

Access to legal advice and representation for survivors of modern slavery

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Research by

About this report

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Acronyms

CG	Conclusive Grounds decision under the National Referral Mechanism
DLR	Discretionary Leave to Remain
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings
ECF	Exceptional Case Funding, a mechanism introduced by s.10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which enables an application to be made for legal aid when it would not otherwise be available, so long as the applicant would financially qualify for legal aid in the usual way (i.e. through the means test)
EEA	European Economic Area
GRETA	Group of Experts on Action against Trafficking in Human Beings
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
MSA	Modern Slavery Act 2015
NRM	National Referral Mechanism, the decision-making framework for identifying victims of modern slavery
OISC	Office of the Immigration Services Commissioner
RWC	Refugee Women Connect
RG	Reasonable Grounds decision under the National Referral Mechanism
RNA	Recovery Needs Assessment, conducted following an individual has received a positive Conclusive Grounds decision
SCA	Single Competent Authority, the department within the Home Office responsible for decision-making under the National Referral mechanism
TMSCCs	Trafficking and Modern Slavery Compensation Claims
UKVI	UK Visas and Immigration, the division of the Home Office responsible for operating the UK's visa system
UASC	Unaccompanied Asylum Seeking Children
VoT	Victim of Trafficking

A. Introduction

Legal advice and representation can play a pivotal role in supporting survivors of modern slavery to achieve positive, long-term outcomes, contributing to recovery and rehabilitation. The nature of what the UK government defines as modern slavery can involve trafficking, forced labour, forced criminality, sexual exploitation, domestic servitude and organ harvesting. Those who are identified as having potentially experienced a form of modern slavery may interact with immigration, criminal, social care, social welfare and housing, and justice systems alongside the National Referral Mechanism (NRM).¹ For those who do not receive legal advice and representation – either because they fall outside of the NRM, cannot access legal aid, or as a result of not being able to access a legal practitioner with relevant expertise – research conducted by NGOs with expertise in this area demonstrates the risk of destitution, detention, deportation and re-trafficking is increased.²

For non-UK citizens who have experienced modern slavery, one of the most pressing and frequent legal problems faced is the need to gain a secure immigration status.³ For this reason, the project examined the role of legal practitioners whose main specialism is immigration law and have experience of navigating the NRM and immigration frameworks on behalf of their clients.⁴ Geographically, the research has engaged with legal practitioners and support providers in England, with particular representation in the North West, East Midlands and South Yorkshire.⁵

A note on terminology

This report makes some references to ‘victims’ and ‘survivors’ of trafficking and modern slavery. We are aware that neither of these terms are unproblematic and that there is a rich literature that has been developed, particularly in the context of domestic abuse and sexual violence, which explores the connotations and implications of the respective terms.⁶ There is a delicate balance to be struck between recognising the agency of individuals, and their capacity for resilience, while still acknowledging their vulnerability and often traumatic lived experiences. On those occasions that the report refers only to ‘victims’, it is in the context of the formal status of ‘victim of modern slavery’ that can be secured by a positive conclusive grounds decision under the NRM.⁷ We use the term ‘survivors’ more broadly to refer to people who have experienced a form of exploitation considered to be a form of modern slavery.

1. The framework established by the UK government to identify victims of modern slavery (considered in more detail below).

2. Human Trafficking Foundation, Supporting adult survivors of slavery to facilitate recovery and reintegration and prevent re-exploitation (2017) <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/599eecd6b8f5beb34c029a1/1503587519916/Long+term+survivor+support+needs+March+17+FINAL.pdf>; British Red Cross, Hope for the Future: Support for Survivors of Trafficking after the NRM (2019) <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>.

3. Human Trafficking Foundation and City Bridge Trust, Life Beyond the Safe House: For Survivors of Modern Slavery in London (2015) <https://www.antislaverycommissioner.co.uk/media/1260/life-beyond-the-safe-house.pdf>; Helen Bamber Foundation, Urgent call for the UK Government to protect and safeguard survivors of modern slavery who have insecure immigration status, April 2020 <http://www.helenbamber.org/wp-content/uploads/2020/04/HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf>.

4. The primary focus was on representation of adults, although the majority of legal practitioners who participated in the research also had experience of representing children who had experienced modern slavery.

5. The regional dimension to the research methodology is explained further below. There are also significant regional implications to the key findings, e.g. as to availability of legal aid providers.

6. See Dunn, J.L., “‘Victims’ and ‘Survivors’: Emerging Vocabularies of Motive for ‘Battered Women Who Stay’” (2005) 75(1) Sociological Inquiry, 1-30; Gupta, R., “‘Victim’ vs ‘Survivor’: feminism and language”, Open Democracy, 16 June 2014 <https://www.opendemocracy.net/en/5050/victim-vs-survivor-feminism-and-language/>.

7. Considered in more detail below.

B. Methodological approach

The project adopted a socio-legal partnership approach, recognising that the impact and value of legal rules can only be understood in the context of the social situation in which they are applied.⁸ 'This provided a conceptual framework with scope to examine the disjuncture between formal law and policy 'on paper' and the reality of the application of that law and policy in the lived actuality of the social context.

The research was underpinned by two methods:

1. Analysis of the law and policy framework which shapes access to legal advice and support for victims and survivors of modern slavery, combined with mapping of existing legal advice and support provision, findings of relevant research projects and available statistical data.⁹
2. Semi-structured interviews with legal practitioners and support providers: 30 interviews were conducted to interrogate the status quo of legal advice provision and the impacts of legal support on survivor outcomes. This provided an opportunity for those who engage closely with the relevant law and policy frameworks when representing survivors of trafficking/modern slavery to share their insights and experiences.

Semi-structured interviews

Given the focus of the research project, a purposive sampling strategy was adopted to identify the participants. Legal practitioners who represent clients who have experienced trafficking were identified, as were non-legal support providers, and contacted with an invitation to participate in the project. Identification was based on knowledge of the research team and was supplemented by use of resources such as ILPA's member directory¹⁰ and the Law Society's database of lawyers.¹¹ The lawyers interviewed all regularly represent clients who have experienced trafficking and were specialised in either immigration and asylum law and/or public law while support workers were from organisations either sub-contracted to deliver NRM support or with independent specialist trafficking teams. The interviews took place between November 2020 and January 2021.

Eighteen interviews with legal practitioners (sixteen solicitors and two barristers) focussed on their experiences of advising and representing clients who had experienced trafficking, including the impact of funding on the legal support provided, the nature of the cases that they work on, and consequences of accessing legal advice for their clients. The majority of the lawyer participants were solicitors as, due to the nature of their legal work, they are well placed to comment on access to legal advice. 'Solicitors' in this context extended beyond those working in law firms and also included those qualified and working in Law Centres, and immigration advisers regulated by OISC (Office of the Immigration Services Commissioner) accredited to a sufficiently high level so as to advise on the relevant legal issues. Two barristers that specialise in representing clients who have been trafficked were also interviewed in order to shed light on issues that impact on legal representation as cases progress and involve court proceedings. Twelve interviews with support workers focussed on the processes by which survivors of modern slavery access legal advice, the support they need to overcome barriers to this and outcomes. The inclusion of those

8. Schiff, D.N., 'Socio-Legal Theory: Social Structure and the Law' (1976) 39(3) *Modern Law Review* 287-310.

9. The cut-off date for the review of relevant research and statistical data was 5th March 2021.

10. <https://ilpa.org.uk/members-directory/>

11. <https://solicitors.lawsociety.org.uk/>

operating within and outside of NRM-contracted support ensured the experiences of those with diverse levels of support are represented. Throughout this report qualitative extracts from the interview transcripts are drawn on to illustrate the responses of participants on particular points of discussion. Interviews with lawyers are identified with code LR, and support providers with SP.¹² Unless specifically mentioned, we have selected quotations which illustrate the viewpoint expressed by the majority of participants.¹³ We also draw on some detailed 'case in focus' examples of particular issues or initiatives developed by organisations that we met with.

The semi-structured interviews consisted largely of open questions to allow the participants to describe their own experiences of how individuals access legal advice, and to share their views on the impact such access can have. Follow-up probing questions addressed issues such as: particular barriers to access; outcomes for clients after securing legal advice; the implications of legal aid funding, and so forth. All interviews were conducted via video in light of the restrictions relating to the Covid-19 pandemic.

Incorporating the impact of the Covid-19 pandemic

This project was initially designed and awarded funding prior to the Covid-19 pandemic. Therefore, it did not specifically set out to examine the impact of the pandemic. The original start date of April 2020 was postponed as a consequence of Covid-19 and then, prior to the project starting in September 2020, the research team incorporated into the project aims an assessment of how the pandemic was impacting on access to legal advice for survivors. Although all participants referred to the pandemic increasing the challenges relating to survivors accessing legal advice, by delaying formal processes and preventing face-to-face interaction, for example, it was clear that the key challenges in the area pre-dated and were unconnected to the pandemic. The findings of the project, therefore, reflect the key concerns as expressed by the participants.

Geographical location of participants

We had intended for interviews to be focussed on two case study regions in England: the North West and the East Midlands. As the project was underway it became clear that such a clear demarcation would not be possible. While a wide range of legal aid immigration solicitors were invited to participate, only a small number of those who were actively interested in the subject of trafficking accepted, with others either not responding or saying they did not have sufficient knowledge to respond to interview questions; necessitating a broader approach to inviting participants. The majority (15) of lawyer participants and all support worker participants had experience of working in the North West, East Midlands and/or South Yorkshire. All participants worked in the North of England or the Midlands.



12. There are also quotations from discussions with organisations we highlight 'in focus'. These participants are identified as IF. Where the names of individuals or organisations are provided permission has been given.

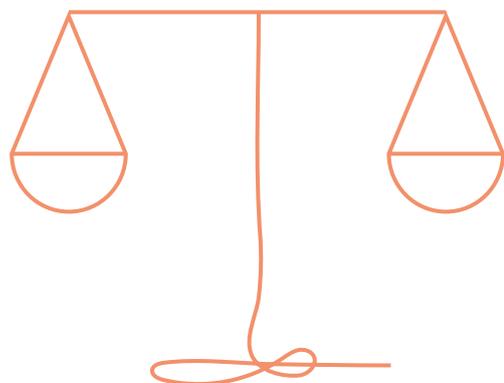
13. Due to space constraints, in most cases only one or two quotations are included in the final report to illustrate a point.

Analysis

Interview transcripts were coded electronically in QSR NVivo 12. A thematic analysis of the interview transcripts was carried out. The coding and analysis followed the approach identified by Braun and Clarke for thematic analysis:¹⁴ becoming familiar with the data, producing an initial coding framework and coding the data, searching for themes, reviewing and defining themes and then writing up the analysis. This approach accommodated a combination of inductive ('bottom up') coding and deductive (or theoretical) coding based on the focus of the research.

Limitations

The sample of legal practitioners interviewed for this project were highly specialised in the specific area the research set out to explore. Their professional lives were immersed in the provision of legal advice and support to individuals who have experienced modern slavery and trafficking. On the one hand, this offers a clear advantage in terms of the level of their knowledge and the richness of their experiences that they were able to relay. They had a detailed awareness how legal advice can (and cannot) be accessed, the way in which legal aid entitlement works in a practical sense, and how these impact on clients. On the other hand, we recognise that, for the vast majority of those that have experienced trafficking, gaining access to a lawyer with such a level of specialism in the subject is not the norm. From this point of view, we are mindful that the data here does not capture the perspective of lawyers who represent clients who have experienced trafficking – for example as part of an immigration claim, or in relation to criminal proceedings – without a detailed awareness of modern slavery and the specifics of the NRM. Therefore, while this research project has been able to analyse the perspectives of legal practitioners who are very engaged in the area, it cannot speculate on the level of knowledge of these issues amongst a broader set of the legal profession. It is also important to acknowledge that this research did not attempt to cover survivors' experiences of accessing legal advice and/or their perceptions of any legal representation.



