result police tell us of the challenges of safeguarding the victims they find. For example, in one case police rescued 18 potentially trafficked people; but because they couldn't find them any short-term housing, compounded by the fact that they cannot work within the NRM and some of the survivors needed money to send home, or pay off debts etc. they 'lost' 16 survivors before they even entered the NRM. In another case, a police officer got in touch with the HTF asking for help, trying to get a council to provide a victim with pre-NRM accommodation; however she was unable to and instead the victim was forced to stay in the police station overnight.

The Foundation's Day 46 report made clear that survivors of trafficking should be prioritised by the council for accommodation and that "This would not reinvent the wheel but rather continue procedures already in place as there is currently a concession within the asylum application process which allows those who are receiving treatment from the Helen Bamber Foundation or Freedom from Torture to remain accommodated in London."

Children also need to be provided with more suitable support and accommodation. Again funding is needed to train up foster carers as well as ensure a variety of options of accommodation. Detective Smith reported to the APPG in 2018 that in Croydon alone there were 4,272 missing people, 70% were children, the majority of whom were in some form of exploitation. He spoke about the lack of safe accommodation provided to young people by local authorities- noting what existed was expensive but prison-like and offered little holistic support such as counselling. A police officer recently told us that prison was in some cases the safest option to protect a young person still at risk of child criminal exploitation."⁴³⁴

⁴³⁰ Besides where the additional support of the ICTAs is in place such as in Wales and Croydon.

⁴³¹ And these were oddly limited to those with recourse – so could anyway more easily access council support than those without recourse and DLR etc.

⁴³² See the case of 35 year old trafficking survivor Drina, who had had an IQ of 23 and was housed unsafely in a dementia care home, and was not able to properly access the NRM outreach services:
https://search3.openobjects.com/mediamanager/barking/asch/files/final_sar_drina_report.pdf

⁴³³ In *R (AK) v Bristol City Council* (CO/1574/2015), it was accepted by the local authority in a consent judgement that they were not prevented from providing assistance to victims of Modern Slavery under the Localism Act. These principles are also reflected in a contested case of *R (GS) v Camden* [2016] EWHC 1762

⁴³⁴ Human Trafficking Foundation submission.

Unseen UK highlight several important concerns regarding the situation of children:

“Safe and appropriate accommodation not in place for this cohort of children – Unseen will be publishing a report shortly about this and the findings from running an Ofsted registered children’s home that will answer this question – can forward it to you. ICTG assisting UKs response but demand for them high and funding can’t cover this so understand remit is reducing. Issue of children going missing and social care not recording V of THB who are children accurately still. Data and effect support still an issue for children.”⁴³⁵

International standards set out that creating a “protective environment” for child trafficking victims are essential in order to prevent further exploitation and re-trafficking. Whilst we do not have data that records the rates of re-trafficking of child victims, children going missing from care is a key indicator. Research by ECPAT UK and Missing People published in November 2016 revealed that trafficked and unaccompanied asylum-seeking children go missing from care at an alarmingly high rate.⁴³⁶

ECPAT UK provides a detailed account of similar concerns, including the lack of nation-wide funding for children survivors, the insufficient support provided by local authorities, and the lack of publicly available information on re-trafficking.

“There is still no central funding for child victims of trafficking in the UK, unlike the £9 million central government contract for adult provision. Child victims, if in need of support and accommodation are provided for as ‘children in need’ under Section 20 of the Children Act 1989 in England and Wales and will become ‘looked after children’ (‘LAC’). Individual local authorities must determine their own budgets and this results in inconsistency in the response to trafficked children. There is very little specialist support for these children. Whereas adults are entitled to support in specialist accommodation with trained staff, children enter general support children in need and the needs of trafficked children often go unheeded. This can put children at risk of re-trafficking and going missing. Access to specialist counselling varies across areas and often provision is very low. Interpreters are often not child protection trained and can be difficult to access, leading to delays and poor communication between the child and professionals.

Accommodation provision for trafficked children varies significantly across the UK – from residential care homes, shared flats and houses, bedsits, bed and breakfast emergency housing, and foster care. Some of these are unsafe and unsuitable for children who are victims or are at risk of trafficking and can contribute to them going missing.⁴³⁷ More widely, there has been a 28% increase in the number of under-18s placed by councils in so-called independent living accommodation, which lacks live-in staff support and includes unsupervised B&Bs, over the past

⁴³⁵ Hope for Justice submission.

⁴³⁶ ECPAT UK (2016) ‘Heading back to harm: A study on trafficked and unaccompanied children going missing from care in the UK’. Available at: <https://www.ecpat.org.uk/heading-back-to-harm-a-study-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk>.

