

<https://www.federalregister.gov/documents/2020/12/02/2020-26576/request-for-information-for-the-2021-trafficking-in-persons-report>

DATES:

Submissions must be received by 5 p.m. on February 1, 2021.

ADDRESSES:

Written submissions and supporting documentation may be submitted by the following method:

Email: tireport@state.gov for submissions related to foreign governments and tireportUS@state.gov for submissions related to the United States.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the TIP Report information concerning sources to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. Submissions related to the United States will be shared with U.S. government agencies, as will submissions relevant to efforts by other U.S. government agencies.

This response regarding the UK is submitted on behalf of the Anti Trafficking Monitoring Group (ATMG)¹, Anti-Slavery International, the Anti Trafficking and Labour Exploitation Unit (ATLEU) and Hope for Justice.

Point of contact for submission: Kate Roberts, UK & Europe Manager, Anti Slavery International k.roberts@antislavery.org

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience. Citations to source material should also be provided. Note the country or countries that are the focus of the submission. Please see the Scope of Interest section above for detailed information regarding submission requirements.

Trafficking Profile

1. Describe the country's trafficking situation, including the forms of trafficking that occur, industries and sectors in which traffickers exploit victims, countries/regions in which traffickers recruit victims, locations and regions in which trafficking occurs, and recruitment methods. What groups are at particular risk of human trafficking? Are citizens of the country identified as victims of human trafficking abroad? Does child sex tourism occur in the country or involve its nationals abroad, and if so, in which

¹ The ATMG was established in 2009 to monitor the UK's implementation of European anti-trafficking legislation. The group examines all types of human trafficking, including internal trafficking and the trafficking of British nationals. The Group operates according to a human rights-based approach to protect the well-being and best interests of victims of human trafficking. It comprises twelve leading UK-based anti-trafficking organisations: Anti-Slavery International, Ashiana Sheffield, Bawso, ECPAT UK, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Kalayaan, Law Centre (NI), the Snowdrop Project, the TARA service, JustRight Scotland and UNICEF UK.

countries? Have trafficking methods and trends changed in the past 12 months, including as a result of the COVID-19 pandemic?

In the UK, the number of people identified and referred to the National Referral Mechanism (NRM) as potentially trafficked continues to rise. [The 2019 end of year summary](#) showed that in 2019, 10,627 potential victims of modern slavery were referred to the NRM; a 52% increase from 2018.

Early 2020 showed a decrease in NRM referrals for the first time since 2016. 2,871 referrals of potential victims were received in the first quarter of 2020, a 14 per cent fall from the previous three months. This was undoubtedly due to the COVID-19 pandemic and national lockdown, which meant that fewer front line services were in operation, leaving less opportunities for identification and referral combined with a decrease in labour inspections and other outreach services, rather than a drop in exploitation including trafficking.

With regards to children there was an increase in referrals during the first two quarters of 2020², with 2,511 children identified as potential victims. In the second quarter of 2020, for the first time ever, there were more referrals received for children than adults; with children encompassing 58% of total referrals for that quarter. The decrease in adult referrals is understood to be due to the effects of restrictions implemented as a response to the Covid-19 pandemic. The increase in child referrals may be due to continuities in perpetrator behaviour, adapted to maintain profitability during the lockdown, including the egregious criminal exploitation of children.³

Child trafficking is identified across the country, with the most prominent industries being nail bars, restaurants, construction and car washes. Illegal industries also feature prominently in the exploitation of children in the UK, predominantly those linked to drug production and supply.

Children are recruited predominantly in the United Kingdom, Vietnam, Albania, Sudan, Romania, Eritrea, Iraq, Iran and Nigeria amongst the most prevalent. The most common profile identified was that of child criminal exploitation with a total of 1,250 referrals in Q1 and 2 of 2020 alone of which 79.2% are British national children.⁴ This form of exploitation can be found in all regions of the country, predominantly in England and Wales with links between large urban centres and drug supply in smaller villages and rural areas.

Exploitation affects children of all backgrounds but particularly those with exacerbated vulnerabilities due to poverty, family breakdown or separation, disability, previous incidence of child abuse or domestic abuse, being in care, being in an institution such as orphanages and exclusions from education. Children in migration are particularly vulnerable to exploitation either through recruitment in their country of origin, during transit and in the UK

² Home Office. (2020). National Referral Mechanism statistics. Available at: <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

³ BBC. (2020). County lines: Teenage drug dealers posed as key workers during lockdown. Available at: <https://www.bbc.co.uk/news/uk-england-london-54356383>

⁴ Ibid, 2.

particularly as harsh border measures force them into extremely dangerous situations and they become even more vulnerable to people who can exploit them.⁵

Recruitment into exploitation can occur on-line through grooming techniques or employment advertisement. It can also occur in person and varies according to the child's profile, vulnerability and country of origin such as the targeting of orphanages prevalent in some cases of children trafficked from Vietnam and other foreign national children. The targeting of schools and pupil referral units is prevalent recruitment grounds for UK based children exploited for criminality with recent from Just for Kids Law stating that children who are outside of mainstream education are more vulnerable to becoming victims of child criminal exploitation.⁶

In the UK, it does appear that child criminal exploitation and more generally, criminal exploitation has continued during the pandemic. Concerns have been raised by many of the wider children's charities in the UK on the impact of the closure of schools and increased risks around online grooming for child sexual and criminal exploitation.