14. Braun, V. and Clarke, V., 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 77-101.

C. The law and policy context

Modern Slavery Act 2015

The concept of 'modern slavery' has been increasingly used as an umbrella term to capture a number of related forms of exploitation, including trafficking, forced or compulsory labour, domestic servitude and criminal exploitation. In England and Wales the Modern Slavery Act 2015 (MSA) encapsulates this approach. The MSA reformed and consolidated the previously piecemeal law on human trafficking and related offences of slavery, forced or compulsory labour and servitude, and put in place a unified legislative framework to address these issues. In addition to providing detail on these offences, the MSA sets out maximum sentences for those convicted, which includes a term of life imprisonment. The MSA also makes provision for trafficking reparation orders to be made in order that victims receive compensation (s.9). In terms of victim protection, the MSA contains a defence for victims who have committed an offence attributable to their slavery or trafficking situation (s.45). Section 49 placed an obligation on the Secretary of State to produce statutory guidance on identifying and supporting victims. This was introduced in 2020, five years after the legislation came into force.¹⁵

The National Referral Mechanism

The National Referral Mechanism (NRM) is the framework established by the UK government for identifying victims of trafficking and providing support.¹⁶ It was introduced in 2009 as part of the UK's ratification of the Council of Europe Convention on action Against Trafficking in Human Beings 2005 (ECAT). The decision-making processes and the entitlements of those referred into the system are now set out in the statutory guidance issued under s.49 of the MSA.¹⁷

Only designated First Responders can refer potential victims of trafficking to the NRM – including the police, local authorities, the Home Office and certain non-governmental organisations (NGOs). Adults are required to provide consent to such a referral being made, a condition which does not apply in respect of children.

The Single Competent Authority (SCA), based in the Home Office, initially makes a determination as to whether there are 'reasonable grounds' (RG) to believe the person may have been trafficked, which should be completed within five days of referral. At this point the standard to be applied by the decision maker is 'I suspect but I cannot prove'.¹⁸ A positive RG decision then initiates a minimum 45-day reflection and recovery period within which the person is entitled to support and assistance (including, for example, provision in safe house accommodation and medical support). During this period, evidence is gathered and a 'conclusive grounds' (CG) decision should follow as to whether or not, on the balance of probabilities, the individual is considered to be a victim of trafficking. Individuals continue to receive NRM support until the CG determination has been made.

15. Home Office, Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland, Version 2.0. Available at <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>.

16. In light of the creation of the Modern Slavery Act 2015 the NRM has been extended to include all victims of modern slavery.

17. The most recent version of the guidance which sets out the detail of how the NRM works in practice is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912824/August_2020_-_Statutory_Guidance_under_the_Modern_Slavery_Act_2015_v1.02.pdf.

18. The standard of proof is considered in the following sub-section.

It is well-documented that significant delays are common in the NRM process.¹⁹ Following a positive CG, a minimum of 45 days 'move on' support continues for confirmed victims. As soon as possible after the positive CG decision a Recovery Needs Assessment (RNA) should also take place.²⁰ This process enables contracted support workers to complete a needs assessment form on behalf of identified victims to request that support be continued in order to meet the individual's recovery needs arising from their modern slavery experience.²¹ The SCA then makes the decision as to whether the recommended support will be provided.

There is no statutory appeal following a negative CG, and judicial review is the formal route to challenging such a decision. There is, though, an informal reconsideration process in which the SCA can be asked to 'look again'. A finding of fact as to whether someone suffered past exploitation/trafficking and whether they will be at risk of future exploitation/trafficking may also be made by a tribunal judge as part of any asylum or immigration appeal.

In 2019,²² 10,627 potential victims of modern slavery were referred to the NRM (representing an increase of 52% from 2018).²³ Of these referrals, 5866 were in respect of adults and 4550 were in respect of children; 7224 were male and 3391 were female.²⁴ Labour exploitation was the most common type of exploitation recorded. Non-UK nationals accounted for 7791 (73%) of referrals.²⁵

The Home Office end of year summary for 2019, published on 2nd April 2020, provides that 'around 7% of referrals made in 2019 have received a positive CG decision so far', reflecting the position up until 10th February 2020.²⁶ This is a result of the current length of time taken to make CG decisions. In the case of CG decisions, the guidance does not stipulate a specific timescale other than to state the decision 'should generally be made as soon as possible after 45 calendar days'.²⁷ Despite this direction, it is clear that the reality for many of those referred into the system is a long period of waiting before a CG decision is reached. As of 10 February 2020, 8,429 (79%) of those referred in 2019 were still awaiting a CG decision; 38% of those referred in 2018 were also awaiting a CG determination.²⁸ The Home Office end of year summary document further states that '10% of referrals made in 2019 have received a negative reasonable (1,064) or CG (90) decision'.²⁹ The long delays within the NRM system mean that individuals can face prolonged periods of uncertainty as to their legal status, particularly as regards to their entitlement to live and reside in the UK.³⁰ Living with an undetermined status over a lengthy period also has considerable associated negative implications for wellbeing, and can hinder the potential for recovery.³¹

19. The issue of delay was picked up in the Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee, 128th Session (02 March 2020 – 27 March 2020) <https://www.antislavery.org/wp-content/uploads/2020/01/Submission-HRC-modern-slavery-in-UK-Jan20.pdf>

20. The Home Office's full guidance on the RNA is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953307/recovery-needs-assessment-v3.0-gov-uk.pdf

21. Introduced following the judgment in *R (on the application of NN and LP) v Secretary of State for the Home Department* [2019] EWHC 1003 (Admin).

22. Note that the NRM statistics covering 2020 were published after the data collection period for this research project had closed.

23. Home Office, National Referral Mechanism Statistics UK, End of Year Summary, 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876646/national-referral-mechanism-statistics-uk-end-of-year-summary-2019.pdf

24. Home Office, National Referral Mechanism Statistics UK, End of Year Summary, 2019, p.3.

25. Home Office, National Referral Mechanism Statistics UK, End of Year Summary, 2019, p.4.

26. Home Office, National Referral Mechanism Statistics UK, End of Year Summary, 2019, p.5.

27. Home Office, Modern Slavery Act 2015 – Statutory Guidance for England and Wales, Version 1.02, April 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912824/August_2020_-_Statutory_Guidance_under_the_Modern_Slavery_Act_2015_v1.02.pdf

28. Home Office, National Referral Mechanism Statistics UK, End of Year Summary, 2019, p.5.

29. Home Office, National Referral Mechanism Statistics UK, End of Year Summary, 2019, p.5

30. Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee, 128th Session (02 March 2020 – 27 March 2020)

31. Human Trafficking Foundation, Supporting adult survivors of slavery to facilitate recovery and reintegration and prevent re-exploitation (2017) <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/599eecd6b8f5beb34c029a1/1503587519916/Long+term+survivor+support+needs+March+17+FINAL.pdf>; British Red Cross, Hope for the Future: Support for Survivors of Trafficking after the NRM (2019) <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>; Helen Bamber Foundation, Urgent call for the UK Government to protect and safeguard survivors of modern slavery who have insecure immigration status, April 2020 <http://www.helenbamber.org/wp-content/uploads/2020/04/HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf>.

Burden and standard of proof in modern slavery cases

The SCA guidance³² sets out in detail the current relevant standard of proof for the two-stage decision making process: i.e. for the RG decision³³ and the CG decision.³⁴

At the RG stage, the test the SCA must apply is whether the statement:

“I suspect but cannot prove” the person is a victim of modern slavery (human trafficking or slavery, servitude, or forced or compulsory labour)’

- is true; or
- whether a reasonable person having regard to the information in the mind of the decision maker, would think there are Reasonable Grounds to believe the individual is a victim of modern slavery (human trafficking or slavery, servitude or forced or compulsory labour)” (para 14.50 of the guidance)

The guidance goes on to explain that: ‘To reach a positive Reasonable Grounds decision the SCA just needs to determine that, on the information available, it is reasonable to believe that a person is a victim of modern slavery; the SCA does not need to distinguish at the Reasonable Grounds stage which form of modern slavery they have experienced.’ (para 14.51)

The Government is currently consulting on this RG standard of proof, with a view to raising the threshold, as announced in the policy statement relating to its New Plan for Immigration.³⁵

At the CG stage, the decision is made ‘on the balance of probabilities’ (para 14.83). The guidance explains:

‘The “balance of probabilities” essentially means that, based on the evidence available, modern slavery is more likely than not to have happened. This standard of proof does not require the SCA to be certain that the event occurred.’
(para 14.84)

It is notable that the standard of proof in a trafficking claim is higher than that in an asylum/international protection claim, even though an asylum-seeker may rely on past trafficking and a fear of future trafficking as the basis for their protection claim.³⁶

32. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950690/January_2021_-_Modern_Slavery_Statutory_Guidance_-_E_W_-_Non-Statutory_Guidance_-_S_NI_-_v2.pdf

33. pp. 116 -7 of guidance

34. p. 121-122 of guidance

35. HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021 <https://www.gov.uk/government/consultations/new-plan-for-immigration> p.33.

36. See the Home Office’s Asylum Policy Instruction: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf The relevant standard of proof - i.e. ‘reasonable degree of likelihood’ - in claims under the Refugee Convention was established in the cases of R (Sivakumaran) v Secretary of State for the Home Department [1988] AC 958 and Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11. The latter case established that it is not just the likelihood of future persecution which must be established to the lower standard, but also any evidence or facts of past or present persecution.

There is no indication as to what, if any, burden of standard of proof the drafters of ECAT 'intended' to be placed upon persons in having to 'prove' their identity as a victim of trafficking. Rather, ECAT is drafted to impose obligations on the SCA, to identify, protect and support victims and to prevent trafficking. ECAT squarely places the duty to identify victims of trafficking on state authorities, not on trafficked individuals (see Article 10 – i.e. 'Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims...'; 'Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations'). It is thus arguable that, in fact, there should not be any legal burden placed on victims of trafficking, but rather a burden on the state to properly identify victims and to be penalised where they fail to do so.

Immigration status following recognition under the NRM

A right of leave to remain is not automatically granted to those who receive a positive CG decision. Home Office guidance³⁷ provides that discretionary leave to remain (DLR) may be considered where an individual is not eligible for any other form of leave (e.g. asylum or humanitarian protection) and leave is necessary either:

- owing to the personal circumstances of the individual. Reflecting Article 14 of ECAT this should involve an assessment of whether a grant of DLR is necessary to provide protection and assistance to the victim.³⁸
- in order to pursue compensation (but only if it would be unreasonable for them to pursue the claim from outside the UK); or
- because they are helping police with enquiries relating to a criminal investigation.

The Government's New Plan for Immigration makes reference to the potential for leave to remain to be granted to confirmed victims with long-term recovery needs, although no details are given as to conditionality or length. The policy statement provides that:

'We will make clear, for the first time in legislation, that confirmed victims with long-term recovery needs linked to their modern slavery exploitation may be eligible for a grant of temporary leave to remain (subject to any public order exemption) to assist their recovery, building on our end-to-end needs-based approach to supporting victims. We will also make clear that temporary leave to remain may be available to victims who are helping the police with prosecutions and bringing their exploiters to justice.'³⁹

37. Home Office, Discretionary leave considerations for victims of modern slavery, Version 2.0, 10 September 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739436/dl-for-victims-of-modern-slavery-v2.pdf

38. See R (on the application of PK (Ghana)) v Secretary of State for the Home Department [2018] 1 W.L.R. 3955.

39. HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021, p.33.

The available evidence suggests the rate of DLR grants to recognised victims remains low. In 2017 the Minister for Vulnerability, Safeguarding and Countering Extremism, in a letter to the Work and Pensions Select Committee, provided evidence that only 12% of those with a positive CG decision were granted such leave in 2015 (52 EEA nationals and 71 non EEA nationals). A further five people confirmed as victims were (2 EEA nationals and 3 non EEA nationals).⁴⁰ In 2020 Every Child Protected Against Trafficking (ECPAT UK) utilised freedom of information requests to probe this issue further.⁴¹ They found that between 2016–2019 there were 4695 positive CG decisions in respect of individuals subject to immigration control (this figure includes adults and children).⁴² Of these individuals, only 521 adults and 28 children were granted a period of DLR in the UK as victims of trafficking, or just less than 12% of those with positive CG decisions.⁴³ It has also been pointed out that, when such grants are given, residence permits are of limited duration only.⁴⁴ While the maximum grant is for a period of 30 months,⁴⁵ the data gathered by ECPAT UK shows that the majority of those DLR grants between 2016–2019 (411 or 75 per cent) were for a length of time between 7–12 months; 9.1% were granted DLR for 13–24 months and 8.3% for more than 25 months.⁴⁶ ECPAT UK noted that in the same time period (2016 to 2019) asylum was granted to 2139 confirmed victims of trafficking/modern slavery (or 45.5%). Of these, 443 were children. In the same time period, humanitarian protection was granted to 174 confirmed victims of trafficking/modern slavery (including 51 children).⁴⁷ The figures underline that a significant proportion of those referred to the NRM also have asylum claims ongoing. Decisions on asylum claims can notoriously take a long time to be issued due to the prevalence of delays in the system.⁴⁸ Furthermore, the length of time a person is 'in the system' clearly extends further should an appeal be necessary which is often the case due to the documented 'variable quality' of initial decision-making within the UKVI division of the Home Office.⁴⁹

40. Letter from Sarah Newton (Minister for Vulnerability, Safeguarding and Countering Extremism) to Chair of the Work and Pensions Select Committee, 17 February 2017 <https://www.parliament.uk/globalassets/documents/commons-committees/work-and-pensions/Letter-from-Sarah-Newton-MP-to-Chair-re-modern-slavery-session-17-2-2017.pdf>

41. ECPAT UK, Child trafficking in the UK 2020: A snapshot, October 2020 <https://www.ecpat.org.uk/child-trafficking-in-the-uk-2020-snapshot>

42. Referring to non-UK nationals and EEA nationals not subject to immigration control, i.e. exercising rights under the EU Treaties.

