

March 2017

**Anti-Trafficking Monitoring Group (ATMG) & Human Trafficking Foundation
submission to the UN Special Rapporteur on Contemporary forms of Slavery**

Questionnaire on Access to Justice and Remedy

Question 1: Please provide information on your organisation and its work on access to justice and remedy for victims of contemporary forms of slavery, including the countries in which you work on this issue.

The Human Trafficking Foundation (HTF) was established in 2010 in order to support and add value to the work of the many charities and agencies operating to combat human trafficking in the UK. HTF aims to bring together the voluntary sector and parliamentarians to influence policy and promote best practice in addressing modern slavery in the UK and supporting its survivors. HTF provides the Secretariat to the All Party Parliamentary Group on Trafficking, Coordinates a quarterly meeting of anti- trafficking NGOs and quarterly meetings of the National Networks Coordinators Forum (NNCF) for regional anti- slavery partnerships. We also work with London Local Authorities to support a coordinated anti- slavery response and build expertise and with parliamentarians in European 'source' countries to support efforts to prevent trafficking. The Human Trafficking Foundation has particularly focused its work around long term outcomes for victims and securing support for survivors in the UK once they have left the statutory support provided when they are identified as trafficked. HTF has published two reports on the lack of long term support in the UK for adult survivors of modern slavery; 'Life Beyond the Safe House for Survivors of Modern Slavery in London' (2015) and 'Day 46: Is there life after the Safe House for Survivors of Modern Slavery?' (2016) as well as the 'Trafficking Survivor Care Standards' (2015).

The Anti-Trafficking Monitoring Group (ATMG) was founded in 2009 to monitor the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) which came into effect in the UK on 1 April 2009. The ATMG now also monitors the implementation of the EU Directive on preventing and combating trafficking in human beings and protecting its victims 2011/36, which entered into force on 5 April 2013. The Group operates according to a human rights-based approach to protect the well-being and best interests of victims of human trafficking.

The thirteen organisations belonging to the ATMG are: AFRUCA, Amnesty International UK, Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), Snowdrop Project, The TARA Service (Trafficking Awareness Raising Alliance, of Community Safety Glasgow), and UNICEF UK.

The group has published reports and briefing papers on human trafficking in the UK, focusing on the three 'Ps'; prevention, protection and prosecution. The research findings form the basis of the coalition's advocacy for improvements in the UK's response to trafficking and other forms of modern slavery.

Question 2

A. Please characterise the legal and/or policy frameworks relevant to access to justice and remedy in place in the country or countries that your organisation works in, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those guaranteeing access to justice and remedy and measures to identify and support victims of contemporary forms of slavery.

A. Legal/policy provisions criminalising contemporary forms of slavery

In 2015, the Modern Slavery Act¹, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)², and the Human Trafficking and Exploitation (Scotland) Act³ came into force. The three Acts introduced new criminal offences for human trafficking, slavery, servitude, and forced and compulsory labour, replacing earlier offences that were dispersed across a number of different laws.

In addition, new civil penalties were introduced designed to provide the courts with additional measures to prevent future offences. The Modern Slavery Act introduced the Slavery and Trafficking Prevention Order [STPO] and Slavery and Trafficking Risk Order [STRO], and the Scotland Act introduced the Trafficking and Exploitation Prevention Order [TEPO] and Trafficking and Exploitation Risk Order [TERO]. The Northern Ireland Act includes only a Slavery and Trafficking Prevention Order [STPO] and did not introduce a Risk Order.

B. Legal/policy provisions to identify and support victims of contemporary forms of slavery.

The **National Referral Mechanism (NRM)** is the key policy framework through which adult and child victims are formally identified and provided access to specialist support in the UK. Details of the current NRM system can be found here:

<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

¹ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

² http://www.legislation.gov.uk/nia/2015/2/pdfs/nia_20150002_en.pdf

³ http://www.legislation.gov.uk/asp/2015/12/pdfs/asp_20150012_en.pdf

Whilst the NRM is currently a UK-wide system i.e. the centralised 'competent authorities' responsible for decision-making in the NRM receive referrals from all four countries in the UK, protection and support for both adults and children are devolved responsibilities.

Following a review of the NRM⁴, published in November 2014, which recommended an overhaul of the decision-making process and model of support in the NRM, a pilot has been running since August 2015 and is due to conclude in March 2017. The pilot is testing a revised model of decision-making, whereby regional multi-agency panels in two areas of England have been established to make the 'conclusive grounds' decision as to whether the individual is a victim of modern slavery. The support model and the viability of the revised decision-making process in the devolved administrations have not been considered in the pilots.

The current NRM is set out in policy, rather than legislation. However both the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland), and the Human Trafficking and Exploitation (Scotland), introduced in 2015, include provisions on support and assistance, in Part 3 and Part 2 of the respective Acts.

Both Acts place a legal duty on Ministers to provide support and assistance to adult victims, and explicitly state the minimum types of support that should be provided (the list is non-exhaustive), which reflect the support standards set out in the Council of Europe Convention on Action against Trafficking Human Beings⁵ and the EU Trafficking Directive (2011/36)⁶. They also state that support should be provided in the period between a reasonable grounds and conclusive determination that the person is a victim, as well as prior to the reasonable grounds determination (i.e. if a referral about the individual is about to be made) and after the conclusive determination is made, for as long as deemed necessary. The Northern Ireland Act goes further still by stating that support can continue to be provided to persons who are conclusively determined not to be victims, if continued support is deemed necessary, and to eligible victims even if they leave Northern Ireland.

The Modern Slavery Act does not explicitly place a duty on the State to provide support and assistance to victims, nor set out victims' support entitlements. Rather, the arrangements for identifying and supporting victims are to be set out in guidance (see Section 49 of the Act) to be issued by the Secretary of State, which may be revised from 'time to time'. The Secretary of State may also make regulations in this regard (see Section 50). Therefore, unlike those in Scotland and Northern Ireland, victims in England and Wales cannot look to the Modern Slavery Act to claim their rights to support.

Support for children - All three Acts provide for a child guardian scheme, albeit the guardians have different titles across the three jurisdictions. In Scotland they have legislated for 'Independent Child Trafficking Guardians', in Northern Ireland it is 'Independent Guardians', and in England and Wales it is 'Independent Child Trafficking Advocates'. Terminology aside, there are real differences in the scope, function and intention of the role across each of the nations. Currently, each jurisdiction has a different interpretation on eligibility for guardianship, for example who is entitled to have a guardian, how the guardian is appointed, when and for

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf

⁵ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005

⁶ Directive 2011/36/EU of The European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

how long a guardian will be able to represent the child. The most detailed and comprehensive model for guardianship is found in the Northern Ireland Act.

Independent Child Trafficking Advocates (ICTA) running in three early adopter sites- Greater Manchester, Wales and Hampshire. Only had 1 referral to the advocates scheme, although lots of NRM referrals in these areas. ECPAT sit on the ICTAs expert oversight panel which is independently overseeing ICTA trials over the next two years, in lieu of there being an independent evaluation. Involved in the drafting of the [interim statutory guidance for the ICTAs](#), published January 2017.

None of the schemes are yet up and running across the UK. In Scotland it is not yet clear when the scheme will be rolled out; a planned government consultation on child guardianship has been delayed. In Northern Ireland, it is thought that the scheme will be up and running by October.

In England, a pilot Advocate scheme was launched and tested over 12 months across 23 Local Authority areas, beginning in September 2014. The Government's intention was to wait until the outcome of the pilot evaluation to determine the model that will be implemented. The evaluation of the 2014/15 trial of Independent Child Trafficking Advocates was completed in September 2015 and the evaluation findings were published in December 2015⁷. Following the trial, children with an advocate were provided support to transition into existing trafficking or other support services.