As some businesses known for exploitation have been shut during the lockdown, such as nail bars and car washers, Hope for Justice have concerns as to what has happened to these workers during this period. Their experience of forced labour more generally in the UK is that where work is not available traffickers will diversify into increased fraud and identity theft, they will continue to give victims food and housing until work is available adding any costs onto a bonded debt.

The pandemic has exposed significant underlying inequalities many of which have increased vulnerabilities during Covid 19. Workers already vulnerable to exploitation have become more vulnerable, some workers do not have recourse to public funds so lack a clear welfare safety net. Focus on Labour Exploitation (FLEX) has produced a report detailing vulnerable workers at risk of exploitation including the disproportionate impact on women and migrant workers (documented and undocumented).⁷

Given the interruption of global supply chains there have been heightened risks in industries under pressure with supplies such as recruitment agencies, food industries, logistics and personal protective equipment. This has been compounded by a lack of ability of labour enforcement agencies to conduct face to face inspections.

There have been increased risks for children as the normal spaces where safeguarding risks might be identified e.g. schools, after school clubs, youth clubs, drop in services are not

⁵ Europol. (2018). Criminal networks involved in the trafficking and exploitation of underage victims in the European Union. Available at: www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu.

⁶ Just for Kids Law. (2020). Excluded, exploited, forgotten: Childhood criminal exploitation and school exclusions. Available at: https://justforkidslaw.org/sites/default/files/fields/download/JfKL%20school%20exclusion%20and%20CCE_2.pdf

⁷ <https://www.labourexploitation.org/publications/no-worker-left-behind-protecting-vulnerable-workers-exploitation-during-and-after-covid>.

operating in the same way. This is coupled with heightened risks around online grooming for sexual and/or criminal exploitation.

As the pandemic has exposed existing inequalities and structural issues, there is particular cause for concern for child victims of trafficking and those at risk of exploitation. Children who are currently trapped in situations of exploitation are less likely to come into contact with police or other services in the current context, leaving them more trapped than ever. Those living in lower-income areas and those from Black, Asian and minority ethnic communities have been disproportionately impacted by the virus and have higher mortality rates, raising particular concerns for young victims of trafficking from these backgrounds.⁸

Europol, the EU's law enforcement agency, has reported a rise in activity around the distribution of child sexual exploitation material (CSAM) online.⁹ There are gaps in the UK's response to online child exploitation and inadequate regulation of Internet companies such as social media platforms frequently used by children. Opportunities to strengthen protections for children online were missed when the government failed to implement the recommendations of the 2019 Online Harms White Paper and create a robust regulatory framework for Internet providers,¹⁰ failed to implement the Information Commissioner's Office Age Appropriate Design Code which was only belatedly laid before Parliament in June 2020¹¹ and delayed implementing Part 3 of the Digital Economy Act 2017 which brought into law additional safeguards for children online including age verification processes and protections related to sexual exploitation imagery.¹² These delays or failures to act have created an online environment, which is less regulated and less equipped to protect children from exploitation than they might have been, particularly during the COVID-19 pandemic.

In April 2020, the Department for Culture, Media and Sport published new guidance to help Internet users to stay safe online during the coronavirus outbreak, with more detailed information for parents and carers,¹³ as well as a joint new government resources page on online child safety. On the 11th June 2020, following three months of lockdown measures in which children spent increased time online and agencies reported increased risks of online child exploitation, the Information Commissioner's Office Age Appropriate Design Code

⁸ Public Health England. (2020). Beyond the data: Understanding the impact of Covid-19 on BAME groups. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892376/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf

⁹ Europol. (2020). Catching the Virus Cybercrime, Disinformation and the Covid-19 Pandemic. Available at: <https://www.europol.europa.eu/publications-documents/catching-virus-cybercrime-disinformation-and-covid-19-pandemic>

¹⁰ Department for Culture, Media and Sport (2019) Online Harms White Paper: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf

¹¹ Information Commissioner's Office (2020) Age Appropriate Design Code: <https://ico.org.uk/media/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services-0-0.pdf>

¹² UK Government (2017) Digital Economy Act 2017 <http://www.legislation.gov.uk/ukpga/2017/30/contents>

¹³ UK Government (2020) Digital minister urges parents to follow new guidance to keep children safe online during lockdown 23rd April 2020: <https://www.gov.uk/government/news/digital-minister-urges-parents-to-follow-new-guidance-to-keep-children-safe-online-during-lockdown>

was finally laid before parliament; setting out 15 standards to increase protections and privacy for children when using the Internet.¹⁴

Concerns regarding referrals and identification of victims are ongoing. At the end of 2020, Anti-Slavery International and others received multiple reports of organisations attempting to refer potential victims into the NRM but there being a significant wait (4-6 weeks) for a First Responder to be available. We also received reports of potential victims being told to use the Home Office or the police as a First Responder. This is concerning as these statutory organisations have a very wide remit and are less likely to be specialists in identifying victims of trafficking and securing consent and disclosure. Many victims are (understandably) fearful of statutory organisations due to past experiences or what they may have been told by their traffickers. Many victims are less likely to feel able to disclose aspects of their trafficking to an authority with whom they do not feel safe and who does not use a trauma-informed method to secure disclosure and consent. Such referrals are less likely to be complete and more likely to result in a negative NRM decision. For victims in immigration centres and prisons immigration enforcement, the officials enforcing their detention are likely to be the only available First Responder, again making disclosure difficult. For those who are identified in spite of these issues there are often additional difficulties around bail.

