

Access to legal advice and representation for survivors of modern slavery

Research Summary

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May 2021



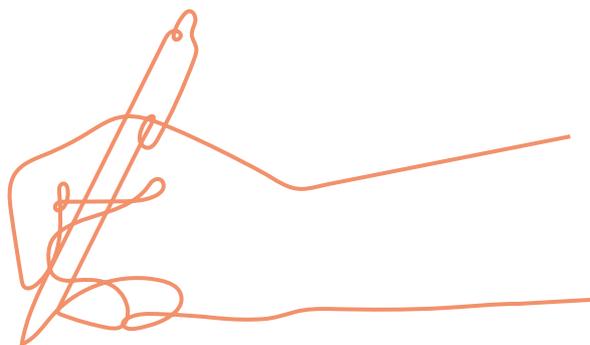
Research by

This is a Research Summary of the report **Access to legal advice and representation for survivors of modern slavery**, by Dr Samantha Currie and Dr Matthew Young from the University of Liverpool. The research team was comprised of: Dr Samantha Currie, Dr Matthew Young, Johanna Bezzano (University of Liverpool), Victoria Marks (Anti Trafficking and Labour Exploitation Unit), Lucy Mair (Garden Court North Chambers, Manchester), Dr Katarina Schwarz and Dr Katy Ferris (the Rights Lab, University of Nottingham).

The research was funded by the Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC). The views expressed in the report are those of the authors and not necessarily of the Modern Slavery PEC. Full report can be found at the Centre's website at www.modernslaverypec.org.

Key findings

- **Legal advice and representation for survivors of modern slavery are key to being formally recognised as a victim, securing immigration status and upholding their rights. These in turn are foundational to the ability of survivors to make progress towards recovery and reducing their vulnerability to re-trafficking.**
- **There are significant barriers for survivors to access legal aid, including uncertainty about the extent of survivors' entitlements. The funding structure for immigration legal aid discourages lawyers from taking on modern slavery cases, contributes to a shortfall in available legal provision, and is inadequate to deliver good quality legal advice and representation to survivors.**
- **Engagement with the NRM process and interaction with First Responders could be improved to be more constructive and meaningful for survivors.**



Under the Council of Europe Convention on action Against Trafficking in Human Beings (ECAT), the UK has legal obligations to ensure that people who have experienced trafficking are entitled to legal assistance and to free legal aid.¹ However, concerns have been raised by practitioners about legal support provision for potential victims.

This research sought to interrogate identified deficiencies in the provision of legal advice and representation for survivors of modern slavery, explore the causes and consequences of these failures, situate access to legal services within the context of the UK's international obligations, and investigate the impact of representation by qualified legal practitioners on outcomes for victims. The research focussed particularly on access to legal aid in England in respect of survivors' immigration status.

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), the framework established by the UK government to identify and support victims of modern slavery. 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 legal problems faced is frequently the need to gain a secure immigration status.³ For this reason, the project examined the role of legal aid lawyers whose main specialism is immigration law and have experience of navigating the NRM and immigration frameworks on behalf of their clients.

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. Geographically, the research engaged with legal practitioners and support providers in England (outside of London), with particular representation in the North West, East Midlands and South Yorkshire. A total of 30 semi-structured interviews were conducted with lawyers and support providers. This research did not attempt to cover survivors' experiences of accessing legal advice or their perceptions of any legal representation.

1. Under Article 15(2) of the Convention: 'Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law'.

2. E.g. 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> and British Red Cross, Hope for the Future: Support for Survivors of Trafficking after the NRM (2019) https://theuniversityofliverpool-my.sharepoint.com/personal/currie.liverpool_ac_uk/Documents/Documents/MSPEC/Final%20Reports%2016%20April/Exec%20sum_feedback%20integrated_16%20April.docx.

3. See 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> and 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>.

Research findings

1. Legal advice and representation for survivors of modern slavery is key to being formally recognised as a victim, securing immigration status and upholding their rights.

- A secure immigration status is foundational to the ability of survivors of modern slavery to access stability and support, and to make progress towards recovery by reducing their vulnerability to destitution, exploitation and re-trafficking.
- Access to legal advice and representation is critically important for the ability of survivors of modern slavery to navigate the complexities of immigration law in order to achieve such security of status. Cases with a trafficking and modern slavery dimension are typically more complex than standard protection claims and require a high level of good quality legal advice.
- Legal representation can also be important for securing recognition as a victim of modern slavery under the NRM.
- 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.

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 Immigration 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.⁴ The findings of the research underline the importance of independent, funded and high quality legal advice for survivors of modern slavery.

4. HM Government, A New Plan for Immigration Policy Statement, published on 24 March 2021, p.28. <https://www.gov.uk/government/consultations/new-plan-for-immigration>

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,⁵ and the Helen Bamber Foundation a minimum period of three years.⁶

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.