43. p.38.

44. GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom GRETA(2016)21 (Council of Europe), 7 October 2016, pp.222–227.

45. Home Office, Discretionary leave considerations for victims of modern slavery, Version 2.0, 10 September 2018.

46. ECPAT UK, Child trafficking in the UK 2020: A snapshot, October 2020, pp.36–37.

47. ECPAT UK, Child trafficking in the UK 2020: A snapshot, October 2020, pp.36–38.

48. At the end of March 2020, 61% (31,516) of those who had claimed asylum had been waiting for more than six months for their claim to be processed. See UK Government, Immigration Statistics (March 2020): <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2020>.

49. Thomas, R., 'Mapping immigration judicial review litigation: an empirical legal analysis' (2015) Public Law, 652–678, at pp.659–660. See also Refugee Action, *Waiting in the Dark: How the Asylum System Dehumanises, Disempowers and Damages* (2020) <https://www.refugee-action.org.uk/wp-content/uploads/2020/07/Waiting-in-the-Dark-Report.pdf>.

D. Survivors' entitlement to legal aid

The focus of the research project was predominantly on access to immigration legal advice to cover securing leave to remain in the UK and being identified as victim under the NRM. Hence, a key concern was to examine when survivors of modern slavery are entitled to immigration legal aid. To give broader context, this section also provides an overview of when legal aid might be available for survivors to seek legal advice on other issues.

Legal aid: for what purpose?

Immigration advice

Under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012,⁵⁰ individuals who have received a positive RG or CG determination under the NRM are formally entitled to legal aid for immigration advice on the issue of securing a right to remain in the UK, subject to satisfaction of the standard legal aid eligibility criteria, including the means test.⁵¹ This legal advice can also cover the NRM victim identification process, although of course at this point the client has already been referred by a First Responder and received a positive determination at least at the RG stage. Therefore, the advice will necessarily relate to issues such as the potential of a positive CG decision and a future application for leave to remain on the basis of being recognised as such. It will clearly come too late to cover the nature of the NRM referral itself. In 2018 the Legal Aid Agency claimed it could restrict legal aid to trafficking victims for such immigration advice but then later conceded this point after judicial review proceedings were launched.⁵²

There is no entitlement to legal aid for immigration advice prior to a positive RG decision. This effectively prevents survivors accessing legal advice, either about leave to remain or the victim identification process, before entering the NRM. Some survivors of modern slavery may access legal aid not as a potential victim of modern slavery, but as part of an asylum claim. However, not all survivors of modern slavery will have (or make) asylum claims, given that protection claims for refugee status or humanitarian protection recognise future risk as opposed to previous harm, and that many potential victims of modern slavery are UK nationals, or are from EU nations rendering an asylum claim 'inadmissible'.⁵³

Advice on the NRM process

There is no entitlement to legal aid for advice solely about the NRM victim identification process. Owing to the nature of their experiences, it is unlikely that survivors of modern slavery will be able to pay for legal advice. Therefore, unless a person is accessing legal aid funded immigration advice of the sort described immediately above, there is no available route to legal advice in respect of navigating the NRM.

50. Schedule 1, para. 32. LASPO was amended by s.47 of the Modern Slavery Act 2015.

51. This should be available to support an application for discretionary leave to remain or another immigration application, including an Article 8 application.

52. See www.atleu.org.uk/news/legalaidimmigrationadvice and the Consent Order in *R (on the application of LL) v the Lord Chancellor CO/3581/2017*. This apparently arbitrary action has contributed to confusion surrounding the issue of what Legal Aid is available for (considered below).

53. See Asylum Policy Instruction: EU/EEA Asylum Claims, Version 3.0, 9 December 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/483462/EEA_EU_Asylum_Claims_v3_0_EXT_.pdf

Challenging decisions

There is no appeal process for NRM decisions. Those in receipt of a negative RG or CG decision, a decision to refuse to reconsider a negative RG or CG decision, or a decision not to grant DLR after a positive CG decision are entitled to legal aid in relation to judicial review of that decision.⁵⁴

Claiming compensation

LASPO 2012 also purportedly makes legal aid available for 'trafficking and modern slavery compensation claims' (TMSCCs), which are claims under employment law in the Employment Tribunal or claims for damages in the High Court. Compensation claims for victims of trafficking do not fall within a specific legal aid contract but instead fall within the 'miscellaneous' category and can, technically, be carried out by any provider holding a civil Legal aid contract. In 2016 the Ministry of Justice carried out a review into legal help for those with TMSCCs.⁵⁵ This found that demand for legal advice on this issue outstripped the ability of some providers to provide the service (para. 25) and that there was not a universal understanding that legal aid may be available for compensation claims (para. 29). The Justice Select Committee of the House of Commons' Inquiry into the Future of Legal Aid was established in 2020. Submissions to the call for evidence have continued to highlight the limited access to legal aid in order to bring such compensation claims.⁵⁶

There is no entitlement to legal aid for confirmed victims of modern slavery to access advice on recovering compensation from the Criminal Injuries Compensation Authority.

54. Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, Schedule 1, para. 19.

55. Ministry of Justice, Review of Legal Help for those with Trafficking and Modern Slavery Compensation Claims (TMSCCs), December 2016 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577351/tmscc-review.pdf

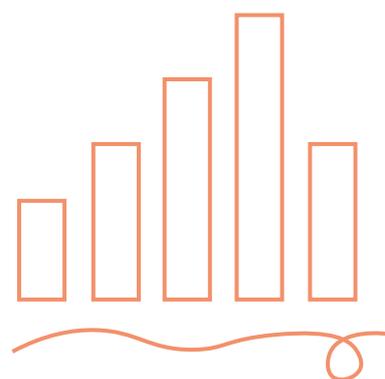
56. The call for evidence closed in November 2020. ATLEU and Dr Jo Wilding's submissions in particular raised such concerns. Available at <https://committees.parliament.uk/work/531/the-future-of-legal-aid/publications/>

Statistical context

There is no complete data collected on the numbers of those who have been referred into the NRM, or recognised as a victim, and been able to access legal aid and for what purposes. However, the available indicators suggest that limited numbers of survivors gain such access.

In December 2017, Dominic Raab, then Minister for Courts and Justice, responded to a question by Stephen Timms MP on this topic by stating that there had been a total of only 124 victims of trafficking who had received legal aid for either **immigration advice (excluding asylum) or advice on a trafficking compensation claim**, in the three financial years ending 2015-2017.⁵⁷ Situated against the number of referrals to the NRM within a similar timeframe (the total number of referrals into the NRM in the three years from 2014 onwards was 9411⁵⁸) it is clear that the vast majority of those who enter the NRM do not receive legal aid either to access (non-asylum) immigration advice or advice as to a trafficking compensation claim. It is not possible, however, to gain an estimate of the extent to which the same cohort is able to access legal aid for an asylum claim, or indeed across other legal areas, due to limitations of data collection in this area.

The UK Government's reply to the Questionnaire issued by the Group of Experts on Action against Trafficking in Human Beings (GRETA), as part of the evaluation of the UK's implementation of ECAT in June 2020, provides that only 49 cases were recorded of legal aid being granted in England and Wales for claims of compensation for victims of modern slavery in the five financial years ending 2015-2019.⁵⁹



57. Available at <https://questions-statements.parliament.uk/written-questions/detail/2017-11-21/114965>.

58. The end of year statistical summaries can be accessed via the Office of the Anti-Slavery Commissioner's website: <https://www.antislaverycommissioner.co.uk/resources/>

59. As recorded in the miscellaneous category rather than in a discrete legal aid contract. Reply from the United Kingdom to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Third Evaluation Round, 30 June 2020, p.90. <https://rm.coe.int/reply-from-the-united-kingdom-to-the-questionnaire-for-the-evaluation-/16809eee04>

E. Key findings

The research findings are discussed under the following three themes: the value of legal advice and representation for survivors of modern slavery; barriers to accessing legal advice, principally as a consequence of the legal aid rules; and survivors' understanding of the NRM referral and interaction with First Responders.

1. The value of legal advice and representation for victims and survivors of modern slavery

i) Legal advice is widely recognised a significant building block to upholding rights and entitlements for survivors of modern slavery

The transformative impact of legal advice and representation on survivors of modern slavery was proclaimed by all participants. The impact was recognised as particularly potent because of the risks of re-trafficking (either within the UK or following return to another country), destitution, or removal from the UK and other associated risks of harm that might arise as a consequence of being returned.

It's priceless, isn't it? It's the difference between either living for years destitute and in the shadows, being returned somewhere and being in very real and present danger, or having status and being able to begin your life again after the trauma that you've been through. It's like, you can't even put a price tag on that. You know, when you think about how many people have fallen through the cracks and destitute, and it just doesn't need to be like that. (LRO2)

Much of the discussion of the research findings that follow focusses on immigration advice. However, it is helpful to have an appreciation of the broader context in which this sits. Survivors of modern slavery often have to navigate the NRM and immigration system alongside other intertwining legal issues and may require other legal interventions, particularly through public and criminal law, to uphold their rights and support entitlements. While the primary legal issue was considered by all participants to be the need to secure a form of leave to remain, there was also recognition that this was often a first step on the legal journey of survivors.

A barrister that took part in the project outlined the numerous legal matters that trafficked clients may have:

First, there's going to be everything around the actual trafficking claim, so that's whether they need legal advice and support pre-NRM or as to whether or not to go into the NRM. There's then shepherding them through the NRM, potential challenges if there's a negative RG or CG, potential challenges if there is untoward delay, which there always is, potential challenges if they get the positive CG but no consideration of discretionary leave, or bad consideration of DL... Then there are also reconsideration requests and then potentially we might have to challenge the decision under public law.

Then, secondly, they're probably going to have some overarching immigration or asylum case, so obviously there's all the legal advice and representation needed for the actual immigration and asylum proceedings.

Then, thirdly, there's obviously other areas of compensation and redress, which I think are really, rarely used... so we need to ask should they be bringing in an employment claim in the employment tribunal, should they be trying to get compensation from the criminal compensation scheme? That would become all the more complex if they did have a criminal matter also outstanding, where we'd now be seeking to overturn [a criminal conviction] out of time.

Quite a few of my clients who have been trafficked also have family law proceedings ongoing, too. Some of them are so mentally unwell that they may have had children removed from them or there may just be contested proceedings over contact or custody between them and an ex-partner or even an ex-abuser or perpetrator.

I don't have any non-trafficking clients with so many overlapping and ongoing legal issues. Sometimes in trafficking cases, there's literally four different sets of proceedings going on, and the client has no idea of the complexity. (LRO1)

The above extract encapsulates the multiplicity of legal issues that people who have been trafficked may need to address, which will often involve a number of different court proceedings and a range of different legal personnel over a considerable period of time. Our discussions with the participants, both lawyers and support providers, reinforced that the level of legal complexity associated with the cases of survivors of modern slavery renders access to legal advice and representation critical if resolution is to be possible.

ii) Legal advice is critical for securing status, which in turn is critical in supporting recovery

A prominent point reiterated by participants was that legal advice and representation was principally important in order to stabilise the immigration status of clients who have experienced modern slavery. Once a level of security has been attained, e.g. by a grant of DLR, this can be a key facilitator to access more mainstream accommodation, welfare and mental health services. Secure immigration status, which is only likely to be obtained with the support of a lawyer, is very much seen as the foundation upon which other entitlements can be scaffolded.