⁴³⁷ Elder Rahimi. (2018). *Systemic Delays in the Processing of the Claims for Asylum made in the UK by unaccompanied Asylum Seeking children (UASC)*. Available at: http://www.elderrahimi.co.uk/UserFiles/Files/p_nS4kT4.pdf

eight years.⁴³⁸ This type of accommodation continues to be used for children who are separated and trafficked, despite guidance stating this is unsuitable.⁴³⁹ The number of over 16-year-olds placed in unregistered accommodation has also increased dramatically.⁴⁴⁰ This type of accommodation may place children at greater risk of exploitation by criminal gangs.

When separated and trafficked children are taken into local authority care, they will often need to be placed in emergency accommodation. It is well-established that trafficked and unaccompanied children are particularly at risk of going missing within the first week of placement, and many within the first 48 hours. Before placing children, there is currently no duty set out in law to consider the appropriateness of the placement and the risk of re-trafficking in these cases. Strategy meetings and section 47 inquiries take place too late to consider the imminent risks of trafficking. This aligns with a broader concern that child protection legislation is better equipped to deal with abuse within the home than extra-familial abuse, such as child trafficking. In this way, the legislation that sets out the duties for local authority responsibility, including placement and care planning arrangements, does not include the need to plan around the particular risk of re-trafficking.

The case of 'H' highlights this point.⁴⁴¹ When found as a 17-year-old child under the control of traffickers, H was arrested and charged with production of cannabis, and when produced before a magistrates' court the following day, the local authority took him into their care. However, instead of seeking safe accommodation such as a foster carer, he was placed in a hotel, where he spent five nights before going missing, only to be found three years later. This was a clear safeguarding failure that went against statutory duties: a victim of child trafficking, at high risk of going missing and being re-trafficked, was placed in unsafe and unsuitable accommodation.

Whilst we do not have data that records the rates of re-trafficking of child victims nationally, children going missing from care is a key indicator. In a piece of research conducted by ECPAT UK, FOI requests were sent to all local authorities across the UK to provide data on the numbers of trafficked and unaccompanied children going missing from care. More than a quarter of all trafficked children and over 500 unaccompanied asylum-seeking children went missing at least once in the year to September 2015, while 207 had not been found. Research by The Times found that 150 Vietnamese minors disappeared from care and foster homes between 2015 and October 2017. At least 104 children went missing between August 2016 and July 2017 in the UK after being transferred from Calais.

Between 2017 -2019, ECPAT UK conducted a project with 4 Local Authorities in England which included a case audit of cases with modern slavery and human trafficking indicators known as

⁴³⁸ Ibid

⁴³⁹ ECPAT UK & Missing People, 2016. Heading back to harm: A study on trafficked and unaccompanied children going missing from care in the UK: <https://www.ecpat.org.uk/heading-back-to-harm-a-study-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk>

⁴⁴⁰ See: <https://www.theguardian.com/society/2019/jan/06/vulnerable-children-housed-unsupported-in-bedsits-and-bed-and-breakfast>

⁴⁴¹ See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UAS_C_Statutory_Guidance_2017.pdf

*Partnership Against Child Trafficking ('PACT'). In 76 of the 120 cases, children and young people had gone missing. Startlingly, the number of episodes ranged from two to 65 instances within the previous twelve months. Fourteen children remained missing at the time of the audit. Two had very recently been found in alarming circumstances: one young female had been found wearing very little clothing and with an older man she later admitted to having sex with in order to have somewhere to stay; another was a young Vietnamese boy who had gone missing a month earlier and was found in a nail bar. He returned to the social work department who placed him outside of the local authority area in an attempt to keep him safe and break the bond with those involved in exploiting him. Although the high number of missing episodes was shocking, the findings were entirely consistent with those in *Still in Harm's Way*.⁴⁴²*

It was particularly noted there was a specific need for safe and specialist accommodation for child victims of trafficking, including somewhere they could receive specialist therapeutic services both in and out of area. Although there are several agencies advertising placements, these are mostly for victims of CSE and were reported as being incredibly costly, meaning managers would likely have to decline requests for such placements. One local authority participating in the PACT project had wanted to develop and test a specialist, therapeutic residential resource but was unable to do so because of budgetary and resource constraint. This local authority was still forced to use 'bed and breakfast' accommodation to house highly vulnerable young people on occasion. It is well known that appropriate accommodation is vital to the safety, security and personal development of trafficked and exploited young people.⁴⁴³ The government should, therefore, look to enable and encourage councils to innovate and pilot therapeutic residential support, as well as invest in local authority children's services generally, because of the expertise, accountability and statutory duties that local authorities hold, including sourcing and securing appropriate accommodation that best meets the needs of the child.