Guidance to enable non governmental organisations to apply for first responder status has now been outstanding for 3 years. For NGO's who do want to become a first responder and have applied their applications cannot be processed until this guidance is issued. This leaves many geographical areas in the UK without a specialist NGO who could first respond in the event that a victim does not wish to have contact with a statutory service.

Case Study

Hope for Justice's community engagement specialist identified a potential victim. He was referred to a first responder. It took over two weeks for the first responder to contact the client. They advised that this was because he was not homeless and therefore not a priority. However whilst the potential victim was living in supported accommodation he was destitute as he had no financial means to support himself.

Case Study Hope for Justice

Hope for Justice had a referral about a potential victim, he had reported his situation to the police (a first responder) but they had no translator so he couldn't explain his situation and the police used the trafficker to translate for them. He was then threatened by the trafficker with physical abuse, managed to escape, he then called the police a further two times and they assisted him getting help as he needed urgent medication but he still had no translator so couldn't explain his situation. The police signposted the potential victim to an NGO to support him with homelessness, they had been trained by Hope for Justice and the case was then referred to Hope for Justice who worked with multiple agencies utilised its local contacts to ensure he was housed and was put into contact with a specialist police officer. The victim by the time we were involved had been in contact with multiple people who were first responders but had not identified him as a potential victim. This caused him considerable anxiety and distress.

¹⁴ Information Commissioner's Officer (2020) Age Appropriate Design Code is laid before Parliament: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/06/age-appropriate-design-code-is-laid-before-parliament/>

There are ongoing concerns around standards of and access to support for people who have been identified and who are eligible for NRM support. While we welcome the commitment that efforts are being made to increase the numbers of decision makers within the Single Competent Authority in order to speed up decision making and long delays in the system, significant delays in decision making remain. This means trafficked people spend what can be years effectively in limbo waiting for a decision. Many do not have permission to work during this time, preventing them from moving on from their trafficking experience and beginning to rebuild their lives. A report by domestic worker support organisation Kalayaan ‘Dignity not destitution’ (published October 2019)¹⁵ highlights the differential experiences of victims in the NRM depending on permission to work. In December 2020 the High Court found the Home Office’s policy on leave to remain for potential victims of trafficking to be unlawful. The case, *EOG v Secretary of State for the Home Department* [2020] EWHC 3310 (Admin), successfully challenged the Home Office policy which failed to provide any route to leave to remain or a right to work for potential victims of trafficking who are [referred into](#) the National Referral Mechanism (NRM). The Home Office is seeking permission to appeal.

Even once confirmed as a victim with a positive conclusive grounds decision, survivors of slavery are not guaranteed a secure basis on which to begin to recover. While there is provision for the grant of a ‘residence permit’ in the form of discretionary leave to remain (usually for a period of 12 months)¹⁶ on the basis of personal circumstances, cooperation with the police or an ongoing compensation claim, in practice, leave is issued to a concerning low number of confirmed victims. In our view the guidance on discretionary leave to remain continues to be too restrictive, particularly around personal circumstances and not in line with the explanatory report to ECAT which at para. 184 states "The personal situation requirement takes in a range of situations, depending on whether it is the victim’s safety, state of health, family situation or some other factor which has to be taken into account."¹⁷ In 2015, 123 survivors with positive conclusive grounds were granted discretionary leave, in 2019 it was 70 and in the first three months of this year it was only eight. Following the UK’s departure from the EU, after June 2021 EEA nationals will also be subject to immigration control and face uncertainty following a positive trafficking decision. The majority of EEA nationals following the changes will require DLR to live and work in the UK and are often not claiming asylum thus not entitled to asylum accommodation. This is likely to mean an extended period in a safe house until DLR has been granted. Many DLR applications are taking months or even years to process. In addition to the detrimental impact on the individuals who are left in limbo with their lives on hold during this time there is also likely to be significant strain on the safe houses within the NRM system unless this situation is resolved in the form of grants of leave to confirmed victims.

We are concerned that the low grants of leave to confirmed victims of trafficking undermine the UK’s anti-slavery efforts. If victims are not offered basic security in the form of a

¹⁵ http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf

¹⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf

¹⁷ <https://rm.coe.int/16800d3812>

confirmed period of time during which they will be safe, supported and able to access work or education in order to re-integrate and rebuild their lives, it makes it very hard to escape exploitation and to give evidence to the authorities. We are concerned that in spite of evidence¹⁸ as to its benefits, the UK government has not given time to the Modern Slavery (Victim Support) private member's bill. Instead we remain in a situation where the NRM offers no security for survivors but instead a long time of limbo and insecurity during decision-making and no pathway for recovery following identification. There is no published government data on outcomes for victims following identification, and there is anecdotal evidence that without security many are re-trafficked; entering exploitation to avoid destitution. A snapshot of data of Hope for Justice advocacy clients from January 2020 (just before lockdown) revealed 61% of clients required advocacy to prevent homelessness. In addition, the failure to regularise status impacts on the ability of survivors to recover from their experience and also engage with a criminal investigation if they wish to do so. Ultimately this impacts on perpetrator accountability and contributes to risks of re-exploitation.