It's the core thing that will enable...other things to happen. Without immigration status the person can't work, can't claim mainstream benefits, can't access mainstream banking. I suppose they're stuck in this world, in the NRM for years and years and years...whereas if you get status you can actually leave that and become a mainstream member of society, which kind of takes you out of...that trafficking process. (LR16)

Participants also emphasised that the instability that comes from having an insecure legal status can impact negatively on chances for recovery, e.g.

I do think [legal advice] is the absolute kind of building block for recovery. I really do. I think when you speak to survivors, they will say how instability is so difficult in terms of when you are trying to recover from trauma, and the things that create instability are things like insecure immigration status, insecure housing, insecure subsistence, and I just think to secure, to give somebody that security in the UK in a very holistic sense, I don't think is possible without legal advice. (SP10)

The Government's New Plan for Immigration acknowledges that '[f]or some victims, certainty over their immigration status is a crucial enabler to their recovery and to assisting the police in prosecuting their exploiters.'⁶⁰ This point about the connection between secure immigration status and recovery is supported by a body of research which has concluded that recovery from trauma for survivors of modern slavery is only possible once secure immigration status is gained.⁶¹ The Helen Bamber Foundation, drawing on clinical and multi-disciplinary experience of working with survivors of modern slavery, concludes:

The certainty of secure immigration status enables survivors to regain the confidence they need to remain safe, to avoid further trafficking risks, to pursue social reintegration in employment, education and the community, and to contribute positively to society.⁶²

Many of the participants, both lawyers and support workers, expressed incredulity that there was still no automatic grant of DLR following a positive CG. The Modern Slavery (Victim Support) Bill, which was originally introduced by Lord McColl in the House of Lords in 2018, proposes to provide identified victims with one year of support in the UK, to include one-year DLR.⁶³ The Bill has been reintroduced for the current parliament and is currently awaiting its second reading in the Lords. The British Red Cross has recommended that recognised victims be provided with security through an automatic grant of 30 months leave to remain.⁶⁴ The Helen Bamber Foundation has argued that a longer period of minimum three years leave to remain is required following a positive CG in order to provide time for survivors to engage with necessary services to allow for recovery.⁶⁵

A number of solicitors that we spoke with recognised that a short-term grant of DLR would not be sufficient to provide requisite stability for their clients. From this perspective, DLR was considered as a backup or stop-gap to more meaningful protection claims which would also be pursued in order to seek a more secure form of leave to provide greater stability for survivors.

60. HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021 <https://www.gov.uk/government/consultations/new-plan-for-immigration> p.33.

61. E.g. Human Trafficking Foundation and City Bridge Trust, Life Beyond the Safe House: For Survivors of Modern Slavery in London (2015) <https://www.antislaverycommissioner.co.uk/media/4260/life-beyond-the-safe-house.pdf> ; Human Trafficking Foundation, Supporting adult survivors of slavery to facilitate recovery and reintegration and prevent re-exploitation (2017) <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/599eecd6b8f5beb34c029a1/1503587519916/Long+term+survivor+support+needs+March+17+FINAL.pdf>.

62. Helen Bamber Foundation, Urgent call for the UK Government to protect and safeguard survivors of modern slavery who have insecure immigration status, April 2020 <http://www.helenbamber.org/wp-content/uploads/2020/04/HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf>.

63. Modern Slavery Victim Support Bill (HL) 2018 (211 57/1).

64. British Red Cross, Hope for the Future: Support for Survivors of Trafficking after the NRM (2019) <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>

65. Helen Bamber Foundation, Urgent call for the UK Government to protect and safeguard survivors of modern slavery who have insecure immigration status, April 2020, p.20.

With discretionary leave I prefer to sort of see it as a holding position because for the most it's going to be 30 months if you get the maximum, and so, to me, it's only an interim. (LR16)

Many participants gave examples of how the absence of an automatic grant of leave to remain impacted negatively on clients who had been issued a positive CG but then had not been able to move forward in other areas of their lives.

I've had a number of clients who've been re-trafficked. I've just had one who I haven't been able to locate for a year and a half and now he's lost his legal aid and I've had to tell the court I'm not instructed anymore, and there would have been quite a significant damages claim for him. That's always the risk in the background. Certainly, if their trafficking took place in the UK or on the way to the UK, there's always that risk that at any point where they're feeling low that they could get back in touch with their traffickers and then the whole spiral starts again. I think that the system is just not robust enough to prevent that happening. People are so close to the edge of destitution all the time because there is not sufficient ongoing support for them. The whole DLR, the fact that you don't automatically get DLR, so you can't work and you can't get benefits, it just puts people in an absolutely impossible position and I don't see how they can recover without that security. (LR08)

Those clients who are not granted leave to remain as a victim of modern slavery, which as was demonstrated earlier happens only in fairly rare circumstances,⁶⁶ might gain security of status by virtue of a separate claim. For example, leave might be granted on the basis of an asylum claim, humanitarian protection, or statelessness application. Any such claim will have its own (likely lengthy) application process and require the representation of an immigration lawyer. Indeed, due to the complexities of the immigration system, achieving a secure immigration status was considered only to be possible with recourse to quality legal advice. There was a clear reflection repeated by participants that pathways to securing immigration status were very difficult to navigate without the support of a legal adviser.

There are unfortunately so many barriers these clients face when navigating the system that lawyers with our specialist knowledge of the different policies and the legal framework, we're now unfortunately essential to getting them good outcomes. (LR17)

[Clients] don't have access to reports and other things that they would need to prove their case without having a legal aid advisor. For example, they won't be able to instruct an expert or pay an expert, or even know that they need to do. There is also translation of documents and all the other services that you would need to go through the process. (LR12)

66. See part B above.

iii) Quality legal advice can be instrumental in identifying and overcoming serious injustice, such as unlawful detention and wrongful conviction

Participants also made a link between a lack of legal advice, or legal advice of insufficient quality, and survivors of modern slavery being wrongfully convicted or unlawfully detained under immigration powers.⁶⁷ Accessing quality legal advice was viewed as being key to identifying and overcoming such serious injustices for survivors of modern slavery.

One case which I worked on wasn't picked up by the police as being a potential victim of trafficking. When they arrested him and charged him with cannabis cultivation, and then his solicitor, his criminal solicitor, didn't identify him either, so didn't use the defence that he had available and so he got prosecuted. So here is somebody who should never have been prosecuted, and eventually, with the assistance of a decent firm of criminal solicitors, that conviction was quashed. But that took a long time afterwards. I couldn't tell you how many people are being poorly advised or don't have access to legal advice. (LR05)

I've done a number of Unlawful Detention Claims for victims of trafficking. I've been successful, but you can't take away the fact that they were detained in the first place for weeks and weeks in their vulnerable state... Had they had proper advice when they were in a detention centre, then they could have got out earlier. I think that's obviously stark, that there's probably not sufficient legal advice in those centres, or at least the advisors that are going in are not spotting those issues. (LR08)

iv) Legal advisers can play a role facilitating access to (non-legal) support for survivors

An additional finding as to the significance of legal advice relates to ensuring that elements of support which should be available are accessed by survivors in practice. For example, it was made clear by participants that even when a person is within the NRM or in receipt of support from another system, legal advice may be required to ensure they receive the full and proper support to which they are entitled. There was a general acceptance that a referral to the NRM in and of itself would not necessarily be sufficient to ensuring support was accessed. Participants referred to problems in accessing support delivered by providers under the Victim Care Contract and more broadly, for example from mainstream services.

You need to always feel safe and you need to have advice about your housing and support needs, increasingly, because even with the victim care contract your support needs may be very unstable and you may not be getting the entitlements that you should have. For example, victims of trafficking going through NRM, many people don't know [they can] request...money for childcare, money for dependents that's sufficient to cover the cost of [childcare]...You might need

67. The Labour Exploitation Advisory Group also found that poor identification of victims of trafficking by First Responders, unfair NRM decision making and lack of awareness of potential legal challenges contributes to the regular and unlawful detention of survivors of modern slavery: Labour Exploitation Advisory Group, 'Detaining Victims: Human Trafficking and the UK immigration detention system', 2019 <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

legal advice to get back payments of subsistence off the NRM if you've been wrongly denied them, legal assistance to get payments off the NRM, legal assistance to get reinstatement support into the NRM if you've had your support cut off. (LR17)

We see a lot of people at the moment coming forward who've never received any support through the NRM. They've had an NRM referral put in that potentially they didn't know about and years down the line they're coming forward, but they've never received any support so they didn't know what their entitlements were. (SP07)

Another solicitor gave an example that demonstrates how following a positive RG, legal interventions may still be needed to facilitate access to appropriate support outside of the NRM context.

We had a family...and they got evicted from a safe house, there was an incident, I don't know, behaviour or something, and they just got evicted and got put on a train back to the place where they were exploited, because that was the only area in the country that they knew anybody so they just bought a ticket back to that place. So I intervened and managed to get them back to the area where their safe house was, because that's where they had a local connection to the local authority, so that's where we had to make the homelessness application. We represented them through the homelessness application system [because] the council previously refused to house, so that route had been explored and shut down and without legal rep there'd be no one to challenge that...[we were] successful with the council and so they got temporary accommodation, but now they're in their own house and their little boy is in school, [so we] also represented them through the universal credit process, because their universal credit claims were declined. We got them overturned...so they actually had some money to see them through this pretty traumatic experience, being shipped back to your place where you were exploited. They now both have settled status and I think one of the clients has been looking for work...and the little boy is in primary school doing really well. They even got a dog at one point. That sounds like the poster story, but it is. Imagine the difference, you know, being back in your town of exploitation, they would probably have ended up back in exploitative work or at high risk of that, but now they have their own home and...a family life. (LR07)

2. Barriers to accessing legal advice and representation: the impact of legal aid rules

Survivors who have received a positive RG or CG decision under the NRM are entitled to access legal aid for immigration advice which can also cover the NRM victim identification process.⁶⁸ The research findings in respect of legal aid highlight that, in reality, accessing such legal aid-funded immigration advice can be extremely difficult. The obligations placed on the UK by Article 15 of ECAT, particularly to provide for the right to legal assistance and to free legal aid, are formally fulfilled 'on paper'.⁶⁹ However, the ability of individuals who have experienced trafficking to genuinely exercise a right to legal aid and legal assistance is hindered by the operation of different aspects of the UK system 'on the ground'. This is compounded by and is exacerbating a problem of limited capacity among legal practitioners to take on cases that involve a trafficking/modern slavery element, or to fully explore this aspect of a client's legal cases in their representation.

i) Considerable confusion exists about when survivors of modern slavery are entitled to legal aid

Participants across the board viewed legal aid as critically important to survivors of modern slavery, principally to enable them to secure their immigration status. However they also reported uncertainty about the availability and scope of legal aid amongst First Responders, support providers and solicitors alike. This lack of clarity about entitlement to legal aid was widely perceived by participants as acting as a barrier to accessing legal advice. For example, the following solicitor expressed concern about the lack of clear accessible guidance on this point, and referred to the case of *LL* – and the concession by the Legal Aid Agency that legal aid is available for matters of immigration⁷⁰ – as requiring particular clarification.

The information document about legal aid advice that resulted from [the LL] case is buried on a Legal Aid Agency webpage. And we frequently send that to people to say you can get immigration advice for a non-asylum case, for any type of immigration advice. We send it to lawyers, we send it to many people, but it's buried. And I think there's a lack of understanding amongst the general public, amongst lawyers, amongst support providers about what type of legal aid is available and what legal problems people need help with. (LR17)

In addition to being key for achieving secure immigration status, it was evident from the participants that legal aid funded representation was viewed as important for securing recognition under the NRM (e.g. for those clients who were able to access an immigration adviser prior to referral due to having an asylum claim). Legal aid was also seen to be important for challenging previous negative NRM decisions by judicial review. The participants did not have experience of engaging with clients who had sought a compensation claim. Indeed, Trafficking and Modern Slavery Compensation Claims (TMSCCs)⁷¹ did not feature prominently in the interviews.