Section 48 (6) of the Modern Slavery Act requires the Secretary of State to make regulations about child trafficking advocates, and Section 48 (7) required the Secretary of State to lay a report before Parliament within 9 months after the Act is passed. In December 2015 Government ministers laid a report before Parliament announcing that regulations would not yet be brought forward as the government was not satisfied with the pilot model following evaluation⁸and intended to consult further. In June 2016 the Government announced that it was intending to re-start the process with three 'early adopter' sites in Hampshire, Wales and Greater Manchester to be established in November 2016 and run until March 2019. These early adopter sites are now up and running.

Duty to notify – The three human trafficking/modern slavery acts⁹ that came into force across the UK in 2015 introduce a duty on specified public authorities to officially notify a particular body e.g. the National Crime Agency in the case of Northern Ireland, when they encounter a potential victim. The stated aim of this duty was to improve understanding of the number of victims across the UK.

The ATMG's 'Class Acts?'¹⁰ report raised a number of questions about the use of this duty in England and Wales and the data collected through it, including the potential misuse of this data for purposes beyond the remit of the Modern Slavery Act. Despite government assurances that the Duty to Notify forms would not be used to identify victims, the reporting form contains a section in which sensitive, identifying information can be provided, with the individual's consent. The report also highlights concerns regarding the mixed messages about

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf

⁸ <https://www.gov.uk/government/publications/independent-child-trafficking-advocates-trial-government-report>

⁹ The Modern Slavery Act 2015, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, and the Human Trafficking and Exploitation (Scotland) Act 2015.

¹⁰ http://www.antislavery.org/wp-content/uploads/2017/01/atmg_class_acts_report_web_final.pdf

the use of the duty children, who are referenced in the Duty to Notify guidance and on the reporting form. The Government's stated intention of the Duty to Notify is to capture data on victims who are not referred to the NRM. All children who are believed to be potential victims of modern slavery should be referred into the National Referral Mechanism (NRM) as, unlike for adults, a child's consent to the referral is not required. It therefore follows that no child's case should fall under the 'Duty to notify'. The Duty to Notify forms should make clear that children who are suspected victims of trafficking and modern slavery are to be referred into the NRM immediately.

C. Legal/policy provisions guaranteeing access to justice and remedy

Access to compensation

- Slavery and reparation orders

The Modern Slavery Act, at Section 8, provides for trafficking and slavery reparation orders, whereby convicted offenders of the offences of slavery, servitude, forced labour, human trafficking, or an 'offence with intent to commit human trafficking', must pay compensation to the victim. The court must consider making a reparation order in cases the perpetrator has assets available, and give reasons in cases where it does not do so.

Section 10 of the 2015 Human Trafficking and Exploitation Act (Northern Ireland) gives effect in Northern Ireland to the reparation order provision in the Modern Slavery Act.

Access to compensation through this route is dependent on a successful conviction of the offender. Given the low prosecution rates of human trafficking and slavery offences across the UK, particularly in contrast to the number of victims, only a limited number of victims will benefit from these orders. *See Q6 for a summary of the challenges/barriers to accessing the various types of compensation.*

- Compensation Orders

Under Sections 130-134 of the Powers of the Criminal Courts (Sentencing Act) 2000, the courts can make orders for convicted offenders to compensate their victims. This route may be of particular use in cases where there is insufficient evidence to prosecute the perpetrator on modern slavery offences, but where they can instead be prosecuted for other offences committed against the victim, such as fraud and rape.

In Scotland, Section 249 of Criminal Procedure (Scotland) Act 1995 enables Scottish courts to make compensation orders requiring convicted offenders to financially compensate victims.

No defendants convicted in 2015 were ordered by the court to pay compensation for the offences of human trafficking for non-sexual exploitation and human trafficking for sexual exploitation.¹¹

- Criminal Injuries Compensation Scheme

Victims of trafficking in England, Scotland and Wales who have suffered a criminal injury can apply for compensation from the state through the Criminal Injuries Compensation Scheme. However, human trafficking is not specifically listed as one of the "crimes of violence" under the scheme, instead those applying must show that they experienced violence or threats of violence as part of their trafficking experience. This may not always be the case for victims of

¹¹ Answer to Parliamentary Question WPQ 58541

trafficking who, rather than being subject to violence, have been subjected to psychological control, such as deception or coercion.

Victims who have been physically or mentally injured in Northern Ireland as a result of their trafficking can make applications for compensation under the 2009 Northern Ireland Criminal Injuries Compensation Scheme. As with the scheme in Great Britain, there are strict eligibility criteria which limit the number of victims that are eligible to apply. See Q6 for further details on these limitations.

- *Employment claims in the Employment Tribunal*

Victims of domestic servitude and forced labour may be able to pursue claims for employment related abuses, such as discrimination and withheld wages. Since 2014, however, when the 'Deduction from Wages (Limitation) Regulations' were introduced, victims have been prevented from claiming more than two years of wages through the Employment Tribunal. There is also a fee for initiating proceedings (£160 for more 'basic' unpaid wages claims, and £250 for more 'complicated' discrimination claim) which can be a prohibitive factor for victims wishing to make a compensation claim.

- *Civil claims*

Civil claims can also be brought by the victim in a County Court based on civil law actions such as harassment, fraud or breach of contract.

Access to legal aid

The Legal Aid Sentencing and Punishment of Offenders Act 2012 ('LASPO') sets out the matters for which civil legal aid can be provided for victims of trafficking, slavery, servitude, forced or compulsory labour¹². Victims who have been referred into the National Referral Mechanism and received a positive 'Reasonable Grounds' decision, are entitled to legal aid for claims for leave to remain, claims under employment law, and claim for compensation.

The Legal Aid Agency (LAA) has not issued a specific contract for human trafficking cases. Instead these cases have been included in a contract for 'miscellaneous' work, a category which includes approximately 20 other types of cases. Until December 2016, legal aid services were only allowed to take on 5 miscellaneous cases per year. Following a review¹³ by the Ministry of Justice of legal help available for trafficking and modern slavery compensation claims, in which it was found that the 'demand for Legal Help...is not being met', the LAA announced that legal aid advisors would be allowed to advise 10 more victims each year. This increase has been deemed by providers as inadequate as it does not allow providers to build up expertise. See, for instance, a response by the Anti Trafficking and Labour Exploitation Unit (ATLEU) - <http://atleu.org.uk/news/2017/2/27/charity-attacks-funding-of-legal-support-needed-by-victims-of-modern-slavery>

¹² Section 47 of the Modern Slavery Act amended LASPO to extend legal aid support to victims of forced labour and slavery, as well as human trafficking victims.

¹³ <https://www.gov.uk/government/publications/legal-aid-in-trafficking-and-modern-slavery-compensation-claim-cases-review>

Question 3

Please detail relevant jurisprudence, including any landmark cases, which demonstrate effective access to justice for victims of contemporary forms of slavery, and provide copies of any judgments if possible.

[Galdikas & Ors v DJ Houghton Catching Services](#) (2016) - The Claimants were six individuals who alleged they were trafficked from Lithuania and subjected to severe labour exploitation. The gamgmasters were found guilty and ordered to pay out over £1m in compensation plus legal defence costs in an out-of-court settlement.

[AK vs Bristol City Council](#) (2016) – The claimant was a Lithuanian national who was a recognised victim of trafficking. The claimant was not given leave to remain nor satisfied the ‘habitual residence test’ and therefore was not eligible for housing benefit or other welfare benefits. Bristol City Council initially denied that it had an obligation to support the claimant and argued that the claimant could instead return to Lithuania to access support. However the council subsequently conceded that it was not prevented by s. 2 of the Localism Act 2011 nor by Schedule 3 of the Nationality Immigration and Asylum Act 2002 from providing support and assistance to EEA nationals who are victims of trafficking to the extent that such support and assistance is necessary to avoid a breach of Articles 3 and 4 of the European Convention on Human Rights and/or to comply with Article 11 of the EU Anti-Tracking Directive.