During the life span of the project, ECPAT UK leads were encouraged by the emergence of increasing numbers of violence, vulnerability and exploitation (VVE) coordination posts. ECPAT UK fully endorses the findings and recommendations in The Mayor's Office for Policing and Crime's Police and Crime Plan (PCP) regarding the need for focus and direct action on keeping children and young people safe, tackling violence against women and girls, and modern slavery. As a result of the report, each London borough has been able to select two crime priorities on top of mandatory high-harm crimes: sexual violence, domestic abuse, child sexual exploitation, weapon-based crime and hate crime, and fund VEE coordinator style posts through the MOPAC London Crime Prevention Fund. However, all of the areas the PACT project has worked with, both directly and indirectly, need such funded posts. Where these posts existed, the local authorities were able to benefit much more from the PACT project offer and it was observed that the local authority was much better equipped to address the issues. However, there was not always a sole focus on children and young people. Often the post holder held a vast portfolio and was a single employee when there was a workload that required a small, dedicated team. There were co-located CSE police leads in two of the areas audited and this was seen as a hugely positive step

⁴⁴² See <https://www.ecpat.org.uk/still-in-harms-way> and <https://www.ecpat.org.uk/heading-back-to-harm-a-study-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk>

⁴⁴³ See: <https://www.bbc.co.uk/news/uk-48300157>

forward. Although it was early for both sites, it was reported that there were clear advantages including better dialogue and a more coordinated approach, which PACT leads felt needed to be rolled out further to be fully tested.

There is clear value in having local, designated, specialist social work teams provide oversight and case file management for separated and trafficked children rather than scattering young people's cases across several teams. Many local authorities were forced to disband their specialist separated children's teams as numbers declined and they were impacted by ongoing financial cuts. However, as is now known, the number of children arriving from overseas needing international protection rises and falls, but because of the recent government programmes, including the resettlement programmes, the Dublin and Dubs routes and National Transfer Scheme, there is a greater need for specialist teams as well as specialist independent advocates for this highly vulnerable group of children.

The local authority within the PACT project that was rated the most effective in supporting separated and trafficked children were located in an area that has a number of specialist NGOs working with separated and trafficked young people. Between the agencies, there was a lot of guardianship style work being undertaken.

Recording of the missing episodes could be patchy and the auditors found that there was a lack of insight on many files as to where the children and young people may have gone and who they were associating with at any one time. There was also inconsistent recording of whether return home interviews had taken place, who they were conducted by, when, where and how they were conducted. This finding is strongly linked to the finding that there was a grave lack of eco-maps, genograms and chronology on files. Despite all the learning from inquiries into the industrial-scale exploitation of children in Rotherham and Rochdale and the reported need for careful and consistent recording and use of tools such as chronologies, the PACT project found that there was a distinct lack of traditionally used and recognised social work tools that would help detect patterns, risks and gaps where children may be drawn into exploitation or be exposed to re-trafficking.

Another concern evidenced in the case file audit was the issue of file closure when young people went missing. This concern was resonated in the findings of a tragic case involving a child victim of trafficking who went missing as was subsequently found dead. Files were found to be closed before a missing child reached 18 years of age. It is strongly felt that this should not be the case, yet ECPAT UK leads fully accept that there is no explicit guidance on this for social workers. Upon undertaking research on this issue, a somewhat obscure reference has been found in data guidance, and the only other guidance has been found in police college guidance. Exactly where a missing child's case should be held is not clear. ECPAT UK leads believe it would be best in a multi-agency panel setting, but also believe Independent Reviewing Officers ('IRO') should be engaged in actively investigating what action is being taken to find the child through their regular reviews of cases. This needs to be carried out in collaboration with police leads and others. To do this, the cases need to remain open."⁴⁴⁴

⁴⁴⁴ ECPAT UK submission.

13.e. enshrine in the law the right to a recovery and reflection period as defined in Article 13 of the Convention.

Several respondents pointed out that the existing support for recovery and reflection is provided on a non-statutory basis, which means that the UK authorities are not legally obliged to maintain such support in the future, and that there is no actual legal standard for the scope and the quality of the support provided to survivors.

For instance, CARE evidence:

“Although support is provided to victims in England and Wales on a non-statutory basis through the Victim Care Contract (VCC) run for the Home Office by the Salvation Army, and the Government has adopted the Human Trafficking Foundation’s Survivor Care Standards⁴⁴⁵ in practice (something CARE welcomes), the absence of a support provision in the MSA means there is no legal guarantee that assistance and support will meet international obligations.

The Modern Slavery (Victim Support) Bill would enshrine in statute a victim’s right to a 45 day ‘reflection and recovery’ period (Clause 1), It would also ensure there would be minimum standards for providing support to victims and that providers would be subject to inspection to ensure that they were meeting the standards.”⁴⁴⁶

Kalayaan make clear that the current rule depriving trafficked overseas domestic workers from the right to work if they are referred to the NRM after their initial 6-month visa has expired is highly detrimental to their recovery and reflection period.