68. As was detailed in C above.

69. Legal aid entitlement is set out in C above.

70. Consent Order in *R (on the application of LL) v the Lord Chancellor* CO/3581/2017.

71. Explained in C above.

ii) Immigration legal aid fee structures discourage and prevent lawyers from taking on cases involving modern slavery, leading to a shortage of legal aid lawyers able to advise survivors

Despite legal aid being available to survivors of modern slavery for immigration advice following a positive RG NRM decision, a major issue identified by participants was that the level of legal work required to be done on cases involving modern slavery was impossible within the current immigration legal aid fee scheme.

The complexity of cases involving survivors of modern slavery increases time required for case work

Cases of clients who are survivors of modern slavery are widely regarded as being particularly complex and, as such, ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out. The cases often involve complicated and interconnected immigration issues that run over a long period of time, and clients often also have other legal issues ongoing not directly related to the immigration case but which may nevertheless impact on it (such as ongoing criminal cases). Legal advisers also often assist such clients in navigating the NRM, for example by following up with the SCA about a referral already made.⁷²

Importantly, the complexity of the cases also stems from the often very vulnerable position of the clients who have experienced, or are still experiencing, significant trauma. Participants talked of the particular barriers to disclosure that exist for survivors of modern slavery and the need for them to be able to access experienced, independent lawyers with the requisite skills to establish trust with the client. This was seen as especially significant as there is often a real fear of engaging with the authorities among survivors. For these reasons, lawyer participants talked of the need to be able to spend extended time with (often distressed) clients in order to be able to sensitively interview and take witness statements. They also referred to the extra time (and finance) required to be able to evidence the traumatised nature of their clients, for example by obtaining psychiatric and psychological reports (not routinely covered by the fixed fee and only recoverable with specific agreement from the Legal Aid Agency). It was also clear that lawyers spent time signposting and referring their clients who were survivors of modern slavery to other services. This applied to other lawyers, e.g. criminal or family, to support with legal issues outside of their own area of legal practice, or more broadly, e.g. to health or welfare services.

One participant explained some of the factors that render cases involving survivors of modern slavery complex and increase the level and time needing to be spent on the case work in the following way.

Delays within the Home Office, delays within the SCA, difficulty obtaining documents and needing to go back and interrogate those documents and ask for more documents. Difficulty in arranging and getting funding for appropriate experts and finalising reports. Difficulties around disclosure, building up a relationship with clients so that they are able to talk about their past and then to obtain sufficient disclosure so that you understand their story, which can obviously take a very long time. Multiple applications that they might need to make, applications for the children that might be relevant. Issues that intervene, which mean a client doesn't feel safe and stable to progress with their case, for

72. See Currie, S. and Bezzano, J., *An Uphill Struggle: Securing Legal Status for Victims and Survivors of Trafficking* (University of Liverpool, 2021) <https://www.liverpool.ac.uk/law/research/research-projects/an-uphill-struggle/>

example, health issues, mental breakdowns, mental health crises, support issues, which is obviously why it interrelates with the immigration case, because they don't feel safe, they haven't got a place to stay, they haven't got enough money. That's just the cases that we run, but then obviously there's other issues that might happen, like addiction, criminal cases and if, say, in terms of somebody's whole history, not just in the time that we see them, there's maybe previous failed applications or refused applications, and the impact of somebody going through successive applications that are refused, what that means for their solidifying poor immigration history and struggles then to get immigration advisors once they have such an unattractive history, struggles to get appropriate support following destitution, maybe re-exploitation. (LR17)

Overwhelmingly, participants spoke of the detrimental effect that delays in NRM decision making had on lawyers' abilities to run cases.

The number one issues...[in] trafficking cases [is the] enormous, inexplicable, impenetrable, insoluble delays... I think what's especially hard is that instead of just saying, look, we're dealing with backlog and here's a time frame, you just kind of get put off and put off. So, you don't know, you just sort of think "is there something wrong with this case?" Finally, you notice a pattern and you say, okay, well, this is just happening across the board. (LR18)

Unexplained delays create more work for solicitors trying to move their cases forward both in order to achieve outcomes for clients and for financial reasons.

We chase the Competent Authority at least every three months. We typically get the stock letter back, which is "we aim to respond to you within the next three months," and then the three months passes and it just goes around and around in circles. We get the same PCQs, personal circumstance questionnaires. I've had one every six months now for one of my clients, and I made a complaint, because I was saying "we've already told you what you need, you've got everything that you need, you're the ones that are delaying a decision being made. It's now taking up our time, it's taking up the client's time, it's taking up everybody's time." ...I think it's also frustrating because there are more victims of trafficking and modern slavery who do need that support and by delaying that decision we're not reaching the most clients that we can. Profitability is really important for lawyers to talk about, because as legal aid lawyers we need to make sure that we remain profitable so that we can help future clients, as well as our current clients. So, I think it's really important to say that it impacts our profitability, because we're looking after one client for two or three years, that means we can't take on more clients. Even if a decision was made in six months it would mean that we would be able to take on a greater number of clients and stay profitable. (LR13)

Impact of fee structure on the approach of legal aid lawyers

Immigration legal aid lawyers are paid standard fixed fees as opposed to being paid on an hourly rate for work carried out on a case.⁷³ It was resoundingly reported by participants that the fixed fees payable to immigration legal aid lawyers are too low as to facilitate the complex legal work necessary on cases involving modern slavery to a sufficiently high quality. While it is possible to charge for the actual time spent on cases if the work carried out exceeds the certain threshold⁷⁴ – thus meeting the escape fee – this does not adequately address the situation. Relying on meeting the escape fee is deemed too risky by many lawyers as there will often be uncertainty as to whether the threshold will in fact be met (for example, depending on the way in which the legal case unfolds). In other words, a legal representative may spend a considerable period of time working on a case to a high standard but still not meet the threshold required to unlock the escape fee and thus only be paid the fixed fee. The risk involved in turning the file escape creates a pressure to remain within the fixed fee which, in turn, can influence the approach to the case work. For example, a legal adviser may decide not to take a witness statement, or, may do so but take it in such a hurried way that the result is of a poor quality and is ultimately not helpful for the client's position.

While standard fixed fees are used widely across the legal aid system, hourly rates are payable to immigration legal advisers in Unaccompanied Asylum Seeking Children (UASC) cases. There are parallels between UASC cases and cases involving survivors of modern slavery that arguably render the latter as suitable for a change to hourly rates of pay. For example, clients in both types of cases have a high level of vulnerability, both types of cases are associated with considerable overall complexity, including multiple legal frameworks and potential avenues to legal resolution, and a number of different involved parties.⁷⁵

It was clear from the interviews with participants that the heavily restricted time afforded to solicitors to work on cases and pursue the relevant legal avenues was hindering the potential for survivors of modern slavery to have their legal case pursued to its fullest potential.

A legal aid lawyer is constantly under pressure to have to bring in sufficient fees to cover some calculation of their pay, two and a half times or twice or three times or something, and so if that's the pressure you're under then quite often you might opt for the cases which are going to be more straightforward, and particularly with the way fixed fees are, you will opt for the cases which are more straightforward and which are going to mean that you can meet your targets more easily. Trafficking cases, unless you get them on to hourly rates, are going to be more difficult because you're going to have to spend more time on them. Unpicking that 2,000 pages of Home Office papers takes hours and hours. (LR16)

Now, we're a private practice, we're not a charity, so we have a target to hit, which is really difficult under legal aid anyway, because we get fixed fees, we get paid a pittance on the files...If you didn't deal with the huge amount, I think you could just concentrate on escape fees...which is very difficult if you work in a department that has a high fast turnover [of] clients So on a trafficking case you'll go over two and a half, probably, times the budget; you get paid £400. So, it's not profitable to take them on. (LR03)

73. The relevant fixed fees are set out in Schedule 1, table 4(a) of the Civil Legal Aid (Remuneration) Regulations 2013 <https://www.legislation.gov.uk/uksi/2013/422/schedules/made/data.xht?wrap=true>

74. The relevant threshold is, if it were paid at the appropriate Hourly Rate, the work carried out would exceed at least three times the value of the standard fixed fee.

75. For a thorough overview of the rights of separated see Coram Children's Legal Centre, Seeking support: a guide to the rights and entitlements of separated children (2017) <https://www.childrenslegalcentre.com/wp-content/uploads/2017/05/Seeking-Support-2017.pdf>

The lawyers that were based in larger firms, with a number of different legal departments, talked of how there was an acceptance within the firm that trafficking cases would run 'at a loss' but be offset by gains in different departments. This strategy enabled them to run the case in a more expansive way than otherwise would have been possible. Clearly, this was not an option available to those lawyers in smaller, less diversified law firms. However, **many of the practitioners in smaller firms talked of their tendency to work long hours on client cases involving modern slavery/trafficking, often at weekends and on an 'unpaid' basis.** This came at a personal cost and many shared their misgivings about the effect and sustainability of their work with such clients, from a financial and emotional perspective.

I think it's a barrier to firms wanting to do their best for their client, because they're put in a situation where, if they really did their best for their client, their business just wouldn't function, they'd go bust, because the fees don't cover the amount of work that you need to do, to do a really good job...So a lot of us who practice Legal Aid, you just have to make the choice of like, am I going to do a shoddy job, you know, or am I going to do a proper job and donate some weekend time that I can't bill for...at a certain point it does get unsustainable, you know, for people and for firms...It makes me think how long can I work this way. Maybe I shouldn't say it, but I do think, just on a personal level, how much longer can I work this way? I'm not sure... (LRO4)

Many of the legal advisers we interviewed explained how they felt an acute awareness that they had a responsibility to be proactive when representing clients who were survivors of modern slavery. One of the lawyers we interviewed expressed their thoughts on how they viewed the role of the legal representative when acting in these particular cases in the following way:

I think what we need to be, as lawyers, is advocates rather than post boxes, so we're not just accepting decisions made about the client or receiving post and passing it on, our added value is to do what the clients can't do themselves, so that is trying to push for decisions to be made or trying to push arguments that they don't know about. (LR17)

This idea of having to really strive and to be proactive to ensure that the interests of clients are recognised and implemented was also expressed by many of the other participants. While the dedication clearly felt by the legal practitioners to pursue their clients' cases even when it meant working outside of standard hours is clearly admirable, it also runs the risk of masking problems of capacity (considered further in the following sub-section) and is unsustainable in the long-term.

Overall, it was clear from the research that the cases of survivors of modern slavery are frequently not financially viable for legal aid practitioners. Added to this, some of the lawyer participants described their inability to take on a level of risk associated with certain legal actions that cases of survivors tend to require. For example, judicial review work is 'at risk', with legal practitioners paid only if permission is granted to proceed and/or a successful outcome is obtained. There is a connection to Jo Wilding's research on the immigration legal aid market.⁷⁶ Her 'Droughts and Deserts' report highlights the issue of 'work-capping', where legal aid providers

76. Wilding, J., Droughts and Deserts: A Report on the Immigration Legal Aid Market (Joseph Rowntree Foundation, 2019) <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>. See also Dr Jo Wilding's submissions to the Justice Select Committee's review into Legal Aid. Available at <https://committees.parliament.uk/work/531/the-future-of-legal-aid/publications/>

limit the amount of work done on cases to the amount that will be paid on the standard fee due to the risk of not being paid for work above that. This limits the extent and level of detail of the instructions that can be taken from clients and can be harmful to the case.

The financial unviability of cases has three key impacts on the way that immigration legal practitioners, or their firms, approach cases involving survivors:

- Refusing to take on or limiting the number of trafficking/modern slavery cases; or
- Taking on cases of clients who are survivors of modern slavery but restricting the work undertaken on that particular aspect of the case. For example, if a client also has an asylum claim, this will be prioritised. This approach is clearly only possible for those clients with an additional protection claim and carries risks should the claim be unsuccessful; or
- Taking on cases of clients who are survivors of modern slavery and dedicating a significant proportion of unpaid time to the case work, often out of standard work times and at personal cost.

Limited capacity of lawyers makes accessing legal advice and representation difficult for survivors of modern slavery

A major implication of the fee structure discussed immediately above is that immigration legal aid lawyers have limited capacity and therefore accessing a lawyer able to advise and/or represent survivors of modern slavery can be very difficult.