[Hounga \(Appellant\) v Allen and another \(Respondents\)](#)- UK Supreme Court (2014)- The claimant was a Nigerian national who came to the UK aged 14 under arrangements made by the defendant. The defendant employed the claimant to look after her children in her home, even though the claimant had no right to work in the UK but, after a period of employment, evicted the defendant from her home. Miss Hounga brought a number of claims against the defendant before an employment tribunal, including discrimination on racial grounds, namely on the ground of nationality.

The Employment Tribunal held that Mrs Allen breached s. 4(2)(c) of the Race Relations Act 1976 as it then was. The tribunal ordered Mrs Allen to pay Miss Hounga compensation for the resultant injury to her feelings to the sum of £6,187. However, this was overturned in the Court of Appeal who found that it was not open to Miss Hounga to complain about dismissal, from an employment which she had agreed to take and which, to her knowledge, was illegal.

Miss Hounga then took her case to the Supreme Court where the majority of judges were of the view that it would be a breach of the UK’s obligations under Article 15(3) of the Council of Europe Convention on Action against Trafficking in Human Beings for the defence of illegality to defeat Miss Hounga’s claim that she was entitled to compensation as a result of the discrimination she suffered. It held that to uphold Mrs Allen’s defence of illegality would run counter to the current public policy against trafficking and in favour of the protection of its victims. The public policy against human trafficking outweighed the public policy considerations supporting the integrity of the legal system.

EK (Article 4 ECHR: Trafficking Convention) [2013] UKUT 00313 (IAC)- Judgment was given in June 2013, which can be read here:

http://www.bailii.org/uk/cases/UKUT/IAC/2013/00313_ukut_iac_2013_ek_tanzania.html

EK was trafficked to the UK from Tanzania in 2006 for domestic servitude. Contrary to UKBA guidance she was not given information on her rights upon entry to UK. After an initial escape, she was internally re-trafficked. She developed tuberculosis but was informed she could not access medical help. In 2008 she was admitted to A&E and treated but by then her lungs had suffered permanent damage.

In 2010 she was referred through the National Referral Mechanism as a victim of trafficking and assisted to raise an asylum claim. The UK Border Agency agreed that she had been trafficked but refused to grant asylum or any form of leave. Anti Trafficking and Labour Exploitation Unit (ATLEU) lawyers took the case after the rejection of her case by the First Tier Tribunal and obtained supplementary evidence showing, in particular, that if returned to Tanzania, EK would face a significantly reduced life expectancy, that she was in need of psychological treatment for PTSD and depression and that she remained exceptionally vulnerable. In the Upper Tribunal, EK argued that the failure to give information to EK at entry had amounted to a breach of Article 4 and that this had contributed directly to her vulnerability to trafficking, and to the damage caused to her health.

The Upper Tribunal agreed. Its judgment set new case law precedent, establishing that in cases where the UK has breached its obligations under Article 4 ECHR, a duty of reparation is owed and that this impacts directly on any decision to remove her from the UK. Also relevant to the decision to remove was the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, and in particular the duty to provide assistance and support to victims (Article 12), to provide a residence permit if their personal circumstances require it (Article 14) and to return victims to their country of origin with dignity (Article 16).

Diplomatic and State Immunity

The Court of Appeal, in a [Judgment handed down in February 2015](#), declared the State Immunity Act to be incompatible under the Human Rights Act.

ATLEU represented the Claimants who were domestic workers seeking to stop state immunity applying to their employment claims. Ms Janah and Ms Benkharbouche, Moroccan nationals, were employed directly by the states Libya and Sudan. They claimed that they were paid grossly under the national minimum wage, forced to work unlawful hours, unfairly dismissed and (in Ms Janah's case) discriminated against on racial grounds.

The Court of Appeal concluded that the State Immunity Act is incompatible with the Claimants' right of access to a court under the European Convention of Human Rights, and is discriminatory. It issued a declaration of incompatibility under Human Rights Act and confirmed that the Claimants' claims under EU law (for unlawful discrimination and breach of working time law) can be litigated in the UK courts despite the contrary provisions of the State Immunity Act.

The Court of Appeal Judgments in the cases of Reyes and Suryadi v Al Malki and Al Malki were also handed down. ATLEU acted for both Claimants, both who had been identified conclusively through the NRM as victims of trafficking. The Claimants sought to bring employment claims against their employer, a Saudi Arabian diplomat. Despite the seriousness of the Claimants' allegations, the Court of Appeal held that they cannot pursue their claims: the doctrine of immunity trumps any rights that they have as victims of trafficking.

NB. Ms Suryadi ceased to take part in the appeal by the time of the COA hearing.

Supreme Court hearing is due to be heard May 2017.

Read both Judgments here:

***Janah v Libya, Benkharbouche v Sudan* [2015] EWCA Civ 33**

***Reyes and Suryadi v Al Malki and Al Malki* [2015] EWCA Civ 32**

C v Criminal Injuries Compensation Authority

CI011/15/00026

This judgement, passed in December 2015, found that barring a victim of trafficking from obtaining compensation from the Criminal Injuries Compensation Authority (CICA), due to non-compliance with the police amounts to a breach of the UK's obligations to victims of trafficking.

Ms C was trafficked to the UK for the purpose of domestic servitude in August 1999. Ms C was required to work up to 18 hours a day carrying out domestic tasks as well as caring for the trafficker's child.

Ms C's movements were heavily controlled and she was not allowed to interact with others without the trafficker's express permission.

During the first year of employment Ms C received payments of £10-£20 every few months but thereafter received no salary at all. When Ms C raised with her trafficker the failure to pay a salary she was told that her trafficker could not afford to pay her but would find her work as a cleaner.

Thereafter, Ms C carried out cleaning work for others on top of her duties for the trafficker, but more often than not was required to hand her wages to her trafficker. In August 2002, Ms C disclosed to one of the families she was cleaning for, her treatment by her traffickers and was assisted to leave her trafficking situation.

Ms C reported her treatment to the police and gave a witness statement. Following this, Ms C was contacted by her family abroad who had been approached by relatives of the trafficker seeking to locate Ms C and put pressure on her to withdraw her complaints. Threats were made to Ms C's family as to what might happen to them if they did not provide details of Ms C's whereabouts.

Ms C relayed to the police the approaches to her family. As the police in the UK could offer no protection to her family abroad, Ms C concluded that she had no choice but to withdraw her complaints.

On 18 March 2014 Ms C submitted an application to the Criminal Injuries Compensation Authority for compensation for her trafficking experience. Ms C relied on Article 17 of the trafficking directive which requires member states to give access to criminal schemes of compensation. The Authority declined to grant an award on the basis that Ms C had, in withdrawing her complaint, failed to comply with a police investigation.

On 18 November 2015 the First Tier Tribunal heard an appeal of the refusal to award compensation. It was argued on Ms C's behalf that the CICA scheme rules require that a victim co-operate as far as reasonably practicable with a criminal investigation and that Ms C had done this, withdrawing her complaint only due to the fear of retribution.

Further, the Authority were required to give effect to the UK's EU obligations to victims of trafficking. None of the EU instruments covering the right to obtain compensation require that the victim co-operates with a criminal investigation.

In contrast, it was argued on behalf of the authority that Ms C need only be given access to the scheme to comply with EU obligations. There was no requirement to set aside the scheme rules in relation to compliance with criminal proceedings.