Equally, changes to the immigration rules, following the UK withdrawal from the European Union, continue to undermine UK efforts to combat trafficking in persons. In combating what is often a transnational crime, the UK has relied heavily on involvement in European mechanisms, such as Europol and Eurojust, which allow closer collaboration between the police forces of Member States to dismantle trafficking networks and bring traffickers to justice. As of our departure at 31st December 2020, it remains unclear how the UK will work with European partners on security and justice measures.

There is little to no consideration given to the impact of immigration policies in other parts of the UK, despite the implementation of pro-active policies by devolved governments and the recognised powers they hold. There is a danger that restrictive and hostile policies could impact on the delivery and attainability of important work to date of the Northern Ireland Executive in using its devolved competencies to address issues arising from immigration policy. The Racial Equality Strategy¹⁹ makes clear that the Executive has powers in respect to immigration and is exercising them to address some of the problems faced by those living under immigration control here, including asylum seekers and refugees. Indeed, it has exercised these powers to put in place several very positive initiatives including:

- setting up a Crisis Fund for vulnerable migrants,
- providing free English language classes for asylum seekers,
- ensuring that all asylum seekers have access to free healthcare,
- providing the legal framework that will give all unaccompanied asylum-seeking children and trafficked children an independent legal guardian.

Paragraph 9.3 of the strategy states “At times our regional interests will not coincide with those of Great Britain. We have for example recognised the importance of legal advice in assisting migrants to attain the stability that underpins long term integration.” While these commitments

¹⁸ See for example, Cost benefit analysis of the Bill. Rights Lab, University of Nottingham. 2020 <https://nottingham-repository.worktribe.com/output/4887518>

¹⁹ Racial Equality Strategy 2015-2025 (executiveoffice-ni.gov.uk)

are positive, there is a risk that the changing nature of immigration rules and legislation led by government in Westminster could undermine The Racial Equality strategy and the positive initiatives to date. For example, on December 1, 2020, there were significant changes to the immigration rules. Under the new rules, permission to stay can be refused or even cancelled if the Home Office is satisfied that a person has been rough sleeping. By definition, this means “sleeping” or “bedding down” for example in streets and doorways. These are situations of human deprivation and want which victims often find themselves forced into beyond their control. The breadth of the rough sleeping rule undermines the Government’s claim that the provision will be used ‘sparingly’. The potential operation of the rules is also troubling particularly where a previous rough sleeping policy affecting EU victims was struck down as unlawful.²⁰ The ATMG recommend that an assessment on the impact of immigration rules and the degree to which they might undermine proposed objectives is conducted to ensure that any areas which undermine the Modern Slavery Strategy, or the Racial Equality strategy are mitigated against.

While in the NRM support system, support within a safe house is limited to 15% of the Victim Care Contract²¹ (the Contract to provide care within the NRM). With 85% of the contract providing victims with only outreach support there are concerns that accommodation is provided according to availability rather than need. There is limited support available for victims with complex needs including needs which may make them vulnerable to re-trafficking with reports of victims in the NRM being street homeless due to a lack of suitable safe house accommodation. Others are housed in asylum accommodation which is often unsuitable.²² In June 2020 subsistence rates for victims in catered early asylum accommodation (section 28) were stopped, meaning victims were provided with 3 meals a day but had no income or way of providing for basic needs such as toothpaste, phone data or clothing. There were reports of victims begging for funds to cover their basic needs such as sanitary products. Following legal challenges, the Government agreed that victims in section 98 accommodation would be entitled to subsistence of £25.40 a week. We remain concerned that this is too low to meet basic needs, let alone support recovery. Such issues have been compounded by the pandemic where victims have required extra support and resourcing including extra food provision especially for those who are shielding and self isolating as well as increased technology to enable access to remote services such as counselling and education.

The finding by Mostyn J in the case of *K & AM v Secretary of State for the Home Department* [2018] EWHC 2961, makes clear that subsistence provided under the UK’s international anti-trafficking obligations was “*more than a minimal sum necessary to stave off destitution.*” This established that the purpose of subsistence to meet a victim’s needs is materially different and in addition to any subsistence that asylum seekers generally receive from the state to avoid destitution.

²⁰ Gureckis, R (On the Application Of) v Secretary of State for the Home Department [2017] EWHC 3298 (Admin) at [127]

²¹ As of 31st July 2020 (FOI 59922)

²² Hibiscus Initiatives.,(2020). *Closed Doors: Inequalities and injustices in appropriate and secure housing provision for female victims of trafficking who are seeking asylum* [Online] Available from: https://hibiscusinitiatives.org.uk/wp-content/uploads/2020/12/2020_11_24-HI_Closed-Doors_Main-Report_FINAL_DIGITAL.pdf p. 8

Confusion and discrepancies remain around material subsistence entitlements, with rates varying from £25.40 to £65 a week, with people in outreach support frequently receiving less than people in safe house accommodation.

There is also concern and confusion as to the subsistence entitlements of asylum seeking victims of trafficking, who do not receive extra financial support payments for their dependent children, whereas non-asylum seeking victims of trafficking with dependent children do. The failure to provide extra financial support to asylum-seeking victims of trafficking with dependent children appears discriminatory and adds to the general confusion as to subsistence payments in England and Wales.

There appears to be little to no support for childcare. Reports include victims who have had to miss appointments or cut them short, or have been unable to attend college or counselling/support sessions because they cannot afford to pay for childcare, which in turn hinders their recovery. This has been compounded by covid 19 where many counselling services are now online and survivors have even more difficulty accessing these services with children present in the house.