I think [legal aid fees] create a culture of trying to train people up to just do the bare minimum to get a file through to claim the fixed fee so that you're running a profit as an organisation. I think it's de-skilling the occupation as a whole because providers are not motivated to put effort into making you good at your job, because there's no compensation for that, because you're only going to get the same fixed fee either way, no matter how much effort you put in or how much you don't. There just aren't as many good advisors that can prepare the case for a victim of trafficking the way it should be prepared. I just don't think they exist anymore in the quantity that they used to and so I think, specifically for this type of application, it's probably getting more and more difficult for them to get placed with an advisor that can do the case justice. (LR04)

This is recognised as a problem with geographic variability. Participants recognised that some parts of the country have no or few legal aid immigration solicitors, and even areas that do have such a legal aid presence can have a demand for legal advice owing to the inability of lawyers to take on certain work.

There are huge parts of the country where you don't really have a legal aid service or you have to travel quite a long way to go there to find a lawyer. People are already so snowed under. If you're in an area where you're the one legal aid provider for this huge radius, you're already going to be lacking capacity. (LR12)

The research findings support the conclusions of Jo Wilding's work on legal aid markers in an immigration context.⁷⁷ She has highlighted the prevalence of both legal aid deserts, areas in which there are no legal aid providers, and droughts, areas in which there appears to be a supply of legal aid providers but clients are nevertheless unable to access advice due to the providers having no capacity to open new cases.⁷⁸

Support provider participants who worked with modern slavery survivors acknowledged the challenge of trying to access legal aid solicitors able to take on clients they were supporting.

[Solicitors] just say that they don't have capacity, and quite often they don't touch anything to do with the trafficking. It all seems like a bit of a convenience cycle. If it's convenient for them. Depending on who you talk to, they might ask you, "Okay, what is the case?" I feel like when they ask that question, they're dithering on whether or not it's too complex... some simply say straight, "No, we have no capacity, try again next month." (SP05)

The need to travel to a different geographic area was mentioned frequently, which could be challenging

Outside of London you would probably really struggle. I know that in some areas you have people travelling really far to find an immigration representative, and that's just any immigration representative, not even an immigration representative who has an expertise in the area of claim. (SP06)

Once they manage to get an appointment we always go with the client for support but also because all of these solicitors are at least an hour away, we'll help them with travel. And then, depending on the level of independence of the client, we may continue to go to. Sometimes they're quite happy to attend alone and they want to attend alone, but we'll always offer to go with them. Some need a little bit more assistance. (SP09)

Liverpool, an area where the discrepancy between supply of legal aid immigration advice and demand is particularly pronounced, provides an illustration within one locality of how all these different pressures and barriers can impact on the ability of survivors of modern slavery to access legal advice.

77. Wilding, J., Droughts and Deserts: A Report on the Immigration Legal Aid Market (Joseph Rowntree Foundation, 2019) <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>. See also Dr Jo Wilding's submissions to the Justice Select Committee's review into Legal Aid. Available at <https://committees.parliament.uk/work/531/the-future-of-legal-aid/publications/>

78. Wilding, J., Droughts and Deserts: A Report on the Immigration Legal Aid Market (Joseph Rowntree Foundation, 2019), p.39.

In-focus

Supporting modern slavery survivors in Liverpool

Research participants who support survivors of modern slavery in Liverpool highlighted how most of their clients had also claimed asylum. In 2020 there were a total of 2,321 people claiming asylum housed in asylum dispersal accommodation in Liverpool, with several initial accommodation centres for those in receipt of s.98 support⁷⁹ with a capacity of hundreds also based in the city.⁸⁰ As such there is a significant number of people claiming asylum in the city, often at the early stages of their asylum claim.

NRM statistics for Liverpool City Region (LCR) reflect the link between trafficking and asylum (and other immigration issues) in the city. Of the 243 referrals to the NRM made in the LCR in 2019, 136 were made by First Responders linked to immigration and asylum.⁸¹

Despite a significant market for asylum cases in the city, only four local law firms currently have legal aid contracts for such work.⁸² Participants based in the city shared how this discrepancy between supply and demand had an effect on the ability of survivors to receive even basic advice and representation on immigration matters.

I think, for example, if you compared Merseyside to London, it's so different, isn't it? There are so many solicitors in London, for example, and the other professionals that I've talked to that work in the area will say things like, "oh, getting legal advice isn't really a problem for us." They've got other challenges but getting legal advice isn't really one of them, whereas it's a real challenge for us... I think a significant part of the work that we do is trying to get people in with solicitors, not just immigration, community care solicitors or housing as well. So, it's not just immigration that's a challenge. (SP02)

We're a dispersal area, aren't we? Also, we're an interview hub [the Liverpool UKVI branch currently undertakes asylum interviews and further submissions for fresh claims for asylum]. Those two factors, and I don't know how many lawyers there are in the city that do the work publicly funded, but not enough. So, then that does mean that those cases are protracted, when maybe if we all had a little bit more room to breathe and focus on them we could get things done... I've got colleagues that work in other cities that say they don't go above 30 cases...whereas I'm four days and I think I've got about 105 cases. (LR02)

The financial models of firms in the city tend to focus on high volumes of asylum cases where there is a straight-forward route to obtaining fixed fees. As such, the complexity and potential delays associated with trafficking/modern slavery cases are perceived as undesirable and avoided by some solicitors even when the clients have legal representation.

79. S.98 of the Immigration and Asylum Act 1999 provides for temporary support to be provided while a decision on full asylum support is being considered, where the applicant is destitute.

80. <https://northwestsmp.org.uk/statistics/>.

81. 65 by UKVI, 47 by Migrant Help (contracted to provide early support for those in s98 accommodation), 22 by immigration enforcement and 2 by UKVI.?

82. Saira Grant, An overview of immigration advice services in England and Wales, Paul Hamlyn Foundation, p. 70

Those solicitors in the city who do have a speciality or good knowledge of how to run cases with a modern slavery aspect are few and highly sought after by NRM and other support providers who want to ensure their client's trafficking cases are fully considered. During the interviews, support providers in Liverpool routinely identified the same three solicitors, across two firms, that they could trust to be pro-active.

The people that we specifically go to, not in terms of the firm but the actual named solicitor we will go to because we think that they are proactive on the NRM side...in terms of specific people that I would say work really well on trafficking cases, it's maybe a handful. (SPO1)

I only know of one other lawyer [in Liverpool] that's as passionate about this area as I am, I don't know what the skills are like in the rest of the city for understanding. (LR02)

Solicitors in the city with a trafficking specialism have a good reputation because of their ability to work sensitively with clients and be pro-active in working within the NRM framework to achieve positive legal outcomes for clients, such as recognition under the NRM and a more secure immigration status. However, they often find it difficult to balance these skills with the realities of a financial legal aid model that renders escape fees unviable. Instead, the quality of legal advice and representation survivors receive can be dependent on the passion of individual solicitors and their ability to offset losses on modern slavery and trafficking work with other more financially viable work. This reduces the already highly limited capacity for pro-active legal support for survivors in the city.

I do like to keep my trafficking to be about 15% of my caseload, not more than that... some organisations will work towards [an] escape fee...but in Liverpool you can't do that because that means I'm helping probably three or four times less people than I would help. It's just not viable in a city like Liverpool...Solicitors have targets, it's usually three times your salary, so you know, if you're running two cases for the price of one, how many of those cases are you going to take on? So, you're not going to be invested in learning the skills for those cases because then you'll be the one that's expected to do those cases. So, it's like there's a barrier there straightaway to access to justice for these people... only people that really have a deep passion for it...are going to do it. (LR02)

A precarious situation has arisen in Liverpool where support providers rely on a small pool of solicitors to advise and represent their trafficked clients, but solicitors with specialism in trafficking in the city are uncertain about being able to continue this work.

I used to take on trafficking, because I really love trafficking cases, but because of what I'm talking about, it's just put me off, I just don't want to do trafficking cases anymore and I find it a real pity, because I do have the expertise but I just haven't got the capacity to deal with the funding, the Legal Aid Agency, the Competent Authority, and everything that comes with it. (LR03)

I can't stress enough how difficult it is to stay in this profession and to keep going...in the face of the lack of remuneration ... it's just really hard and I feel like we are being squeezed out. That's how I feel. (LR02)

iii) High quality Immigration legal aid practitioners are spending time rectifying previous poor-quality advice from other legal practitioners

Many of the lawyer participants commented on the work they sometimes had to undertake on cases in order to rectify problems that had arisen due to the case previously having been mishandled by a different legal practitioner. This speaks to the existence of poor-quality legal providers with insufficient expertise, or willingness, to fully analyse the elements of an individual's case which pertain to their modern slavery experience. This is another point of synergy with the findings of Jo Wilding's research: she refers to the 'failure demand' brought about as a consequence of poor-quality providers mishandling cases that then requires 'rescue' work by another lawyer.⁸³ This is another factor contributing to the complexity of cases involving survivors of modern slavery. The sentiment that 'no advice is sometimes better than bad advice' was expressed by some legal practitioners on the basis that, once legal advice has been provided, the client is deemed to have acted on advice (and the assumption is that such advice was of a competent standard). This has the effect of making it difficult to explain why a client had not made certain disclosures or mentioned certain experiences at an earlier stage when, in actual fact, this may have been the consequence of a poor standard of legal advice having been previously accessed.

I mean, we do see cases where we can't really see if any proper advice has been given to the client. So a lot of our cases are cases that failed elsewhere. So we don't see cases that have succeeded elsewhere, it's cases that failed elsewhere. There's one particular law firm where I've never actually ever seen a letter to a client that's actually giving advice about the detail of the case. So it seems to be a bit of a factory. So the person comes in and the firm might do a fresh claim for them. Sometimes they charge them, sometimes they do them with legal aid, but it just seems to a bit of a copy and paste, it doesn't seem to be any kind of proper analysis of the case or thought about issues like trafficking. I think there's huge variation. Some legal aid firms or some legal aid professionals deal with all these issues and do it properly. I think that's few and far between, and we know who they are and it's really pure chance which. Someone who has a lawyer who doesn't do a good job for them is sometimes in a worse position than someone who doesn't have a lawyer. So I think that issues of equality are really important, and we seem to be in a situation where quality has been... there is still quality provision but in some parts of the sector quality has been driven down to such an extent that it's become a sort of a conveyor belt factory of you just do this and this and this and then send that out and then if it fails, you say to the client, "it's failed, sorry," but without sufficient analysis. I think the firms that do well, the practitioners that do well are the ones that do a really good case analysis. The ones that don't are the ones that it proceeds on a kind of a conveyor belt factory. (LR16)

We've done a few cases where you've got the case and it was with another solicitor previously, and then you get the records and you realise it was really obvious that there was a trafficking claim but they just didn't know about it and hadn't done anything about it, or had let it lapse, they'd let the JR deadline lapse for challenging a negative decision. It's often those High Street immigration practitioners, I think that they're not always that clued-up or have got the will to do anything about it. They just think, "I can't do it," So they just leave it. (LR08)

83. Wilding, J., *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (Joseph Rowntree Foundation, 2019) <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf> p.2.

iv) Support providers play a vital conduit role in connecting survivors to legal advice

Against the backdrop of the challenges involved in accessing legal advice, lawyer participants consistently spoke of the important role played by some NRM subcontracted services in helping their clients to access quality legal advice. The vast majority of solicitors received their referrals of clients who were survivors of modern slavery directly from support providers; demonstrating their key role in acting as a mediator between their clients and their legal representatives.

I think they're great at, first of all, accompanying the person to the appointment [with the legal representative]. This is when it was in person, obviously, because I think that just really helped people to feel comfortable and at ease and confident, so that introduction. Liaising about getting paperwork together, scanning the paperwork through, getting the information for the legal aid applications, coming to subsequent appointments. If you felt that you weren't getting through to the person then sometimes you can use the support worker to help convey information or get- not get instructions, but just assist with the communication, I guess. I think they're really essential, actually, and it's always much easier if there is a support worker involved. Certainly, when people's mental health is up and down, I think they're really necessary, because I've had a number of clients who dropped-off the radar, and we just don't have the time to go looking for people, whereas you can say, "would you mind doing that?" I think it's good really good. It definitely makes a difference. (LR08)

It was also clear from interviews with support worker participants that many supporting those in the NRM are passionate and endeavour to follow the Survivor Care Standards. All participants from this group outlined their perseverance when finding solicitors for their clients, even if they had to do this within the challenging and compromised legal markets. All of the participants were also relatively experienced, with several years' experience in their roles and having picked up skills on-the-job or via specialist external training. None of the NRM subcontracted support workers, however, identified compulsory training for staff that went into a high level of detail about legal rights and entitlements for survivors of modern slavery. Lawyer participants, moreover, observed that high turnover of staff meant that all positive experiences they had working with support workers were tempered with frustration at having to 'start over' with new staff – a regular occurrence – who appeared to not have been trained to deliver the same level of support of their more experienced colleagues.