On 26 November 2015, having reserved its judgment the First Tier Tribunal found that Ms C had not co-operated as far as reasonably practicable with the criminal investigation, but to bar her from an award on this basis was contrary to EU legislation.

Caste Discrimination

Following a groundbreaking judgment upholding Ms Tirkey's claim of caste discrimination the Tribunal awarded Ms Tirkey £266,536 in compensation. She was found to have been made to work 18 hours a day 7 days a week and paid as little as 11p an hour.

This includes her award for £183,773 in respect of her traffickers' failure to pay her the National Minimum Wage. It is a notable judgment as Ms Tirkey was awarded the exceptionally high sum of £56,000 in respect of her non-pecuniary losses.

The Legal Aid Agency initially refused to fund her representation for 17 months on the grounds that her case was not of "sufficient importance or seriousness", and that it was "only a claim for money".

Judgement <https://drive.google.com/file/d/0B3ufXqp97I93Q1ZJS2JqSkpWb2c/view>

Question 4

Please describe specific support that is in place for victims of contemporary forms of slavery who seek obtain access to justice and fulfil their right to an effective remedy, including but not limited to, shelters, other forms of housing, legal aid, visa support, witness and victim protection measures, livelihood or financial support and counselling in the country or countries that your organisation works. Please also include information about global trends in the provision of such support that you would like to highlight.

The UK has a National Referral Mechanism, established in 2009, for identifying victims of trafficking (NRM) in place. In spite of primarily being an identification system also acts as the gateway to the only government funded support specifically provided for victims of slavery. Victims who do not enter the NRM, or who are not positively identified as a victim at the first 'Reasonable Grounds' stage of identification, are not able to access this support. The shortcoming of the NRM have been widely recognised including in a Home Office review of the NRM published in 2014¹⁴ which made the following recommendations:

- To develop a comprehensive awareness strategy to increase recognition of human trafficking via the public and professionals.
- An overhaul of the referral process.
- Providing support based on an assessment of the individual needs of the victim.
- A process of conclusive identification of trafficking victims through regional multi disciplinary panels to be tested with a view to ceasing the sole decision making roles of UK Visas and Immigration and UK Human Trafficking Centre and Immigration Enforcement.
- A single management process for trafficking cases to be put in place with accountability lying with the Home Office.
- Improving the collection of data to facilitate progression of cases and contribute to intelligence.

¹⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf

The UK is currently running two pilots trialling a different decision making model. The pilots do not however appear to address the issues of longer term support and recovery for victims or quality of support while in the NRM. The UK's Independent Anti- Slavery Commissioner has written to the responsible Minister saying that he will also be consulting as to what a new identification system and support model for victims should look like.¹⁵

Children who are potential victims of slavery do not need to consent to a referral into the NRM, it should be made on their behalf. In practice referrals are not always made on behalf of trafficked children by those supporting them as these professions either do not know about the NRM or cannot see how a referral is in the child's interest in terms of providing support. This is in spite of a statutory duty to refer victims of trafficking. Adults must give informed consent for a referral into the NRM to be made on their behalf. Other than in the pilot areas this referral must be made by a recognised First Responder. Once a referral has been made there is officially no support available until the potential victims receives a first stage 'Reasonable Grounds' (RG) decision which is on the threshold of 'suspect but cannot prove'. This decision should be made within 5 days of the referral and gives access to safe house accommodation and support which includes exemption from health care charging and access to legal aid. A Conclusive Grounds (CG) or final decision as to if the potential victim has been trafficked should be made within 45 days of the victim entering the NRM. If the decision, for which the threshold is 'on the balance of probabilities', is positive, the confirmed victim has two week in which to secure move on accommodation and support and leave the safe house. If it is negative they have 48 hours.

This means that the only confirmed recovery period, during which a victim has guaranteed support, can be as short as 45 days. This is an incredibly limited period in which to take legal advice, and if necessary, submit an immigration application, meet with the police and think about disclosure and giving evidence in support of a prosecution, secure documents which may have been taken by the trafficker, access mental and physical health support and be in a position from which is it at all realistic to be able to move on with your life.

Standards of support during the 'recovery period' can vary and although the positive RG decision allows victims access to legal aid and services such as healthcare there is no additional provision. Specialist legal advice is not always available locally and lack of capacity often means waits of several weeks, cutting into the 'recovery period'. The way in which legal aid is being managed by the Legal Aid Agency has limited the number of matter starts available for compensation claims to 10 per firm making it hard to build up expertise.

Not all victims of trafficking are able to apply to the Criminal Injuries Compensation Agency (CICA) for compensation. At present the CICA scheme does not recognise the act of trafficking as a crime of violence in its own right. Victims have to demonstrate a physical injury. Victims who suffer psychiatric injuries (and who may have no formal diagnosis due to multiple issues including lack of services) will struggle to receive any compensation from CICA and there is no legal aid available for CICA applications. Research carried out by FLEX using criminal justice statistics found that between 2004 and 2014, 211 people were found guilty of modern slavery but only eight compensation orders were made during this period to a total amount of just over £70,000 (FLEX, 2016).

Specialist counselling services such as that provided by the Helen Bamber Foundation are limited in capacity and in geographic spread. For many victims the best chance of accessing

¹⁵ <http://www.antislaverycommissioner.co.uk/media/1126/letter-to-sarah-newton-mp-on-the-national-referral-mechanism.pdf>

counselling is via their GP. There will often be a long wait for a referral and once offered any counselling will only be available for a fixed period of weeks.

The grant of a positive Conclusive Grounds decision does not equate to any kind of status for a victim of trafficking. There is the possibility of the grant of a Residence Permit which is usually a grant of Discretionary Leave to Remain (DLR) issued for 12 to 30 months. This is generally issued on the basis of personal circumstances or on cooperation with the police. However low numbers of Residence permits are issued and there are reports of permits being issued for periods of less than 12 months. Additionally the way in which decisions as to grants of a residence permits are informed and the grounds for renewal are not clear. Even once a permit has been issued victims who apply to extend this are left for months or even years awaiting the renewal decision. During this time victims are in limbo (and therefore at risk) for lengthy periods while applications are processed at the Home Office. At this time victims' vulnerability increases as they cannot evidence their right to be in the UK. This makes it hard to access services, rent property, access benefits or enter into or maintain employment.¹⁶ It also places them at risk from perpetrators due to their specific vulnerability in the context of the ongoing insecurity of their residency status.

EU or EEA nationals are not automatically considered for a residence permit but instead have to 'opt in'. As they are not generally seen as having immigration concerns they are often not advised to do this. However, having been trafficked EU nationals often have difficulty evidencing that they are exercising treaty rights and so eligible for public funds. This has led to cases of trafficked EU nationals being left destitute, or issued with removal notices.

For non EU nationals an application for asylum is often made before they leave the safe house. As trafficking is not a Convention reason and may have taken place outside the individual's home country this is not always the most appropriate application. It also means that the person is moved into NASS accommodation which may not be suitable and is likely to involve dispersal away from existing support networks.

Nor do the police always apply for a residence permit even when a victim is involved in a prosecution. This is particularly the case for EU nationals as they are (incorrectly) not seen as having an immigration issue. Convictions of traffickers remain low, and police report that they can struggle to maintain contact with victims who are left unsupported during the course of an investigation. Without guarantees of basic needs such as support and accommodation, let alone their long term safety and that of their families, it is no surprise that it can be difficult to persuade victims to give evidence against traffickers who have had no much control over their lives.