“This indicates that individuals denied permission to work are being drawn into destitution and made reliant on food banks and community members for support as the subsistence they receive is not enough to support themselves in the UK or their families abroad. This inevitably undermines their recovery time and increases their vulnerability to being re-exploited, as further discussed below.”⁴⁴⁷

ECPAT note that children who identify as potential victims of trafficking still do not benefit for the reflection and recovery period.

“A 17-year-old potential victim of trafficking with a positive reasonable grounds decision, arrived

⁴⁴⁵ Human Trafficking Foundation, The Slavery and Trafficking Survivor Care Standards, 2018 <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5bcf492f104c7ba53609aeb0/1540311355442/HTF+Care+Standards+%5BSpreads%5D+2.pdf>

⁴⁴⁶ CARE submission.

⁴⁴⁷ Kalayaan (2019) ‘Dignity, not destitution: The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism’. Available at: http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf

in the UK in December 2018 and has been looked after by the local authority ever since. He waited for over a year for a conclusive grounds decision and never received access to counselling services, he was referred to Child and Adolescent Mental Health Services ('CAMHS') but did not provide assistance. He was then referred to an NGO which offers therapeutic services but due to capacity they refused the referral. When considering the support that he is entitled to, it is clear that children are not provided with any specific entitlements to targeted trafficking support once they are referred into the NRM and receive a positive reasonable grounds decision."⁴⁴⁸

13.f. ensure that all victims of human trafficking who have received a positive conclusive grounds decision and whose immigration status requires it are issued a renewable residence permit when their personal situation warrants it or when they are co-operating with the authorities

All NGO respondents agreed that, at the moment, trafficking survivors that obtain a positive conclusive grounds decision are not automatically provided with a renewable residence permit, and that some of them are held in immigration detention. Many victims apply for asylum and end up spending years in the asylum process and accommodation, which is often not suitable for victims of trafficking, while many EEA nationals are not considered eligible for public funds due to being unable to prove that they have been working in the UK.

This situation has a very significant impact on the survivors' right to access justice and an effective remedy. As it has been pointed out above, survivors returned to their country of origin are rarely able to take part in, and follow, legal proceedings in the United Kingdom. The British Red Cross note:

"In the UK, not all victims of human trafficking who have received a positive conclusive grounds decision are issued a residence permit or equivalent. The current situation for a confirmed victim of modern slavery who does not qualify for asylum, humanitarian protection or other forms of leave to remain under the Immigration Rules, is that they are considered for a grant of discretionary leave to remain on a case-by-case basis, taking into account the particular circumstances of each case."⁴⁴⁹

In our joint report with Hestia and Ashiana 'Hope for the future: Support for survivors of trafficking after the National Referral Mechanism'⁴⁵⁰ we recommend that survivors should be protected and given security through the grant of immigration status of at least 30 months. Rather than relying on the use of discretionary powers, the Immigration Rules should be amended to create a specific form of leave to remain as a Survivor of Modern Slavery.

⁴⁴⁸ ECPAT UK submission.

⁴⁴⁹ Human Trafficking: Immigration: Written question – 292096, 8 October 2019. [Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-09-30/292096/>]

⁴⁵⁰ British Red Cross, 'Hope for the future: Support for survivors of trafficking after the National Referral Mechanism'. [Available at: <https://www.redcross.org.uk/-/media/documents/about-us/research-publications/human-trafficking-and-modern-slavery/hope-for-the-future.pdf>]

To achieve this, the Home Office should:

- *Introduce an automatic grant of leave to remain for a minimum of 30 months with recourse to public funds for people leaving the National Referral Mechanism with a positive conclusive grounds decision.*
- *The Immigration Rules should be amended to create a specific form of leave to remain as a Survivor of Modern Slavery. People with a positive conclusive grounds decision who do not have a secure immigration status should automatically be awarded leave to remain as a Survivor of Modern Slavery for a minimum of 30 months to enable them to continue to recover and rebuild their lives.*

At present, a conclusive grounds decision may make very little difference to a survivor's life in practice. Some receive the decision that they have been conclusively identified as trafficked or exploited together with a letter telling them they have no leave to remain in the UK.”⁴⁵¹

CARE expand:

“There are no automatic entitlements to ongoing support nor residency when a person is a confirmed victim of modern slavery. To access further support and remain in the UK, victims must apply for special discretionary leave to remain, which is only available in a narrow range of circumstances. Others, including many EU nationals, at present, are eligible for the benefits system, but there are no specialised support services on account of their ordeal as a victim of modern slavery. The position of EU nationals after Brexit is unclear.