There are some absolutely wonderful support workers out there...but I see fewer of those long-standing experienced individuals...there's just such a high turnover of people working in support worker roles, [they] don't really have the opportunity...to get up to speed on different issues. And you have such a high number of clients, and based all over, with such a diversity of needs now that you have to be meeting, I don't see how anyone has the time to do everything that you need to do. I remember I had a client who was receiving outreach support, I'd say three or four, two to three years I was working with her, and she had a number of different workers, and she couldn't even remember their name...she said that they would come, give her the money and leave again...there's an absolute spectrum of knowledge and experience and the support that the client gets is directly proportional to that knowledge and experience. (LR17)

So once you've kind of trained [an NRM support worker] in how you run a trafficking case, they're really great and they know what they're doing and then they're gone, and it's a different support worker for each case so for each case I'm trying to train someone...It still helps me more than trying to do it on my own, fostering those relationships, but it can be quite frustrating. I just think that there could be some kind of top-down training on that rather than me training every single person that comes to my room with a, you know, person that's been trafficked. (LR02)

3. Survivors' understanding of the NRM referral process and interaction with First Responders: room for improvement

The previous section outlined challenges in accessing legal aid funded advice for survivors with entitlement to legal aid, because they have a positive RG decision. The focus of this section is instead on those survivors who have not yet been referred into the NRM and, as such, have no entitlement to legal aid for immigration advice as a modern slavery victim.⁸⁴

i) Circumstances and nature of NRM referrals can undermine the process of informed consent and disempower survivors

It is a requirement that adults who are considered to be potential victims of modern slavery provide informed consent to their referral into the NRM.⁸⁵ It is First Responders who are responsible for obtaining informed consent. The NRM referral process moved online in 2019 and First Responders are required, under the statutory guidance, only to 'record that they have obtained consent when completing a referral through the Modern Slavery Portal.'⁸⁶ Informed consent is widely acknowledged as a critical component in empowering survivors. For example, in the *Principles that underpin early support provision for survivors of trafficking*, produced jointly by the British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit, it states:

'Supporting survivors to regain trust in their own ability to control their lives is a crucial step towards reducing their vulnerability and preventing re-victimisation. The ability to move freely and make their own decisions is integral...

It is essential that they can make an informed choice in disclosing information and in permitting it to be shared with other professionals and services. This is the only way in which they will be able to provide informed consent.'⁸⁷

Concerns were expressed by participants in our research about the extent to which survivors are genuinely given the opportunity to provide their informed consent to First Responders to enter the NRM.

People are going into the NRM without even knowing what the NRM is sometimes. It's not being explained properly, alternatives haven't been explained and then they're in the NRM and not seeing or getting legal advice until some weeks or months down the line, which is almost too late to help them by then or for them to actually make proper informed decisions. (SP12)

84. As detailed in C above, those who are seeking asylum do have entitlement to legal aid advice on that basis.

85. Home Office, Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland, Version 2.0. Available at <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims> 5.30.

86. Home Office, Modern Slavery: Statutory Guidance for England and Wales, 5.32.

87. British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit, *Principles that underpin early support provision for survivors of trafficking* (2018) <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/human-trafficking-and-slavery> p.3.

You've got [First Responders] that will sort of make notes and just say "sign this, you said you're trafficked and I've said how this happened". They [the clients] don't know what's on that piece of paper or what's written. When I come and meet them quite often they don't have a copy of that, they don't even have a copy of their own information. I think it's something we really want to flag up, because that's against all the Government's own guidance. The Government is very clear that people should have informed consent and should be given time to consider options, and informed consent means that they know the alternatives. I think it's quite concerning if you're saying that so many clients just signed a paper and they didn't really understand what it was. Although it might not, on the surface, seem like that's a problem related to this research about legal advice, it shows that there is a lack of legal advice on the NRM. For a non-legal advisor to say to someone, "I'm going to put an asylum claim in for you," would be against the law, but people are able to do the same thing for NRM without acknowledging the potential. You're saying that everyone that you know in the NRM does need legal advice so to treat is almost as a non-legal system seems. (SP05)

There is a link between our findings and research by Carole Murphy in which she found that some First Responders' limited knowledge of the needs of survivors of modern slavery and the NRM referral process results in referrals 'done hastily and with limited information, with the potential for causing a backload of work and hindering the ability to help those most in need.'⁸⁸ Participants in our research also highlighted that similar knowledge gaps meant that some First Responders followed procedures that did not engage or give effect to survivors' own needs or wishes.

Linked to the issue of informed consent is the extent to which survivors are able to access the information relevant to their own referral, such as the referral form. The Human Trafficking Foundation's *Slavery and Trafficking Survivor Care Standards*, now adopted by the Home Office, provide that:

'if a referral to the NRM is made, the survivor should be read the content of the NRM form in a language they understand before they sign the form...[and] should be provided with a copy of the NRM form at the point it is submitted and know they can request copies in the future'.⁸⁹

Despite this, there is no statutory guidance which obliges First Responders to share and translate NRM submissions and so it is done only at the discretion of First Responders. Such good practice was described as having become less common following the NRM referral process moving online:

88. Murphy, C., *A Game of Chance? Long-term Support for Survivors of Modern Slavery*, The Bakhita Centre, St Mary's University (2018), p.12. <https://www.stmarys.ac.uk/research/centres/bakhita/docs/2018-jun-a-game-of-chance.pdf>

89. Human Trafficking Foundation, 'The Slavery and Trafficking Survivor Care Standards', 2018. <https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf> 2.1.1, p.39.

It's worse now than it ever has been in terms of the victim getting the [NRM] form. [First responders] are often not with the victim when they submit it, so it's not getting read back to them. Quite routinely we would get those forms previously, because they would have to get sent back up to the victim to sign them because they hadn't been signed at the time. There's no signature needed now, so they don't even see a copy of it. (SP07)

NRM referrals are often done in stressful and overwhelming contexts, such as Home Office asylum interviews or following police raids, and have the potential to re-traumatise survivors.⁹⁰ Without the First Responder adequately explaining the NRM or adopting a trauma informed approach, the risk of survivors of modern slavery being unable to give complete and accurate statements, or the transcripts of this information containing errors, is high.

The screening interview process at Croydon is completely chaotic. If it's a female client, you may not have a female interpreter or a female interviewing officer. And I've been at these interviews, I've been present at them and they are chaotic. They can be aggressive, because they've got a lot to get through in a whole day. (LR06)

There can be further implications of NRM referrals being made in such rushed and intense circumstances. A number of participants explained that statements submitted with the NRM referral, particularly those submitted without having being checked by the person being referred, can contain inconsistencies. These, in turn, might be picked up by decision-makers and then contribute to a negative RG decision.

90. Murphy, C. 'A Game of Chance?' pp.12-14 ; British Red Cross, 'First Steps to Safety? The role of reception centres in supporting people out of exploitation', 2020.

ii) Legal aid funded immigration advice prior to an NRM referral: a potential way to empower survivors and improve the quality of referrals

Many of the participants interviewed for the project expressed the view that a way to improve survivors' understanding of the NRM process and to enhance their confidence to engage with the referral would be introducing entitlement for legal aid immigration advice prior to referral. Independent legal advice at this earlier stage was seen as a way of empowering survivors, increasing the potential for consent to be genuinely informed.

To have someone explain to you there is a legal framework and emphasise that what's happened is wrong and illegal,[because] I think that a lot of clients feel quite maybe shameful of what's happened to them or maybe like it was their fault, they take responsibility. So, to have someone say, "right, what's happened to you sits within this framework and it is illegal and there's therefore a process now," sort of allows people to acknowledge that it wasn't their fault and I think that's really important to someone's recovery. (SP02)

I think that there is kind of an absolute need for somebody in their pre NRM stage to get legal advice on their immigration status and their rights, and possibly also in terms of the implications for them if they don't enter the NRM. (SP12)

The understanding that legal advice at an early stage is important for survivors in terms of their potential to fully understand the process and consent corroborates the recommendation in the *Principles that underpin early support provision for survivors of trafficking*, that:

'To ensure that adult victims of trafficking and slavery are able to give informed consent to a referral into the NRM, potential victims should be entitled to up to five hours of legally aided immigration advice prior to making a decision as to whether to enter the NRM. Services providing early support, including Places of Safety, should secure links with independent legal advisors that have experience of working with this client group and can offer specialist knowledge in face to face sessions. Legal aid is not automatically available in England and Wales pre-NRM for immigration advice, but a straightforward amendment to the operation of the existing legal aid scheme would enable this advice to be delivered.'⁹¹

Legal advice at an earlier stage was also seen as important for improving the overall quality of NRM referrals and therefore increasing the likelihood of legal issues being resolved sooner, potentially reducing the complexity of the case in the long-term.

The advice before the NRM is really important and I think there isn't awareness out there about literally how important that is, and really how cost saving that is, because I'm taking cases to the High Court to judicial review because refusals and decisions are citing discrepancies between NRM referral and what the client said,

91. British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit, *Principles that underpin early support provision for survivors of trafficking* (2018) <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/human-trafficking-and-slavery> p.8.

but the people doing the NRM referral are not trained to elicit information from a vulnerable person that's subject to modern slavery. So, it's like everything, I feel, with public funding. Spending thousands of pounds at the end, millions probably, when we could just spend a little bit of money at the beginning and then it will just save so much money and time and effort and trauma. (LRO2)

Some research participants are involved in projects that give insight to the potential positive impact of such early legal advice, both in terms of enhancing the opportunity of informed consent and improving the quality of the referral. Given that legal advice for immigration prior to NRM referral is not in scope, these types of project operate outside of the legal aid scheme and the immigration contract.

For example, Refugee Women Connect (RWC) run an Anti-Trafficking project in Liverpool to support women who want to or recently have been referred to the NRM. It was set up in response to their clients' NRM or asylum cases being frustrated by perceived 'inconsistencies' identified by the Home Office that were often the result of inaccurate statements taken in asylum interviews or by Migrant Help, a charity contracted by the Home Office to support people claiming asylum in the early stages of their applications.

We've had clients where their screening interviews and substantive interviews, their information's been taken down incorrectly, for whatever reason, and they're then getting refusals because their credibility is being questioned...there is a complete lack of informed consent and I think that that ultimately lies with the first responder because they're the ones taking a statement, and that means that someone's recounted what's happened to them without understanding why they're telling that story, which is really, really worrying. (SP01)

RWC have begun to form networks with a small number of local solicitors who are willing to provide short-term advice by looking over NRM referrals for any potential inconsistencies. Over the past 18 months no women accessing the service have received negative RG decisions.

Solicitors have been able to rectify issues in screening interviews, simple things like dates that the Home Office has recorded incorrectly have been addressed from the get-go and it just means that someone's credibility isn't being questioned later down the line, because from the very start someone's been overseeing what's going on, so it can make all the difference. (SP01)

iii) Exceptional Case Funding (ECF) is not currently perceived by legal practitioners as a suitable option for facilitating pre-NRM referral advice for survivors

Exceptional Case Funding (ECF), introduced by s.10 of LASPO 2012, provides a potential avenue for those who would not otherwise be entitled to legal aid to access it, so long as they would financially qualify for legal aid in the usual way (i.e. through the means test). The premise of ECF is to ensure the UK satisfies its obligations under the European Convention on Human Rights (and previously European Union law) despite the more restrictive nature of legal aid following LASPO.⁹² ECF can only be obtained by application to the Legal Aid Agency and the test is whether an individual can present their case effectively and fairly without legal aid.

In the case of *R (on the application of) Gudanaviciene v Director of Legal Aid Casework*⁹³ the Court of Appeal held that there is no automatic right to legal aid for victims of trafficking in relation to an application for leave to remain prior to an RG decision. However, the Court did also suggest that:

‘There is force in the argument that without legal advice some (perhaps many) potential VOTs will keep away from the NRM process when they would otherwise have entered it.’ (para. 123, ii).