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

3. We recommend that 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.

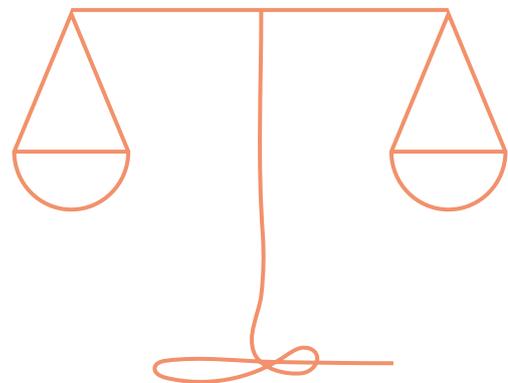


5. <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/human-trafficking-and-slavery/after-the-national-referral-mechanism-report>

6. <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>

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

- There are a number of significant challenges in relation to survivors' access to legal aid, including general uncertainty as to when legal aid will be available and for which areas of law. Such uncertainty extends to some First Responders, support providers and legal practitioners.
- The funding structure for immigration legal aid is inadequate to deliver good quality immigration legal advice and representation to survivors. It is contributing to a shortfall in available legal provision. The limited nature of fixed fees for legal advice and risks associated with escape fees (available only when the work carried out on a case exceeds at least three times the value of the fixed fee) discourages lawyers from taking on such cases. It also encourages restricting the level of work carried out on a case, impacting on the supply and quality of the legal provision.
- Dedicated legal practitioners are carrying out legal work on behalf of survivors without receiving adequate payment, in their own time, and at personal cost. They may also spend time rectifying previous poor-quality legal work carried out on survivors' cases.
- 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.



Recommendations

For the Ministry of Justice: legal aid payments

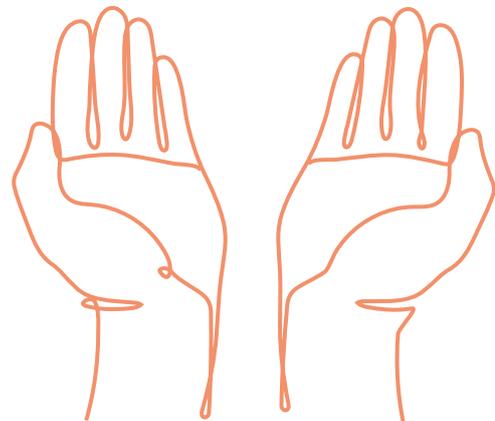
4. We recommend that immigration and asylum cases funded by legal aid for potential and confirmed victims of modern slavery be paid on an hourly rate, in line with Unaccompanied Asylum Seeking Children cases.

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

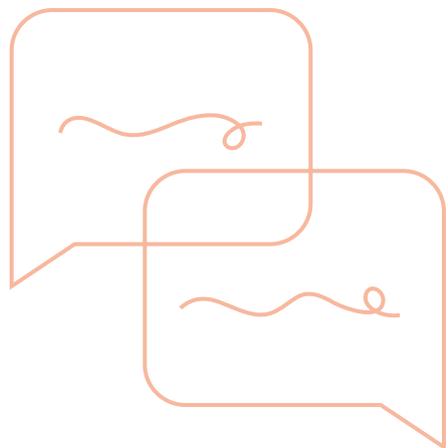
5. We recommend that the Ministry of Justice and the Home Office produce a statement which positively, clearly and comprehensively expresses the legal aid entitlement of survivors in England and Wales, across all legal areas, providing more detail than set out in the current statutory guidance (under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



3. Engagement with the NRM process and interaction with First Responders could be improved to be more constructive and meaningful for survivors.

- The research identified that the process of referral into the NRM can disempower survivors and prevent them from providing their informed consent, necessary for making an adult referral. Informed consent can be undermined by hasty referrals which may be undertaken in stressful or re-traumatising circumstances, survivors not fully understanding what the NRM is or what the alternatives are, and not being made aware of or provided with a copy of the information contained in the referral.
- There is scope for First Responders to improve the level of engagement and empowerment of survivors at this stage by encouraging an understanding of the process, and by ensuring that survivors are aware of the basis of their referral, the NRM process and its practical implications.
- 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 valuable advice from an independent legal adviser at this stage. This allows 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). However, the research found that this is largely considered to be too costly or time consuming a process as to warrant an application.



Recommendations

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.⁷ 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 safety⁸ developed by the British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit.⁹

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.

7. Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, para. 32 <https://www.legislation.gov.uk/ukpga/2012/10/schedule/1/paragraph/32/enacted>.

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

9. 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.¹⁰

In its New Plan for Immigration the government announced its intention to strengthen the support given to First Responders. When considering such measures 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.



10. 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>.

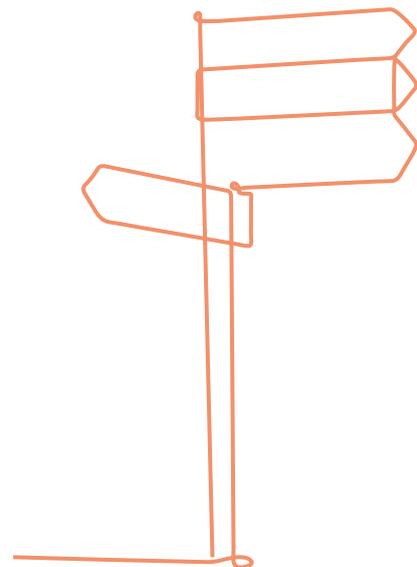
Conclusion

The current legal aid fee structure is insufficient to meet the cost of the work required to resolve survivors' legal issues. This 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 unmanageable 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. Given the critical importance of legal advice for survivors – for securing immigration status but also more broadly in terms of facilitating access to support and helping to achieve recovery – ensuring survivors' access to legally aided representation should be a priority.

Areas for future research

Looking ahead, it would be instructive for further research to be carried out in order to gain better understanding of survivors' direct experiences of seeking legal aid funded advice and their views on any legal advice or representation received. Added to this, investigation into how other UK jurisdictions are implementing their obligations under ECAT should be undertaken, including to identify areas of good practice. The project exposed the limited quantitative data available on access to legal aid for survivors of modern slavery. A fuller statistical picture of the numbers of those referred to the NRM who do access legal aid, and for what type of advice, would strengthen understanding of the scale of the issues faced.



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