Additionally, a new policy introduced to transition people out of the NRM, the 'Recovery Needs Assessment'²³ (RNA) provides individuals with subsistence payments providing they are not receiving other forms of income, such as benefits. Within the RNA subsistence payments are means tested, meaning many individuals are without financial support before a decision has been made that support should be ended. We are unclear on the methodology used to calculate the rates and the reasons for the disparity in payments between people receiving different support from different areas of the NRM. In future, the Home Office has committed to ensuring that payments are made on the basis of individual needs. It is important that this individual needs based approach is for payments above a basic level and does not in practice mean that survivors of trafficking are compelled to make a case for payments. If we are to reduce risks of re-exploitation then it is important to look at a survivor's needs in the context of their history, what has made them vulnerable to exploitation as well as their trafficking experience if we are to provide holistic support and reduce risks of re-exploitation. We additionally remain concerned that this may create extra administrative burden on support providers, effecting access to casework support, and lead to delays in subsistence provision.

Access to legal entitlements remains a challenge for many victims of trafficking. Legal aid is not always available for all victims and consecutive cuts to legal aid means there are 'legal aid deserts' throughout the UK with many victims unable to access specialist legal advice or significant delays in referrals. This can impact survivor's prospects for immigration status, housing, compensation and criminal justice, among other factors. A lack of access to legal advice will ultimately undermine the faith of survivors in the UK's anti trafficking systems.

23

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953307/recovery-needs-assessment-v3.0-gov-uk.pdf

In England and Wales legal aid is not available for pre NRM advice outside asylum cases aside from a small number of pro-bono advice services. This issue is compounded for survivors as trafficking cases are a specialism within a specialism so finding advisors with knowledge of trafficking is even more difficult. In addition many immigration advisors lack knowledge around the rights of EEA nationals.

Routine Refusals of Legal Aid to Victims

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

Case Study (Provided by ATLEU)

Rabia was trafficked to the UK for the purpose of domestic servitude, she was required to work lengthy hours for which she received just 33p per hour. Rabia's identity documents were taken from her, she was not allowed to leave the property unaccompanied and was subjected to race and religious discrimination.

Rabia brought a complaint to the Employment Tribunal and sought legal aid to ensure that she could be represented at the hearing. Rabia's application was refused on the basis that it is 'only a claim for money' and is not of 'sufficient importance or seriousness' to warrant a grant of funding. The Legal Aid Agency further stated that legal aid was not necessary as Rabia would be provided with an interpreter at the hearing and so would not encounter difficulty in cross-examining her traffickers and making legal submission to the Tribunal. The Legal Aid Agency reversed its position following the issue of judicial review proceedings. But the need to pursue satellite litigation meant that the Employment Tribunal proceedings were delayed for over a year.

Legal Aid Doesn't Cover the Cost of Enforcement of an Employment Tribunal Claim Judgment

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

process, the idea that without access to a lawyer a victim of trafficking could have effective access to a remedy in these cases is fanciful.

Lack of Transparency and Clarity of the Scope of Legal Aid for Victims

As an outside agency looking into the system, HfJ considers that there appears to be confusion and a complete lack of transparency from the Legal Aid Agency (LAA) as to the scope of the provisions within schedule 1 section 32 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (“LASPO”)²⁴ covering advice on immigration and compensation to victims of human trafficking and modern slavery. For instance, HfJ had a case where one provider was told by the LAA via a legal aid provider that LASPO schedule 1 section 32 covered an application by a victim for permanent residency. Another legal aid provider was told the complete opposite by the LAA. ATLEU (Anti Trafficking and Labour Exploitation Unit) a legal aid provider who specialise in providing advice to victims have repeatedly asked the LAA for details of the policy/information to clarify the scope to assist legal aid providers but have had no response to this request.

The Statutory Charge

Even if compensation is recovered if legal aid has been in place this will be subjected to a statutory charge which could swallow up the compensation received.²⁵ This is despite ECAT (Article 15) and the Trafficking Directive (Article 17) requiring member states to enable victims to access compensation schemes and Article 12 of the Trafficking Directive referencing “free legal advice” and “without delay.”

Access to Legal Advice on Immigration

Some victims may be able to access advice pre-official identification through the National Referral Mechanism (“NRM”) system e.g. if they are claiming asylum. In addition, there are small pockets of pro-bono advice available pre-NRM. Pre-NRM advice is also covered by legal aid in Scotland. A lawyer who specialises in cases involving human trafficking in Scotland has advised that she considers that early legal advice actually gives victims confidence in entering official systems such as the NRM. However, in England and Wales many victims often cannot access legal advice until they have a reasonable grounds decision that they are a victim. This is unsatisfactory, as whilst an NRM decision is not an immigration decision it does have immigration implications e.g. risk of deportation, the ability to apply for discretionary leave to remain (“DLR”); can create risks of deportation or removal if a victim has a criminal history.