This suggests that ECF applications hold potential for securing legal aid prior to an NRM referral. The vast majority of participants reported, however, that they had no experience of pursuing ECF for their clients who had experienced trafficking. They described the applications as time-consuming and unlikely to be successful.

The process for applying for exceptional case funding would simply be a barrier to even thinking about doing it. It’s too time consuming and takes far too much time for the amount of money you may eventually get if they agree at some point in the future. It’s just pointless. (LR10)

There was one highly specialised solicitor who had applied for ECF before on behalf of clients who experienced trafficking, but they spoke of it as creating financial risk that they as a provider could not afford to take. Developing the application itself would amount to a lot of work for which payment will only be made if it proves successful.

92. LASPO removed a number of areas from the scope of legal aid, including employment, welfare benefits, most areas of housing and debt. On the impact, see Organ, J. and Sigafoos, J., The impact of LASPO on routes to justice (EHRC, 2018) <https://www.equalityhumanrights.com/sites/default/files/the-impact-of-laspo-on-routes-to-justice-september-2018.pdf>

93. [2014] EWCA Civ 1622

We do not, as a general rule, apply for ECF unless it is part of an existing client's case. That is because of the risk involved, because there's so many elements of risk in legal aid funding at all the different stages. Judicial review, even the cases we do on immigration, not knowing if we're going to get paid on them, not knowing if the Legal Aid Agency is just going to argue that our legal aid forms aren't right so we were never allowed to do this work in the first place, it's thousands of pounds. So, so many elements of risk. This is one more hugely risky area, so we wouldn't take on any volume of it because we just can't financially afford to do that. (LR17)

Another legal practitioner similarly understood the potential for ECF applications to be made in respect of pre-NRM referral legal aid, as well as why solicitors regard them as perilous.

We can justify exceptional case funding in pretty much every non-asylum immigration case involving victims of trafficking [but] you need a solicitor who's prepared to do that, though, because it's a lot of upfront free work, and you don't get paid for making the application, you only get paid if the application's successful. (LRO1)

F. Conclusions

The project findings clearly underline the critical importance of legal advice and representation for survivors of modern slavery. Access to legal advice and representation is especially significant for navigating the complexities of immigration law and ensuring that people in need of protection are not returned to harm and for being formally recognised as a victim of modern slavery. A secure immigration status is foundational to the ability to access broader support entitlements and to making progress towards recovery by reducing the likelihood of destitution and re-trafficking.

The research found a number of significant challenges in relation to survivors' access to legal aid, including uncertainty as to when legal aid will be available and for which areas of law. Crucially, the research underscores the inadequacies of the funding structures for facilitating the delivery of good quality immigration legal advice and representation to survivors. The limited nature of fixed fees and risks associated with escape fees to cases involving trafficking/modern slavery conspire to disincentivise the taking on of such cases at all, or, encourage restricting the level of work carried out on a case. It is also clear that some dedicated legal practitioners are carrying out legal work on behalf of survivors without receiving adequate payment, in their own time, and at personal cost to their own wellbeing. They are also spending time rectifying poor-quality legal work carried out on survivors' cases by other legal practitioners.

The current legal aid fee structure undermines the importance of the modern slavery experience and the long-term trauma of survivors, limiting the potential for survivors to access justice. The legal aid model is unsustainable in the long-term, given the disjunction between demand and supply of immigration legal advice for survivors of modern slavery. The current system places an unmaintainable burden on individual practitioners with known expertise, particularly in geographical areas where there are insufficient numbers of experienced legal aid practitioners to meet the demand. The payment structure is contributing to the existence of legal advice deserts and droughts for survivors of modern slavery.

Another important issue that the research has identified relates to the process of referral into the NRM, and the tendency for survivors to be disempowered by the approach of some First Responders, especially in the context of informed consent. There is much scope for improving the level of empowerment of survivors at this stage by encouraging a level of involvement and understanding of the process and survivors' potential legal entitlements. While there is no automatic entitlement to legal aid for immigration advice prior to an NRM referral, Exceptional Case Funding offers a potential pathway to access; however, the research found that this is largely considered by lawyers to be financially risky or time consuming as to warrant an application.

Finally, the research demonstrates that even when survivors gain access to legal advice, there remain challenges. Principally, the degree of delay within the NRM is widely regarded as damaging to survivors' interests and affects how many modern slavery cases representatives can take on. There is widespread recognition that, when resources and capacity allow, strong partnerships between support workers and legal representatives can secure positive results for survivors. However, at present, there are significant concerns about the stability of such partnerships with capacity an issue of concern in both the relevant legal and support sectors.



G. Recommendations

For the Home Office and Ministry of Justice: importance of legal aid for facilitating access to independent legal advice

1. We recommend that survivors' access to legal aid be placed at the centre of future considerations as to how access to legal advice for survivors can be improved.

The Government's New Plan for Immigration⁹⁴ includes an announcement to consider how to improve survivors' access to legal advice, as part of a new 'one stop' process in which all protection-related issues are raised upfront.⁹⁵ The findings of the research underline the importance of independent, funded and high quality legal advice for survivors of modern slavery.

For the Home Office: Leave to Remain

2. We recommend that a minimum of one year Leave to Remain be granted automatically following all positive Conclusive Grounds decisions for those without secure immigration status.

This would provide survivors with some stability and time to recover, helping them to feel safer, avoid destitution and re-trafficking.

An automatic grant of one year Leave to Remain is the minimum that should be considered for all confirmed victims, in line with the proposals set out in the Modern Slavery (Victim Support) Bill, introduced by Lord McColl in the House of Lords in 2019/2020 parliamentary session. This bill proposed providing people with positive Conclusive Grounds decisions with one year of Discretionary Leave to Remain. However, it is important to note that other specialist organisations recommend a longer period of Leave to Remain to support survivors' long-term recovery, including the British Red Cross recommending 30 months,⁹⁶ and the Helen Bamber Foundation a minimum period of three years.⁹⁷

We note also that there is precedent for automatic leave to remain being granted in other categories, for example in Unaccompanied Asylum Seeker Children cases, even in the event of the asylum application being refused.

94. HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021 <https://www.gov.uk/government/consultations/new-plan-for-immigration>

95. HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021, p.28.

96. <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>

97. <http://www.helenbamber.org/wp-content/uploads/2020/04/HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf>

For the Ministry of Justice and the Home Office: more robust data collection on survivors' legal aid access

3. We recommend that the Ministry of Justice and the Home Office routinely collect and publish statistical data on those with a positive Reasonable or Conclusive Grounds NRM decision who gain access to legal aid for asylum, immigration (non asylum) and advice on a trafficking compensation claim.

This would provide a fuller picture about the proportion of survivors who are able to access legal aid advice and give a clearer indication of the scale of the issues.

For the Ministry of Justice: legal aid payments

4. We recommend that immigration and asylum cases funded by legal aid for potential and confirmed victims of modern slavery be paid on an hourly rate, in line with Unaccompanied Asylum Seeking Children cases.

Changing the way immigration legal aid work is remunerated in cases involving survivors of modern slavery is essential in order to encourage and facilitate an increase in available provision and in the quality of legal advice. Paying legal practitioners for their case work on an hourly basis is a clear way to make such cases financially viable.

For the Ministry of Justice and the Home Office: clear statement of legal aid entitlement

5. We recommend that the Ministry of Justice and the Home Office produce a statement which positively, clearly and comprehensively expresses the legal aid entitlement of survivors in England and Wales, across all legal areas, providing more detail than set out in the current statutory guidance (under section 49 of the Modern Slavery Act 2015).

This will enable legal practitioners, support providers and First Responders to advise survivors with more certainty, therefore improving access to legally aid funded advice for survivors.

For the Ministry of Justice: pre-NRM advice

6. We recommend that those individuals with indicators of modern slavery should automatically fall within the scope of legal aid for a minimum of five hours independent immigration advice from a legal aid lawyer prior to making an NRM referral.

Indicators of modern slavery can be identified by services providing early or frontline advice and support (e.g. community organisations and charities, not limited to First Responder organisations). In a practical sense, to implement this recommendation, frontline organisations could produce a letter setting out the indicators present in respect of an individual applicant. Legal aid providers could then offer legal advice when satisfied that such indicators were present. This would be analogous to the approach that currently exists for survivors who want legally aided advice in respect of a compensation claim.⁹⁸ For such claims, it is not necessary to have a Reasonable Grounds NRM decision and indicators can be identified by a range of organisations.

Services that provide early support to survivors, including 'Places of Safety', are in a position to build links with independent legal aid immigration advisors who have experience of working with survivors and can offer specialist advice. This is consistent with the ten core principles for places of safety⁹⁹ developed by the British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit.¹⁰⁰

For the Home Office: sharing the referral form

7. We recommend that the Home Office introduce a requirement that those referred into the NRM be provided with a basic copy of their referral and accompanying documents (considering what specific information is needed which would not compromise ongoing investigations), have these verbally translated to them, be asked to sign them before they are submitted and be given an explanation how the information given in the referral will be used by the Single Competent Authority to make a decision.

Introducing a requirement that those referred into the NRM be provided with a copy of their referral in a language that they understand is in line with the Human Trafficking Foundation's Slavery and Trafficking Survivor Care Standards, which have now been adopted by the Home Office.

Providing a basic version of the referral form to those referred will have positive implications for the understanding and empowerment of survivors. It will also help to facilitate the provision of focused legal advice, as the individuals will be able to share the information with their legal adviser at an earlier point.

98. Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, para. 32.

99. https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5c08f8f54ae2375db96f6713/1544091902062/Places+of+Safety_BRC_ATLEU_HTF_ATMG.pdf

100. British Red Cross, Human Trafficking Foundation, Anti-Trafficking Monitoring Group and Anti Trafficking and Labour Exploitation Unit, Principles that underpin early support provision for survivors of trafficking, November 2018.

For the Home Office: training for First Responders

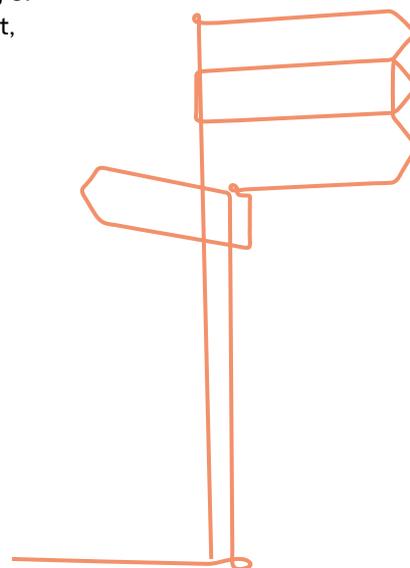
8. We recommend First Responders are trained in line with Tier 2 of the Skills for Care Training Framework for Identification, Care and Support of Victims and Survivors of Modern Slavery and Human Trafficking.¹⁰¹

We welcome the commitment made by the Government in its New Plan for Immigration to improve the training given to First Responders.¹⁰² In making such improvements we recommend that Tier 2 of the Skills for Care Training Framework is particularly apt as a standard for First Responders to be trained to. This Tier includes: understanding of the effect of trauma on memory recall and how individuals describe what has happened to them; understanding of how to employ trauma-informed approaches to their interactions with survivors; the complexities of gaining informed consent; and the importance of clear documentation and good record keeping.

For the Home Office: training for support providers

9. We recommend that all NRM support providers are trained in line with a minimum of Tier 3 of the Skills for Care Training Framework for Identification, Care and Support of Victims and Survivors of Modern Slavery and Human Trafficking. This should be accompanied by a requirement to carry out ongoing Continuing Professional Development on a regular basis to continually build their knowledge.

We recommend Tier 3 of the Skills for Care Training Framework as particularly apt to enable support providers to gain understanding of what good quality legal advice looks like for survivors they support, to allow them to advocate effectively for such on behalf of their clients and to help drive standards up.



¹⁰¹ Skills for Care, Training Framework: Identification, Care and Support of Victims and Survivors of Modern Slavery and Human Trafficking (2020) pp.18-19. <https://www.antislaverycommissioner.co.uk/media/1468/training-framework-identification-care-and-support-of-victims-and-survivors-of-modern-slavery-and-human-trafficking.pdf>

¹⁰² HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021, p.32.

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