There are pockets of good practice which support survivors towards recovery. However these are voluntary sector initiatives which do not have capacity to provide for every victim who exits the NRM. As to whether a victim receives support this point is largely a matter of luck. This good practice includes schemes which provide case work support including training, mentoring and support into employment such as that run by The Snowdrop Project. Organisations such as Kalayaan, which offers support and advice to migrant domestic workers, works with potential victims from when they make contact, will work with them to prevent exploitation, continue to support any potential victim whether or not they chose to

¹⁶ The 'Criminalisation of Illegal Working' and the 'Right to Rent' provisions within The Immigration Act 2016 pose make it difficult for individuals to continue working or to rent property while their papers are in the Home Office and they cannot evidence their status. This leaves them again vulnerable to exploitation.

enter the NRM and whatever the outcome of an NRM referral and only close a case file when both parties agree this.

City Hearts, an organisation subcontracted by Government to provide safe house support to victims within the NRM, have partnered with the Coop on a project called 'Bright Future' to support victims of trafficking who want and are ready to work into work placements with the possibility of a job at the end of these. This has been welcomed as an example of better practice, the Coop are keen to work with other safe houses and to support other business to follow their model. This model does depend on victims having permission to work. This means unless the CG decision results in immigration status it is likely far lower number of survivors will be able to benefit from such a scheme once the UK has left the EU.

Question 5

Please describe national and/or global measures that you are aware of that allow victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights taking place in national or international supply chains.

The Modern Slavery Act section 54 places a duty on commercial organisations to prepare a 'slavery and human trafficking statement for each financial year'. Subsequently, the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations provided that this duty applies to organisations with a turnover of £36 million or more. The intention behind these provisions is to create transparency in supply chains, therefore the statements produced annually are to outline 'the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place' in its supply chains or in its own business.

The Act is not prescriptive as to what the supply chain statement should contain, rather it provides that a 'statement may include information about—

- (a) the organisation's structure, its business and its supply chains;
- (b) its policies in relation to slavery and human trafficking;
- (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- (f) the training about slavery and human trafficking available to its staff.

Statements are to be signed at boardroom level and published on the organisation's website. The purpose is to give the public, NGOs, academics and others the opportunity to scrutinise the actions taken by such organisations, and to thereby celebrate those organisations which are being proactive in tackling problems of exploitation and reveal which organisations could be doing more. It is hoped that creating such public scrutiny will drive up standards. A number of organisations have set up websites to act as a repository for such statements in order to facilitate this scrutiny and therefore enhance transparency.

At time of writing, a Private Members Bill - Modern Slavery (Transparency in Supply Chains) Bill – is due to have its second reading in the House of Commons on 24th March. The primary purpose of this Bill is to explicitly extend the obligation to produce a supply chain statement to

public bodies, and to require contracting authorities to exclude from procurement procedures economic operators who have not provided such a statement.

The transparency in supply chains provisions do not directly entitle exploited workers to seek justice or remedy from an organisation at the top of the supply chain. However, it is hoped that over time these provisions will have a significant impact on human trafficking and modern slavery globally, as the organisations to which these provisions apply have supply chains which reach around the world. It is anticipated that it will take some time for these results to be seen, owing to the lack of knowledge and understanding of the issues regarding human trafficking, in some instances the lack of knowledge which some companies have of their own supply chains, and the considerable cultural and organisational changes which will be required in order to bring about lasting improvements.

Question 6

A. Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring that victims of contemporary forms of slavery have access to justice? Please also specify any global trends that you are aware of.

The following is a summary of some of the key challenges and barriers that victims face in the accessing justice in the UK. For further detail on the following issues, the ATMG would like to direct the reader to ATMG member, Focus on Labour Exploitation (FLEX)'s policy paper on 'Improving access to compensation for victims of trafficking for labour exploitation in the UK'¹⁷ (September 2016), as well as the Group of Experts on Action against Trafficking in Human Beings second evaluation report of the UK, in particular paragraphs 230-247.

Identification and support of victims:

- Concerns with the National Referral Mechanism (NRM), the formal system through which victims of modern slavery are identified and provided access to specialist support in the UK, has been well-documented, including concerns with the speed and accuracy of decision-making through the NRM, the lack of knowledge of the NRM by children's services, and the support drop-off for adults post-45 days. The ATMG report 'Hidden in Plain Sight'¹⁸, the Human Trafficking Foundations' 2015 report 'Life beyond the safehouse', and the 2014 Home Office review of the NRM¹⁹, provide further details on these concerns. The introduction of regional, multi-agency decision-making, and the move away from having UKVI as sole decision-maker, in the ongoing NRM pilots is a positive step and should help improve accuracy in the decision-making process. Further consultation meetings are being organised by the office of the Independent Anti-Slavery to discuss the model of support for victims of modern slavery.

Access to Compensation

- *Slavery and reparation orders*: Access to compensation through this route is dependent on a successful conviction of the offender for modern slavery offences. Compared to the number of victims of modern slavery identified in a year, the number of convictions for offences related to human trafficking, forced labour and servitude are

¹⁷ http://www.labourexploitation.org/sites/default/files/publications/FLEX_Access_to_comp_WP.pdf

¹⁸ http://www.antislavery.org/wp-content/uploads/2017/01/hidden_in_plain_sight.pdf

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf

extremely low e.g. In 2014, 2,340 potential victims of human trafficking were referred into the NRM but only 39 persons were convicted for offences related to modern slavery²⁰

- *Compensation Orders*: As with reparation orders, compensation orders require the conviction of the offender. Furthermore, as FLEX explains, “Prosecutors are not required to request a compensation order, and unlike with trafficking and slavery reparation orders, courts are not obligated to consider making a compensation order, which makes them even more rare. Between 2004 and 2014, 211 persons were found guilty of crimes of human trafficking (both for sexual and nonsexual exploitation) and slavery, servitude and forced labour. However, only 8 compensation orders were made with regard to those crimes during the same 11-year period, amounting to a total of just over £70,000²¹”.
- *Criminal Injuries Compensation Scheme*: Compensation through this scheme is only available to victims who have experienced violence or threats of violence as part of their trafficking experience. Particular eligibility conditions apply, including that the individual must co-operate with the authorities. This may prevent victims applying if they are unable to cooperate in a police investigation due to fears for their safety or the safety of their family. Furthermore, if a victim does apply, the compensation award may be reduced if they have previous convictions. This may negatively impact those who have been forced to undertake criminal activities as part of their trafficking experience. Similar eligibility criteria and limitations apply to the scheme in Northern Ireland.
- *Employment claims in the Employment Tribunal* - Since the introduction of the ‘Deduction from Wages (Limitation) Regulations’ in 2014, victims have been prevented from claiming more than two years of wages through the Employment Tribunal. As explained by FLEX²², “[a] victim of modern slavery is very likely to have been working without pay or for very little money —below the national minimum wage— for over two years, and as a consequence victims will be restricted in their ability to recover unpaid wages under the Regulations. The effect of this limitation is not only to penalize long term victims of trafficking, but also to shift the cost-benefit balance of exploiting workers, since any benefit obtained by exploiters exceeding the two-year limit cannot be recovered”. In addition, the introduction of a fee to initiate proceedings in an employment tribunal has resulted in sharp decline in the number of proceedings. GRETA in the 2016 evaluation report of the UK report the number of claims decreased by 89% following the introduction of the fee²³.

Access to legal aid

- Legal aid is not available to victims of trafficking and modern slavery for the provision of advice and assistance prior to a referral into the NRM, and most support providers are not trained to provide legal advice. It is a criminal offence to provide immigration advice if you are not qualified to do so. A referral into the NRM and decision, positive or negative, can have serious and long-lasting consequences for the individual. Many trafficked persons do not have lawful immigration status in the UK as a result of their exploitation. They require legal aid for advice on their options and to assist them in regularising their status, if appropriate. The current system leaves trafficked persons

²⁰ FLEX Working Paper, July 2016, ‘Access to Compensation for victims of human trafficking’. Data contained in the report obtained from the Criminal Justice System Statistics 2014, available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

²¹ Ibid

²² Ibid

²³ See GRETA, 2016, Second round evaluation of the UK, at para. 240.

in a Catch 22 situation: the individual is not identified as trafficked because s/he is unrepresented, and because s/he is not identified as trafficked, cannot get representation. In order that victims can provide their informed consent to a referral into the NRM, legal aid must be made available prior to referral.