There is no mention in the RNA of the need for support if someone is helping the police with their inquiries. Victims will still need to apply for discretionary leave rather than getting automatic support and leave to remain. This could negatively impact the likelihood that traffickers are convicted as victim testimonies are vital to criminal justice proceedings. Victims can be given assistance to apply for discretionary leave under the RNA, but there are no proposals to give victims clarity about their immigration status.

The Modern Slavery (Victim Support) Bill would provide victims in England and Wales a right to remain for a minimum period of twelve months. It would also allow confirmed victims in Scotland and Northern Ireland who receive additional discretionary support the right to remain while receiving the support.”⁴⁵²

FLEX puts the spotlight on the situation of survivors in immigration detention:

“Victims are not protected from government practices, such as immigration detention, that increase risk of re-traumatisation and can lead to negative long-term physical and mental health outcomes, and that affect their willingness to engage in legal processes, such as supporting

⁴⁵¹ BRC submission.

⁴⁵² CARE submission.

criminal investigations, seeking compensation, remedies, tc.

While in most cases a positive reasonable grounds decision leads to release from detention, Labour Exploitation Advisory Group's report 'Detaining Victims: human trafficking and the UK immigration detention system' has shown that the Home Office has maintained the detention of people who receive positive reasonable grounds decisions. The reasons the Home Office denies release are usually the same: risk of absconding or harm to the public based on a previous criminal conviction, which is in most cases a result of their exploitation.

A recent UK court case is serving to further undermine the well-being of potential victims of human trafficking in detention by making it acceptable to deny them bail following a positive reasonable grounds decision. The Court of Appeal decision on EM v SSHD ruled that potential victims of trafficking can have their needs met under articles 11(2) and (5) of the EU Anti-Trafficking Directive while in immigration detention, despite evidence of the long-term negative impact of detention on vulnerable adults. Dr Chisholm, a clinical psychologist with expertise in treating victims of trauma, who provided evidence during EM v SSHD, stated that Home Office staff in detention do not "attempt to build trust beyond general forms, and [do not] attempt to assist in creating a coherent autobiographical memory", demonstrating how treatment of victims in detention differs from those who have access to specialist support outside. He also stated that support services provided in detention are not adequate for potential victims as "the staff appears to have no experience and awareness of the issues associated with trafficking and had no formal prof. qualifications." In addition to maintaining detention of victims of trafficking, the Home Office has detained people after they have been referred to the NRM and are awaiting a reasonable grounds decision, despite the government ensuring that "potential victims of modern slavery cannot be removed while consideration is being given to whether there are reasonable grounds." Their detention contradicts the principle that the Home Office can only use detention for the purpose of removal or for assessing someone's claim to be in the UK."⁴⁵³

Hope for Justice focus on the shortcoming of the Home Office Guidance on Discretionary Leave:

"In practice many victims are not issued with a renewable residence permit and applications for residency permits on the basis of personal circumstances are in our experience applied restrictively. The Home Office Guidance on Discretionary Leave (DLR) Considerations for Victims of Modern Slavery has been updated following the ruling in PK Ghana v SSHD [2018] that it was unduly restrictive.⁴⁵⁴ The guidance is still too restrictive, takes case law out of context and fails to recognise that routes to compensation are wider than civil litigation.⁴⁵⁵ The guidance fails to recognise that EEA nationals exercising free movement rights still often require DLR to

⁴⁵³ FLEX submission.

⁴⁵⁴ Discretionary Leave Considerations for Victims of Modern Slavery 7th August 2018, sourced at <https://www.gov.uk/government/publications/interim-operation-guidance-discretionary-leave-for-victims-of-modern-slavery> and case of PK Ghana v Secretary of State for the Home Department [2008] EWCA Civ 98 sourced at <http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2018/98.html>

⁴⁵⁵ Discretionary Leave Considerations for Victims of Modern Slavery 7th August 2018 pages 6 and 7 sourced at <https://www.gov.uk/government/publications/interim-operation-guidance-discretionary-leave-for-victims-of-modern-slavery>

access welfare entitlements owing to often limited entitlements.⁴⁵⁶ The guidance makes a blanket statement that “criminals.....should not normally be granted leave because it is the Home Office Priority to remove them from the UK” and that if leave is granted it should be an initial 6 months.⁴⁵⁷

Whole Unseen UK confirm the concerns highlighted above:

“There remains no clear pathway for those with positive CG decisions to remain in the UK based on trafficking status. This relies on asylum process or having status (British or EU national) not trafficking process. Cooperating with the authorities assumes that a) authorities are investigating b) that there is enough evidence to investigate – not always the case – impact = negative on the victim through no fault of their own.”⁴⁵⁸

In relation to children, ECPAT set out the following information:

“The Anti-Trafficking Convention obliges States to issue a residence permit to a person who has been trafficked if a competent authority considers that their stay is necessary owing to their personal situation or a competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigations or criminal proceedings. The Home Office has provided detailed guidance on the grant of discretionary leave for victims of modern slavery. It states that ‘when a case involves children, the best interests of the child is regarded as a primary consideration (although not necessarily the only consideration) and one that can affect the duration of leave granted’. Figures obtained through FOI requests show that the Home Office accepted only 16 out of 326 applications for discretionary leave to remain for child victims from April 2017 and the end of 2018. ECPAT UK does not know how many of these applications were granted for Indefinite Leave to Remain. There is also a trend towards asylum refusals for child trafficking victims.[3] the same FOI request showed that 136 out of 201 asylum claims made by child victims of trafficking had been refused. Children and young people can be in the asylum process for many years with delays shown to be increasing. A young person will need to have accumulated 10 years leave to remain before being eligible to apply for indefinite leave to remain or ‘settled status’, a very long time to be living with such insecurity and a significant barrier to recovery.

A significant finding of ECPAT UK’s PACT audit was that recording immigration status accurately was an area of weakness across all files in all areas. Several entries suggested a child was claiming asylum but the status did not change as the file progressed. This meant the child remained an ‘asylum-seeking child’ when they were likely either granted some form of status or refused international protection and thus required urgent information and legal advice. In several files, the child’s immigration status was not at all clear which was concerning, particularly as rights and entitlements can vary during the child’s approach to turning 18, and a young person may well need continued specialist legal immigration advice as they reach 17 and a half years. It is imperative that any precarious immigration status is recognised and discussed throughout the

⁴⁵⁶ Ibid, page 11.

⁴⁵⁷ Ibid, page 18.

⁴⁵⁸ Unseen UK submission.

child's journey through the care system, particularly when they can be locked into asylum, immigration and trafficking identification procedures at the same time as having age assessments, health assessments and criminal justice and civil law proceedings; all of which can have a bearing on one another.

Whether the young person understood their immigration status or not was also unclear in the majority of the files when young people were subject to immigration control. There was very little information placed in files relating to asylum, immigration and trafficking identification processes, and on occasion no notes regarding the child's representative in their claim for international protection (if this was applicable). Asylum and immigration decisions were regularly missing from files. In two cases only part of the refusal was scanned onto the system.

Some terminology relevant to immigration and asylum procedure was used incorrectly and interchangeably, which caused confusion in the file. While it is fully accepted that social care staff do not need to and cannot be expected to understand all the intricacies of the asylum system, it was found that some of the inaccurate information held on file relating to immigration status could potentially cause major complications for the child or young person in the long-term, for example when needing to claim further leave to remain or apply for higher educational placements, welfare benefits and housing.

In a few cases, queries were raised as to whether the child was actually British. There appeared to be assumptions made that a child or young person was British when this had not been confirmed and may not, in fact, have been the case.”⁴⁵⁹

As noted in question 1.1.c, Kalayaan report that as of today the UK government is still failing to include, in the Conclusive Grounds notifications sent to overseas domestic workers referred to the National Referral Mechanism, a notice of their right to apply for further leave to stay in the United Kingdom as provided in the Modern Slavery Act.

It is also notable that overseas domestic workers that obtain a positive Conclusive Grounds decision still need to apply to this leave, instead of having it granted to them automatically. Furthermore, at the moment of submitting the application to further leave, workers need to prove that they are self-sufficient, which will be difficult if they have been denied the right to work because they were referred to the NRM after the end of their six-month visa.⁴⁶⁰

13.g. ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of *non-refoulement*.

⁴⁵⁹ ECPAT UK submission.

⁴⁶⁰ Kalayaan (2019) 'Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group (MSSIG) Prevent meeting. Available at: <http://www.kalayaan.org.uk/wp-content/uploads/2019/09/Briefing-MSSIG-meet-11-September.pdf>

Some trafficked persons may not be able to, or wish to, remain in the UK. In such cases, the UK is required to ensure their safe return. While the UK government has established a mechanism to facilitate returns -the Voluntary Return Service, which is also used to return failed asylum seekers and irregular migrants- the NGOs that responded to this question pointed out this mechanism is severely inadequate for trafficking survivors.

In particular, respondents highlighted the lack of a proper risk assessment prior to the return of survivors; to the lack of effective co-operation with authorities in the relevant countries of origin; and to the existing restrictions on access to the Voluntary Return Service, which is only available to survivors that decide to enter the NRM, and that have obtained a positive conclusive grounds decision.

IOM UK provide an overarching account of the situation:

“There is currently one main route for voluntary return for victims of trafficking which is via the Voluntary Returns Service (VRS), managed by Immigration Enforcement at the Home Office.⁴⁶¹ The VRS provides return assistance (in the form of a flight ticket) to victims of trafficking who have received a positive conclusive grounds decision through the NRM. It is important to note that the VRS is not a specialised scheme for victims of trafficking, rather it focuses primarily on failed asylum seekers or irregular migrants. IOM is not aware of any government policy documents which outline how victims of trafficking are supported with voluntary return and reintegration assistance.