Even if victims do have a positive reasonable grounds decision that they are a victim, efforts to obtain immigration advice are hampered by wider legal aid reforms which have resulted in an ever diminishing number of firms providing legally aided immigration advice. This is particularly acute outside London with many areas with no immigration advisors and those still available at high levels of capacity. In HfJ’s experience it can take anywhere on average between 8 weeks and 12 months to obtain an appointment to see an immigration advisor depending on the area. Sometimes appointments can be obtained within 2 weeks in some

²⁴ Legal Aid and Punishment of Offenders Act 2012 Schedule 1 para. 32 sourced at <http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

²⁵ Further information on the Statutory Charge can be found here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777007/paying-for-your-civil-legal-aid-leaflet-v2.pdf

areas. This is unsatisfactory especially if advice is urgent e.g. if a victim is at imminent risk of deportation or removal. HfJ will provide, if needed, financial support to victims if they have to access legal advice in a different area to ensure that they have access to justice. However, many victims may not be able to afford the cost of transport to another area.

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

*"A positive reasonable grounds decision under the National Referral Mechanism should not be the gateway to legal aid which should be provided at an earlier stage, at the point of first identification. The support of a legal representative and their explanation of a person's options (or lack of options) may be what persuade a person to engage with the National Referral Mechanism in the first place. First, without legal advice, fear of detention and removal if they identify themselves to the authorities are powerful incentives for trafficked and enslaved persons to stay hidden."*²⁶

In addition, ILPA point out that by the time the reasonable grounds decision has been made deadlines for immigration cases may have passed and without assistance from a legal advisor wrong decisions can be made around the person's status as a victim.[iv]²⁷ We agree with these statements and note that the spirit of ECAT and the Directive is clearly to ensure that victims receive immediate assistance, including legal assistance, to enable them to come forward and feel protected and supported.

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

The experience of practitioners is that specialist immigration advice and regularisation of status is vital to safety and stability. It is crucial to enable longer term access to welfare, community care and housing. Without immigration advice many victims can end up at risk of homelessness and destitution, affecting their long term recovery and reintegration.

Access to legal assistance pursuant to ECAT and the EU Directive should be provided without delay. In particular if victims aren't able to access immigration services this can lead to issues of destitution, homelessness, risks of removal and deportation as regularisation of status is so vital to many wider aspects of support that empowers recovery including clear access to homelessness assistance, community care, welfare entitlements and access to employment.

²⁶ ILPA Response to the Ministry of Justice Review of Legal Aid for Trafficking and Modern Slavery Compensation Claims, 27th May 2016

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

Subsistence payments and legal aid eligibility

People who are in the NRM are 'entitled' to legal aid. However legal aid is also means tested. This means not everyone in the NRM is able to access legal aid in practice. This poses a significant barrier to justice for people who are not eligible and denies them a key entitlement under article 12 of the Council of Europe Convention for Action Against Trafficking In Human Beings and recital 19 and Article 12 of the Anti- Trafficking Directive.

One example of the issues which arises with legal aid eligibility is when subsistence payments (an entitlement under Article 12- material assistance) clashes with income tests.

There is a capital test and an income test for legal aid.

The income test means that anyone, including survivors of trafficking, who has a monthly income of over £733 (after deductions e.g. for housing or dependents) is not eligible for legal aid, even if they are in the NRM.

This has implications for survivors who work. It means that for some people, accessing subsistence payments, could push them over the eligibility threshold for legal aid.

It also includes survivors who are in sex work who are not eligible for legal aid due to their earnings. Some survivors find themselves trapped in abusive relationships and sexual exploitation because they are unable to access advice even when they are in the NRM, due to the level of their earnings.

This seems unfair because subsistence payments are to aid recovery- they are additional income to help each survivor recover, for example to pay for travel to appointments. These payments should not serve to make them ineligible for legal aid, another entitlement key to recovery.

The capital test means that people who have over £8,000 in savings or assets are not eligible for legal aid. This causes problems if survivors have property overseas (e.g. migrant domestic workers whose family have a small patch of land which they cannot prove the value of) or they win a compensation claim which pushes them over the limit.

People with partners who are working may find themselves just over the income threshold, or where the partner owns a property or has some savings, can also find themselves ineligible due to the capital test. Survivors may have partners who are not aware of their trafficking history and they feel unable to discuss it with them in order to access funds for legal advice. Survivors often find themselves in abusive and controlling relationships where partners may be unwilling to fund advice.

It is possible for lawyers to make exceptionality arguments e.g. if they can't get assets abroad valued, but this requires a detailed understanding of the rules and a commitment and risk from the legal firm.

Some benefits are 'passported'. This means that if you receive one of these benefits you are eligible for legal aid without needing to pass the income test and only have their assessment on capital. These benefits include Universal Credit, income support and JSA. People in receipt of section 4 or 95 asylum support are passported through both income and capital tests for immigration advice. However, many victims of trafficking do not get the benefit of being

passport at an early stage for immigration advice, as they do not claim asylum and receive asylum support until after being identified as trafficked.

Recommendation

Being in the NRM should also passport you through the legal aid income and capital tests. This would mean that everyone in the NRM would be able to access legal aid (as per Article 12, ECAT).

This blanket rule, which should cover all legal aid categories of law, would mean that no one in the NRM would be barred from accessing their entitlement to free legal advice as a result of being ineligible for legal aid.

Being passported through the income test would remove a significant barrier to work for people in the NRM. Without this there is a risk that survivors may be dissuaded from seeking work, although it would be beneficial to their recovery.

This would also cut down significantly on bureaucracy for legal representatives, making victims of trafficking less financially complex and risky to open cases for. It would by no means solve all the issues with legal aid but could help facilitate access for people in the NRM and would make the system clearer and fairer.