- As highlighted by the Review of Legal Help for those with Trafficking and Modern Slavery Compensation Claims (TMSCCs)²⁴, undertaken by the Ministry of Justice, there are a limited number of legal aid providers with the necessary expertise to take on trafficking cases - "The survey showed that amongst providers there is not a universal understanding that legal aid may be available for TMSCCs and there may also be a lack of experience of such claims amongst providers. In addition to the limit of miscellaneous matter starts to 5 which limits the volume of work any provider may take on, there may also be language and other cultural issues hindering some potential victims from bringing claims or from engaging with appropriate 3rd sector organisations." The announcement made by the Legal Aid Agency to increase the number of matter starts from 5 to 10, in response to the review, has been deemed insufficient by providers. To illustrate this shortfall, ATLEU, one of the key charities providing legal representation to victims of trafficking and modern slavery has announced²⁵ that it will be setting up a separate law firm in order to raise the funds necessary to pay for the support it provides to victims. The press release states: "The legal aid system depends on lawyers working with victims for free. Legal aid rates are now so low that firms cannot afford to do this. This makes it even harder for victims to overcome the many barriers to justice that the system puts up. The government is simply failing those who are victims of what the Prime Minister has stated is 'the greatest human rights issue of our time'".
- Legal aid is not available to victims who wish to make a CICA claim.

B. Please elaborate on any specific challenges faced by vulnerable groups, for example women, children, those living in poverty and/or in rural areas, minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, in obtaining access to justice and fulfilling their right to remedy.

Challenges due to immigration status

The Modern Slavery Act 2015 contained little on victim protection or care. The focus on the Act was on enabling criminal prosecutions rather than the rights of victims or potential victims. The Act did little to ensure that workers or others in the UK, particularly those with insecure immigration status, are protected against their exploitation worsening to the point of modern slavery, or once in slavery conditions, are able to escape, knowing they will be supported by the authorities. The UK's Immigration Act 2016 only increased these concerns with provisions which include The 'Criminalisation of Illegal Working' and 'Right to Rent'. The Criminalisation of illegal working allows for confiscation of assets, so as well as potentially criminalising exploited workers rather than awarding compensation stands to confiscate anything they have earned. The Right to Rent makes it a criminal offense for landlords to rent to someone who is undocumented. Immigration enforcement is involved in many raids or spot checks which

²⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577351/tmscc-review.pdf

²⁵ <http://atleu.org.uk/news/2017/2/27/charity-attacks-funding-of-legal-support-needed-by-victims-of-modern-slavery>

purport to be attempts to 'rescue' individuals in modern day slavery and there is still a real risk that any undocumented worker who escapes modern slavery will be detained as an immigration offender rather than identified as a potential victim. Without any pre NRM support it is unclear how anyone in exploitation would have a chance to disclose abuse in a raid situation when they will be scared, not know their rights in the UK and not sure who they can trust. There were a series of well published raids which took place in December 2016 during which are reported to having led to 97 arrests and 14 potential victims of slavery identified.²⁶ We are disturbed at this immigration enforcement approach and feel that there is a strong chance that many of those arrested for 'illegal working' may well also be victims of human trafficking. We have requested key findings from the official assessment of the raids but to date have not received these. This immigration enforcement approach will also make communities whose members have insecure immigration status and who are vulnerable to exploitation and trafficking less likely to trust, work with authorities or disclose slavery for fear of drawing wider attention from law enforcement.

The fact that identification as having been trafficked confers no status in the UK is a further challenge for individuals who may be marginalised because of insecure immigration status and lack of ability to access statutory support systems. A referral into the UK's National Referral Mechanism for identifying victims of trafficking (NRM) is often not seen as a sensible option to individuals whose exploitation is one symptom of the lack of choices available to them and who consequently have been driven into dangerous and illegal work. A positive Reasonable Grounds (or first stage) NRM decision provides temporary admission to the UK and safe house accommodation, which often involves dispersal, for a period which could be as short as 45 days. This does not give permission to work²⁷. A trafficked individual may choose to make immigration applications during this time and will have access to legal aid as a result of a positive reasonable grounds decision but in itself a positive Conclusive Grounds decision makes little tangible difference. For many all a referral into the NRM has done is disrupted an exploitative situation. Without guarantees as to what a referral will lead to, many, who are dependent on any wages they do receive, no matter how low, decline a referral into the NRM, preferring to avoid contact with the authorities.

In spite of not seeming to have immigration issues, EU migrants are also vulnerable due to their status. Many become destitute upon leaving the safe house and / or are issued with a notice of removal for not accessing treaty rights. This is because EU national victims seeking to access accommodation upon leaving NRM support must demonstrate that they are exercising their Treaty rights, and that they have accrued permanent residency, qualified worker or some other status. Many EU nationals who have been trafficked are not considered eligible for public funds due to being unable to prove that they have been working in this UK. Ironically, this lack of evidence is often inherently part and parcel of the exploitation. Even for those who have a residence permit or Discretionary Leave to Remain (DLR), often job centre staff have limited understanding of how this applies: there have been cases where victims have been asked to sit Genuine Prospect Of Work tests (which they inevitably fail), despite having DLR, contrary to the DWP's own guidance on this. With the UK preparing to leave Europe it is likely that the situation of EU and EEA migrants will worsen.

Non-EU nationals who make an international protection claim will frequently be pushed out of specialist NRM support into NASS asylum support, sometimes before being identified as a

²⁶ <http://news.sky.com/story/government-to-tackle-modern-slavery-in-uk-with-16340m-crackdown-10709916>

²⁷ ODW have right to work if issued positive RG during term of 6 month visa: Immigration (Variation of Leave) Order 2016
http://www.legislation.gov.uk/ukxi/2016/948/pdfs/ukxi_20160948_en.pdf

victim of trafficking. This fails to appreciate the difference between the purpose/objective of NRM support and asylum support. Many victims who get moved to NASS support are then not provided with outreach support via the NRM and are dispersed away from any existing support, such as mental health support/counselling. They are therefore denied the much needed support at a critical point in time in their recovery. This has knock-on serious effects on lost opportunities for police investigations which are delayed and/or hindered.

Challenges due to homelessness

There is increasing recognition that traffickers target the homeless community, and homeless men in particular, for forced labour. A report published in January 2017 by The Passage, together with the Independent Anti-Slavery Commissioner, ([Understanding and Responding to Modern Slavery within the Homelessness Sector](#)) recognised that the ‘vulnerabilities in the homeless population may, therefore, also make them vulnerable to being targeted by traffickers’. It also states that: ‘Anecdotal evidence from the homelessness sector suggests that homeless people and rough sleepers are being targeted by traffickers: they are approached for work in the informal or black economy and are then held in exploitative and slave-like conditions across the UK. As there is currently no national database or recording mechanism for this phenomenon, and despite the best efforts of organisations working in this field, the response to date has not been effective.’