While the VRS webpage⁴⁶² does not provide detailed information about how victims of trafficking are supported after their return, IOM understands from engagement with Immigration Enforcement that in most cases, victims of trafficking receive a cash-card containing a pre-loaded value of £1000 (for EU/EEA nationals) or £2000 (for non EU/EEA nationals). If the victim returns to a country covered by the European Return and Reintegration Network (ERRIN), reintegration assistance may be provided through an in-country partner, however, it is unclear what kind of assistance is provided and if any monitoring takes place. It should also be noted that the ERRIN programme does not provide assistance in any of the countries of origin of the top five most referred nationalities in the NRM in 2018 (excluding the UK), namely: Albania, Viet Nam, China, Romania and Sudan.⁴⁶³ Furthermore, it is not clear whether the UK will continue to be part of ERRIN once it exits from the European Union.

Immigration Enforcement does not publish information about the number of victims of trafficking

⁴⁶¹ IOM previously provided assisted voluntary return and reintegration (AVRR) assistance to victims of trafficking in the UK. Between 2002 and 2011 this was in the framework of a broader UK-government funded AVRR programme for asylum seekers and irregular migrants. Between 2011 and 2019 (July) this was through ad hoc projects and activities which focused specifically on victims of trafficking, such as the CARE Project (Coordinated approach for the reintegration of victims of trafficking), funded by the EC, and more recently, the TaNGO project for Romanian victims of trafficking, funded by the Swiss Agency for Development and Cooperation.

⁴⁶² See <https://www.gov.uk/return-home-voluntarily>

⁴⁶³ According to correspondence received from Immigration Enforcement in November 2019, the ERRIN countries are: Afghanistan, Armenia, Bangladesh, Brazil, Ethiopia, Gambia, Ghana, India, Iraq, Morocco, Nepal, Nigeria, Pakistan, Russian Federation, Sri Lanka, Ukraine.

who return via the VRS and which countries they return to. They also do not publish information about the processes which are followed when a victim of trafficking expresses an interest in returning home, such as the risk assessment procedure or what kind of engagement and referral, if any, is carried out with organisations in the victim's country of origin for the provision of reintegration assistance. Immigration Enforcement does not provide any details of outcomes for victims after they leave the UK, indicating that monitoring of returning victims is not taking place, making it difficult to track their wellbeing, and potential cases of re-trafficking. (...)

To explore the topic, IOM and HTF conducted a survey in September 2018 about voluntary return arrangements for victims of trafficking in the UK, to which there were 30 respondents, including organisations supporting survivors under the Victim Care Contract, as well as the police. (...)

The findings highlighted that the overall picture of voluntary return and reintegration support for survivors of trafficking returning from the UK is concerning. For example, of the organisations who were involved in supporting the return of victims through referrals to the VRS, only 62% said they carry out some form of pre-return risk assessment. It is not clear what the remaining 38% do in terms of assessing risk. Overall, among survey respondents who had been involved in supporting returns, 87% reported concerns about the survivor's safety on return. This included: fear of reprisal or re-trafficking; lack of support or support not being of the standard required or on a short-term basis only; lack of employment opportunities and destitution; returning to families and communities that know the person has been exploited and the associated stigma, as well as general concerns about survivor needs going unaddressed.

In response to a survey question regarding re-trafficking, six respondents reported that victims they had supported to return had been re-trafficked following return and had re-entered a UK support service.

Organisations who provide assistance to victims of trafficking within the UK victim care contract who participated in the workshop explained that when they refer a case to the VRS, the responsibility to complete a risk assessment falls on them and that there are no consistent standards that they are required to follow. Different care providers described the challenges they have with this process, given that they are UK organisations with no international operations or links in countries of return. This makes it extremely difficult for them to assess risk on return, put in place a mitigation plan or refer victims to possible in-country support services. Workshop participants also raised concerns about the provision of large amounts of cash assistance to survivors who were particularly vulnerable or had issues with drug or alcohol abuse, as there was potential of this putting them in a situation of harm. Participants emphasised their desire to be able to work with a network of support providers overseas with single points of contact to ensure smoother referral processes, and to be able to monitor survivor outcomes post-return.

IOM and HTF produced a short paper in 2019⁴⁶⁴ which summarised the findings and made a series of recommendations for improvement, including the development of a stronger risk assessment and mitigation framework that is consistently applied for all victims of trafficking who

⁴⁶⁴ Available here: <https://www.humantraffickingfoundation.org/news/2019/6/assisted-voluntary-return-and-reintegration-for-survivors-of-modern-slavery>

would like to return home to reduce the risk of harm and re-trafficking, including input from key actors in the UK and the country of origin. (...)