Non- prosecution

Despite existing guidance from the Crown Prosecution Service, victims of modern slavery continue to be wrongly criminalised for drug, benefits or immigration offences that were the result of their exploitation. Although section 45 of the Modern Slavery Act introduces a defence for victims who are compelled to commit criminal offences, it can only be relied upon once the prosecution process has commenced and does not protect victims from being prosecuted in the first instance. In addition, there are numerous offences that victims may have committed that are excluded from the scope of the defence. Practitioners still find that survivors coming into their service have already been prosecuted for offences committed whilst trafficked without anyone identifying them as a potential victim. Often the victim isn't even aware that they have been prosecuted and been through the court system. Issues around prosecution are compounded by often a lack of understanding of the complexities of human trafficking by law enforcement and criminal justice agencies; a lack of training of judges, prosecutors and criminal defence lawyers, as well as, wrong perceptions of victimhood.

In England and Wales, having reviewed all cases which mention section 45 of the Modern Slavery Act 2015., there are 16 cases in total, 5 cases contain substantive commentary or apply section 45 and 11 cases mention section 45 with no substantive commentary.

In light of the small sample size, it is not possible to pick out any broad themes in relation to the way in which the section 45 defence has been applied. As previously explained, the relatively small number of cases is due to the fact that the majority of first instance decisions in Crown Courts and Magistrates Courts are not reported. A similar point is made in the Home Office's Independent Review of the Modern Slavery Act 2015 (the "Independent Review"), which states that:

"There is no quantitative data available with which to assess the scale and impact of the statutory defence. It is therefore difficult to understand how the statutory defence has been used or potentially misused, other than considering qualitative case studies. In addition to the cases that are charged, it is of course possible that in some cases charges were never brought because of the existence of the defence; by their nature these cases will not be recorded. Anecdotally, we heard that the use of the statutory defence has increased".

Equally, in Northern Ireland, although non-punishment or prosecution measure exist in line with the Executives' primary legislation, there is no publicly available data which sets out how many cases the Section 22 statutory defence has been raised in in both children or adult cases. Comparatively, in England and Wales, while the 2019 Modern Slavery Act Review and a recent report by The Independent Anti-Slavery Commissioner have looked in detail at the provision of section 45 of the Modern Slavery Act, there is a growing tension between the criminal justice system and the NRM. Police intervention and arrest are being used in various areas in the UK as a disruption measure to keep children safe when there is improper intervention in their care in other areas.²⁸ Measures outlined to increase communication with police must not result in an increased police presence in children's lives.

The coalition has done extensive work monitoring section 45 in England and Wales for children, finding that defence claims are being increasingly met with scepticism, particularly in cases of child criminal exploitation for drug offences which has seen a year on year rise since 2015. For many young people who are criminally exploited there is an on-going tension around the criminal justice system's interpretation of the offences. Although children are offered a degree of protection, in England and Wales there are various issues pertaining to the "reasonable person test" which is absent in the Northern Ireland legislation. The test is largely framed around how the criminal justice system interprets and understands "choice", an inappropriate consideration in the context of human trafficking for children's cases which preclude the 'means' portion of the definition in both domestic and international framework.

With regard to non-punishment provisions post Brexit, how the courts choose to interpret the Directive beyond this date, remains to be seen. However, there is concern how this will affect s45 of the Modern Slavery Act. For example, if the interplay between article 2 and 8 of the Directive gives much more protection to a person who is exercising a defence than The European Convention against Trafficking in Human Beings does. Instead, "ECAT's" referencing non-punishment is far more oblique. For now, the lacuna is covered by Crown Prosecution Service guidance, which contains clear referencing to Article 2 of the Directive. and encompasses all aspects of servitude and trafficking. If this is soon to be replaced by definitions and guidance from the Modern Slavery Act, this could impact on the court's ability to consider non-punishment provisions effectively.

²⁸ <https://howardleague.org/wp-content/uploads/2020/03/Victims-not-criminals.pdf>.

The legal framework has established a strong baseline in improving the understanding of the circumstances individuals are exercising the defence in and how the court is responding, particularly in relation to medical and credibility expert evidence. However, little else is known about what point defences are being exercised and considered beyond the courtroom.

We have long advocated that judges and officers of the court require enhanced training on modern slavery and human trafficking. Only improvements to data, training and other preventative measures will improve understanding of the circumstances that the defence is being exercised in and how its application is considered by the criminal justice system. Monitoring section 22 and the various points at which a defence can be raised should be prioritised as a matter of urgency.

There is emerging focus on the roles of juries in human trafficking offence cases. As noted in the Independent Anti-Slavery Commissioner's comments in the latest Northern Ireland Modern Slavery strategy: "Scope the need for legislation to require jury directions to be given in modern slavery and human trafficking offence cases", we believe this proposal arises from a judgement handed down in February 2020 concerning *R v DS* [2020] EWCA Crim 285, an appeal concerning terminatory ruling in a county lines drugs case. The judge at first instance stayed the prosecution as an abuse of process in light of the Single Competent Authority's (SCA) 'conclusive grounds' determination that the defendant, a child, was a victim of human trafficking. On appeal, the Crown successfully argued that the introduction of the 'modern slavery defence' (s.45 of the Modern Slavery Act 2015) meant that the issue of exploitation was not a matter for the judge, but the jury.

The Court of Appeal explains in *R v DS* that the Crown must continue to take a conclusive grounds decision by the SCA into account in deciding:

- a) 'Whether a defendant is a Victim of Trafficking; and
- b) Whether the offending has a very close nexus with the exploitation' (paragraph 41).