Overseas Domestic Workers

People who enter the UK on the Overseas Domestic Worker (ODW) visa remain vulnerable in spite of the substantial advocacy around this visa during the Modern Slavery Act. The MSA did provide for an independent review of the ODW visa and committed to carrying out the recommendations of the review with then Minister responsible Karen Bradley stating:

*We have asked for this review to take place and I look forward to the recommendations. I cannot commit a future government... but the intention is whoever is in government carry out the review's recommendations*²⁸

The review was carried out by James Ewins QC and published in December 2015.²⁹ It recommended that ODWs were allowed to change employers and, in order to make such a change a realistic option, to extend their visas for up to 2.5 years. It also recommended that all ODWs be provided with information sessions as to their rights and options in the UK.

In spite of earlier commitments the Government did not accept the first recommendation of the review instead there was a provision that those who enter the UK on the ODW visa are able to change employers but the duration of the visa is capped at 6 months and is non renewable. The call for migrant domestic workers to be able to change employers was to prevent abuse including modern slavery by giving these workers the most basic of negotiating tools- the ability to withdraw their labour. This is only possible for migrant domestic workers, who are predominantly women who have migrated out of a need to provide for families and are often paying of substantial debts, if they have the option of getting another job. By limiting the visa to a total duration of 6 months with no recourse to public funds the ‘right’ to change employers is meaningless. It only allows for a change to another full time job as a domestic worker in a private household. Given that this type of work inevitably involves substantial trust-work in someone’s house, and is often a caring role, it is very unlikely that someone who

²⁸ Karen Bradley MP 17 March 2015 Modern Slavery Bill debate

²⁹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf

leaves a job a few months in will get a decent job involving this level of trust with only a few months left on their visa. The result is that individuals who enter the UK on an ODW visa are still made vulnerable to severe exploitation because of the massive power discrepancy between them and their employers. They depend on their employers for work, housing, information about the UK, and given the realistic chances of being able to find a decent work in spite of the limitations of the visa most will put up with severe exploitation before leaving.

The Review recommendation for information sessions was that these would be mandatory group meetings to which workers would go without their employers, with a copy of their contract and their own passport and visa. These would be funded by an increase in the visa fee. Crucially the worker attending the information meeting was to be an obligation on both the worker and the employer and any non attendance would be followed up. While there are clearly limitations to how effective such sessions can be if workers rights are limited in practice they do still clearly send an important message to the employer and the worker but the fact that the worker must go alone, in possession of their own legal documents, which will be explained to them and, presumably, they will be given contacts to whom they can go back for help. The Government has committed to implementing the information sessions yet these are still not in place. In the interim period it is likely that at least 22,000 more people have entered on the ODW visa and not benefitted from the information sessions.³⁰

Pregnant victims of trafficking/Trafficking victims with children

In 2016 the ATMG produced a report, Time to Deliver³¹, which considered the adequacy of the UK's response to victims of modern slavery who are pregnant or who have children. This report examined health and maternity care, accommodation, childcare and local authority support. The data collated for the research suggests that between 25-50% of trafficking victims in the UK are pregnant or have children, either accompanying them in the UK or residing in their home country. Despite the significant support implications that being pregnant or having children entails, scant mention is made of this cohort in UK policy and legislation on trafficking and modern slavery. There is no special recognition that this cohort are particularly vulnerable and should be prioritised for support. Little mention is also made of the needs of the children of trafficking victims and the safeguarding procedures that should be taken to protect and promote their welfare. The report contains the following recommendations:

- Acknowledge pregnancy and m/paternal status of victims of trafficking at the national and UK level and recognise the potential impact of parenthood on the needs of victims of trafficking, and the potential impact of their trafficking experience on their child(ren)
- Provide assistance and support to victims of trafficking in line with international legal obligations that takes into account the holistic needs of the family and has, as a primary consideration, the best interests of the child.

Children:

In 2016 ECPAT UK and Missing People produced a report 'Heading Back to Harm'. This research found that from September 2014 to September 2015, 28% of trafficked children (167 children) in care and 13% of unaccompanied children (593) in care went missing at least once. Of these, 207 missing trafficked or unaccompanied children had not been found. The report highlights 'a worrying lack of consistency in the way in which local authorities identify and

³⁰ An average of 17,000 ODW visas are issued annually.

³¹ http://www.antislavery.org/wp-content/uploads/2017/01/atmg_time_to_deliver_report_for_web_final.pdf

record risk of trafficking and exploitation’ and that ‘the true number of trafficked and unaccompanied children going missing is likely to be far higher than our findings suggest’.

The government is currently trialling Independent Child Trafficking Advocates, with a view to rolling out nationally in 2 years’ time. This follows a pilot conducted in 2015 which was considered successful by an independent review. However the Government expressed concerns that the number of children going missing was still too high. It is important to note that many of those children who went missing did so before meeting their advocate and that in other respects the advocate were considered to have an extremely positive impact in guiding the children through complex processes.

Refugee children

There is great concern at the UK’s recent announced closure of Section 67 of the Immigration Act 2016 (commonly known as the Dubs scheme) only 6 months after it was introduced. The UK’s Anti Slavery Commissioner visited some of the camps in Europe in September 2016 and reported that children were unsafe and vulnerable to traffickers and that the eligibility criteria for Dubs should be broader.³²

Question 7

A. Please detail any examples of good practice in relation to access to justice and remedy for victims of contemporary forms of slavery.

Several cases mentioned earlier in answer to Question 3 are examples of good case law facilitating access to justice and remedy.

A further example:

Kalayaan assisted a client, Ms J, to pursue an employment claim against her trafficker. When she was referred to Kalayaan she had a positive reasonable grounds decision having self-referred to the NRM. When Ms J agreed to come to the UK, she was told she would be paid £400 per month in the UK and that her employer would pay for her education. She arrived in the UK in July 2013 and was later dismissed by her employer in June 2015 following a verbal disagreement when she asked for an increase in pay and holiday pay.

Given the restricted matter starts given to legal aid providers, Kalayaan referred her case to a pro bono corporate firm to act. Kalayaan assisted Ms J to contact ACAS to extend the limitation period and begin the conciliation process. The corporate firm later took conduct and lodged a claim before the Employment Tribunal, which was later heard in October 2016. The issues before the tribunal were unfair dismissal, wrongful dismissal, unpaid wages, unlawful deductions from wages, failure to pay the National Minimum Wage, holiday pay, failure to provide rest breaks, direct and indirect race discrimination, failure to provide written particulars of employment and failure to provide an itemised payslip. Ms J succeeded before the tribunal on all claims except direct and indirect race discrimination. A remedy hearing is awaited to determine the settlement to be paid by her employer.

B. Please describe any examples of good practice or possible legal and policy measures that you think in your view are effective at overcoming the challenges and barriers referenced above in question 6.

³²³² <http://www.antislaverycommissioner.co.uk/news-insights/statement-call-for-adjustment-of-eligibility-criteria-under-section-67-of-the-immigration-act-2016/>

- **Legal advice and representation must be offered early to all potential victims of trafficking:** To ensure that victims are fully informed of their options and the potential implications of an NRM decision, and that adult victims are able to give meaningful consent to a referral into the National Referral Mechanism, potential victims should be entitled to a minimum of 2 hours legally aided immigration advice prior to a referral as is the case with asylum applicants. In addition to this all survivors of trafficking must be given specialist legal advice, funded through legal aid, as early as possible following a positive Reasonable Grounds decision.

- **Improved scope to challenge negative NRM decisions:** Any negative decision at RG stage should automatically be reviewed by another decision making panel. Victims themselves, support providers, legal representatives or anyone else acting for a potential victim must all be able to make requests for reconsideration of negative CG decisions. Victims must have ongoing support and accommodation while any reconsideration or Judicial Review of a CG decision is ongoing. Potential victims should not be exited from support and accommodation until the appeals process is complete and appropriate move-on accommodation secured.