The recent re-tendering of the Victim Care Contract could have provided an opportunity for the voluntary return arrangements for victims of trafficking to be strengthened and become an integral part of the framework of victim support. Indeed, the government had announced in 2017 that it would adopt the HTF's STSCS and include them in future victim care contracts,⁴⁶⁵ but unfortunately the Services Description did not include all of the standards related to voluntary return. Rather, they clarified that eligible victims (i.e. victims with a positive conclusive ground decision) would still be referred to the VRS for return which only involves the provision of a one-time cash grant and no in-country reintegration support.⁴⁶⁶ There were improvements in relation to risk assessments, but it fell short in stipulating the factors that this should include and it did not make engagement with organisations in countries of origin mandatory. For those not eligible for mainstream voluntary return schemes, bidders were asked to propose a more detailed service which takes risk into consideration (with the same limitations noted above) but does not include the provision of reintegration assistance. This was included as an Optional Service which the Government could choose whether or not to invoke.

IOM has also been provided with informal information from the Home Office that the upcoming Reintegration Strategy⁴⁶⁷ will not recommend a specialist voluntary return and reintegration arrangement for victims of trafficking, instead one approach will be used for all categories of migrants (including, for example, victims of trafficking, asylum seekers, and irregular migrants).

In summary, the UK's policy and practice on assisted voluntary return for victims of trafficking continues to raise cause for concern. The lack of specialised and comprehensive support puts victims at risk and can heighten their vulnerability to further harm and potential re-trafficking. Significant improvements are needed to ensure that victims are protected and supported with their rehabilitation and reintegration on return."⁴⁶⁸

Finally, Hope for Justice underscore several shortcomings on the Voluntary Returns Scheme:

"In HfJ's experience there are currently identified victims with positive conclusive grounds decisions being detained. In addition, under the Voluntary Returns Scheme in HfJ's experience of working with EEA national victims, if they do not wish to enter the NRM system or are awaiting a conclusive grounds NRM decision they cannot avail themselves of the voluntary returns scheme

⁴⁶⁵ The then Minister responsible, Sarah Newton MP explained during a backbench debate on the Modern Slavery Act: "If a potential victim opts to enter the NRM, we must ensure that the care they receive is consistent and meets minimum standards, regardless of where in the country they are being cared for. That is why the Government will adopt the Human Trafficking Foundation's trafficking survivor care standards as a minimum standard for victim support". See <https://hansard.parliament.uk/commons/2017-10-26/debates/D9B8BD1A-F0D6-42D5-9490-741950800859/ModernSlaveryAct2015>

⁴⁶⁶With the exception of the ERRIN countries, as noted on page 5 of this document [Note ATMG: in reference to IOM's stand-alone submission].

⁴⁶⁷ The Strategy and Planning Directorate (SPD) of Immigration Enforcement undertook to write a Home Office Reintegration Strategy in 2018, for which IOM has made several contributions so far.

⁴⁶⁸ IOM UK submission.

and have been advised by Home Office officials that to return home prior to a conclusive grounds decision they would have to withdraw their NRM application and agree to be removed. The voluntary returns scheme appears only available to EEA national victims with a positive conclusive grounds decision. There are also currently few voluntary returns schemes for EEA nationals outside this scheme. In theory victims should be able to enter the NRM system and through the support provision obtain support including legal advice and supported repatriation. In practice if a victim wishes to return home they are often denied access to NRM support.

A recent and concerning report by After Exploitation published in July 2019 indicated on voluntary returns data noting that the detention of potential victims of human trafficking doubled in 2018 and 53% of those who were “voluntarily” returning were kept in prison-like settings.⁴⁶⁹The report also states that in 2018 there were 29 victims with positive conclusive grounds decisions that they were a victim of human trafficking. Whilst this data is 2018 data it shows a concerning trend that is reflected in HfJ frontline work.”⁴⁷⁰

⁴⁶⁹ After Exploitation Data August 2019 sourced at <https://afterexploitation.files.wordpress.com/2019/08/voluntary-trafficking-returns-after-exploitation-.pdf>

⁴⁷⁰ Hope for Justice submission.

Part III - Statistics on THB

We would like to refer to the 2017 and 2018 Annual Assessments of the Modern Slavery Helpline, as prepared by Unseen UK.

- 2017 Annual Assessment: <https://www.unseenuk.org/uploads/20180413150810356.pdf>
- 2018 Annual Assessment: <https://www.modernslaveryhelpline.org/uploads/20190424042048980.pdf>
- 2018 Executive Summary: <https://www.modernslaveryhelpline.org/uploads/20190503163925108.pdf>

The National Crime Agency also produces statistics on referrals into and decisions made within the National Referral Mechanism for identifying victims of trafficking (NRM).