- **A positive Conclusive Grounds (CG) decision must carry status:** All recognised adult victims of modern slavery, both EU and non-EU nationals, should be automatically granted, together with a positive Conclusive Grounds (CG) decision, a renewable residence permit for no less than 12 months, in addition to having full recourse to public funds. During this 12-month period recognised victims should be entitled to work if they choose. Currently, the recovery period prior to the CG decision offers no opportunity for recovery as this time is instead spent seeking urgent advice and making rushed decisions regarding move-on support. Providing a year's recovery period together with a positive CG decision would do much to prevent victims falling between the gaps in the system which have been so well documented by yourself and others. It would make compensation claims much more of a realistic possibility, would allow victims to seek counselling and health support and, would almost certainly help with longer term disclosure.

NGOs and experts working with child victims of trafficking have expressed concern that the current provision of temporary leave to remain is insufficient. If not granted Refugee Status or Humanitarian Protection, child victims may be receive Unaccompanied Asylum Seeking Child leave, entitling them to temporary leave to remain for 30 months or until the child reaches the age of 17½ years. This temporary leave provided to many child victims of trafficking undermines the ability of the child, or those supporting the child, to find a durable or permanent solution. Short term leave prevents local authorities making long-term plans for the child, rather than facilitating a clear pathway to adulthood. In order to build a sustainable future for a child, in particular during the transition into adulthood, it is essential that there is stability and certainty. A failure to find a durable solution for the child leaves them at risk of further exploitation and re-trafficking. Secure immigration status is essential in building a long-term plan and establishing a framework of emotional and legal support and accommodation for that child as they leave care. For these reasons, an additional form of leave should be created to grant recognised child victims of trafficking Indefinite Leave to Remain (ILR). The decision to grant a child ILR should be taken through a multi-agency Best Interests Determination (BID) process, within a child protection framework, that takes into account the views of all of those working with the child, the child's advocate/guardian and the child him or herself.

- **Legal aid must be provided for trafficking victims to access compensation from the Criminal Injuries as they are victims of serious crime.**

ODWs Information meetings - A lost opportunity to facilitate access to justice and remedy for ODWs is the mandatory information sessions which still have not begun. Following James Ewins QC's Independent Review of the Overseas Domestic Worker visa,³³ mentioned earlier in answer to Question 6 b, which was commissioned by Government following the Modern Slavery Act, the Government committed to implementing mandatory group meetings which would function as information sessions. These sessions would put a requirement not only on the visa holders, but also their employers, that the workers would attend the sessions, without their employers, in possession of their own passport and contract. Here they would learn about any rights they have in the UK and where they can go for help should they need to.

While these sessions won't overcome the limitations of the ODW visa, which leave its holders particularly vulnerable to exploitation they would do something to ensure that workers and employers know that the UK is interested in the working conditions of these workers and that they would have someone to contact for help should they need and chose to do so. These sessions are still not in place almost 2 years after the Modern Slavery Act has been enacted and over a year after Ewins made his review and recommendations. Given that an average of 17,000 ODW visas are issued annually there are likely to be around 20,000 additional people who have entered the UK on this visa and not benefitted from the information sessions since they were committed to.

Question 8

Please describe any projects delivered by your organisation or other civil society organisations to ensure access to justice and remedy for victims of contemporary forms of slavery.

Coop & City Hearts partnership 'Bright Futures programme' - On March 1st 2017, in partnership with City Hearts the Co-op announced the launch of their Bright Future programme which will help integrate victims of the UK modern slave trade back into communities. The Bright Future programme will provide survivors with a four-week paid work placement followed by a non-competitive interview. If this is successful and there is a position vacant, the candidate will be offered a job. Further information here: <http://www.city-hearts.co.uk/blog/2017/02/21/co-op-partnership>

ECPAT UK Youth Groups

The ECPAT UK Youth Groups are two groups of young people aged 15-23 who have been identified as trafficked in the UK. The groups, run by ECPAT UK Youth Group Coordinator meet on a weekly basis to support each other and develop life skills. Activities include social outings, where young people can relax and take time out from their often hectic lifestyles and meet other young people. There is a programme of workshops to develop important skills for both personal and professional life, as well as access to an educational mentoring scheme to assist with academic needs.

ECPAT Educational Mentoring and Befriending Programme

ECPAT UK and The Refugee Support Network provide specialist training to volunteer mentors in working with child victims of trafficking. The mentors provide educational support which is

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf

tailored to the young people's needs. This may be support with literacy, homework or assisting with job applications.

ECPAT UK Compensating Victims of Serious Crime

ECPAT UK supports young victims of trafficking to obtain compensation for the crime that has been committed against them. The organisation works with the legal firm Hogan Lovells to assist young victims to file compensation claims under the compensation scheme. Hogan Lovells is offering the service to victims of trafficking free of charge.

Question 9

In your view what are the necessary components of a comprehensive human-rights based approach to ensure that victims of contemporary forms of slavery can have access to justice and fulfil their right to an effective remedy?

There are concerns that the ongoing involvement of immigration authorities hinders a victim of trafficking's access to justice. There is widespread agreement that immigration authorities should not be responsible for determining whether or not an individual is a victim of modern slavery. Nevertheless the UK Visa and Immigration (UKVI) continues to act as the competent authority for non-EU nationals referred into the NRM. There is evidence that factors such as immigration status may influence the decision making process. Statistics from 2015 show a pattern of discrepancy between EU and non-EU nationals: around 70% of EU nationals are recognised as victims e.g. 77% Polish and 67% Lithuanian are recognised, but only 11% Vietnamese and 10% Nigerians are given positive CG decisions.³⁴ The UK government is currently assessing how to restructure the NRM and it is hoped that UKVI will be taken out of the decision-making process. To have a multiagency panel acting as the Competent Authority and making the decision as to if an individual meets the criteria for identification as having been trafficked or a victim of modern slavery or not would go some way to addressing this imbalance.

There are also problems with raids on premises where it is suspected that exploitation might be taking place, such as car washes, brothels or nail bars. Many anti-trafficking NGOs feel that the involvement of immigration enforcement in such raids is counter-productive. Owing to the intimidating environment created by policies including the Immigration Act 2016 (described above), a victim of trafficking may feel unable to fully disclose their exploitation for fear of deportation or further punishment. In such 'heavy-handed' operations there is a real risk of vulnerable people simply being displaced, perhaps being made homeless and vulnerable to further exploitation. It is imperative that the needs and vulnerabilities of the individual are prioritised over their immigration status. To ensure this is the case there should not be an immigration enforcement presence on 'rescue' operations or raids, the value of which anyway in terms of identifying and supporting victims is questionable.

³⁴ National Crime Agency, National Referral Mechanism Statistics, Quarter 1 January to March 2016 <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/711-human-trafficking-national-referral-mechanism-statistics-january-to-march-2016/file>

Question 10

Please provide any research, data or other information that your organisation has produced or is aware of relating to access to justice and remedy for victims of contemporary forms of slavery.

FLEX policy paper, September 2016, [*Improving Access to Compensation for victims of trafficking for labour exploitation in the UK*](#)

FLEX, November 2014, [Guide to legal remedies for victims of trafficking for labour exploitation](#)

FLEX working paper, July 2016, [Access to compensation for victims of human trafficking](#)

Anti-Trafficking Monitoring Group, October 2016, [Class Acts? Examining modern slavery legislation across the UK](#)

Human Trafficking Foundation, July 2015, [Life Beyond the Safe House for Survivors of Modern Slavery in London: Gaps and options review](#)

Human Trafficking Foundation, June 2015, [Trafficking Survivor Care Standards](#)

James Ewins QC, December 2015, [Independent review of the Overseas Domestic Worker visa](#)

Andrew Boff, October 2013, Shadow City, Exposing Human Trafficking in Every day London