But it reiterates that the prosecutor does not need to abide by the conclusive grounds decision and can seek to challenge the finding before a jury, inviting them to come to a different decision to the Single Competent Authority. None of this is new, but following *R v DS*, it is to be expected that a prosecutor might proceed to trial, erring on the side of caution.

Where the CPS and the Single Competent Authority reach different decisions, it is now the jury that acts as an arbitrator between these two arms of the state. Importantly, the jury as the answer to the question 'who in the criminal justice system consistently and accurately identifies the victim of modern slavery?', is perhaps unsurprising, but courtrooms are not neutral environments. The evidence placed before a jury and the rules by which the jury must approach their decision-making are determined by legal principles and the success of the argument advanced by the prosecution and defence.

By transferring responsibility to the jury, the Court in *R v DS* does not resolve the tensions and complexities inherent in one arm of the state seeking to undermine the decision of the other and the implications of the same in practice. For instance, the Court of Appeal seems to

accept that the admissibility, or otherwise, of a positive conclusive grounds decision itself is likely to be a matter of contention, without seeking to resolve the issue: ‘whether the decision of the Authority is admissible at all before the jury is an issue which has been briefly canvassed before us, but we do not think it is right for us to express any view’ (paragraph 43).

This leaves big question marks over the role of the jury in modern slavery defence cases and it remains unclear who will describe the significance of the decision to the jury or the weight that will be attached to it. The practical consequences of the decision in *R v DS* are yet to be seen but we believe greater understanding of the provision is needed across the UK. Data is called for but hard to come-by.

The Immigration Act 2016 created an offence of illegal working, despite ample evidence presented that many victims are made illegal by their traffickers to make it easier for them to be controlled and to detract the attention of law enforcement from the perpetrators. An inspection of the Home Office’s approach to illegal working, August to December 2018, by the Independent Chief Inspector of Borders and Immigration found that “the Home Office’s efforts are not really working and may have had the unintended consequence of enabling exploitation and discrimination by some employers”.²⁹

2. What was the extent of official complicity in trafficking crimes? Were officials—including police, immigration officials, diplomats, peacekeepers, military personnel—government contractors, or government grantees directly or indirectly facilitating or enabling trafficking in persons? Did they operate as traffickers, enable traffickers, or take actions that may facilitate trafficking (including accepting bribes to allow undocumented border crossings or suspending active investigations of suspected traffickers, etc.)?

3. Was there a government policy or pattern of human trafficking, such as in government-funded or -affiliated services or programs within the country or abroad? Did government policies, regulations, or agreements relating to migration, labor, trade, and investment facilitate vulnerabilities to, or incidence of, forced labor or sex trafficking? Were there examples of trafficking occurring in state institutions (e.g., prisons, orphanages or child foster homes, institutions for mentally or physically disabled persons, camps, compounds, or outposts)? If so, what measures did the government take to end such practices?

Law Firm Duncan Lewis have issued a challenge on behalf Eritrea Focus (*Eritrea Focus v FCDO*) against the Foreign, Commonwealth & Development Office, regarding the UK Government’s funding and support to the EU Trust Fund for Africa's *‘Reconnecting Eritrea*

²⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

and Ethiopia through rehabilitation of the main arterial roads in Eritrea’ development project in Eritrea.

It is understood that this EU project was using conscripts from the Eritrean National Service, with the service commonly being described as ‘enslavement’ and a “crime against humanity” by a UN Commission of Inquiry. The European Parliament denounced it as “forced labour” and “a form of slavery”. Despite this, the EU funding, with UK government contributions, continued unabated and indeed increased throughout last year.

Although in their response to Duncan Lewis, the UK Government has admitted entering into this project despite “significant concerns” of human rights abuses and the use of forced labour regarding the planned use of national service labour in delivering the project.

The government also confirmed that the UK’s involvement operational contracting period of the EUTF comes to an end on 31 December 2020. The UK made its final payments before 31 July 2020 and have since confirmed there will not be further contributions to the project.

Many trafficked children are among the wider children in care and care leaver population placed in accommodation provided by for profit companies. One recent investigation uncovered support workers in one care home in Lancashire who were recruiting children within the home into criminal exploitation for the purposes of drug supply.³⁰ There has been no clarity regarding the steps being taken to remedy these practices. There is significant concern regarding the risk of exploitation for children in care, particularly those over the age of 16, many of whom are placed in unregulated semi-independent or independent accommodation also run by private for-profit companies. Unaccompanied and separated children are particularly vulnerable, with six times more unaccompanied children living in semi-independent accommodation than other children in care (36% vs 6%).

Case Study

Bao*

Hope for Justice successfully supported a client, Bao from children’s services into adult support services. Bao first met with HfJ the day prior to his 18th birthday, with his social worker and ICTG. Bao was shocked to learn his support from children’s services would be ending on the following day and that Children’s Act support only lasted until he reached 18—including housing. HfJ was able to reassure Bao that he would not be left in the lurch and that he would be moved into safe house accommodation. HfJ was able to inform Bao of his rights and options moving forward, including issues such as Asylum and the possibility of entering the NRM.

During the meeting one of the IMSAs present recalled Bao asking, “who in the room will I ever see again?”.

³⁰ <https://www.lancs.live/news/lancashire-news/drug-dealers-work-childrens-homes-19258061> ; <https://www.mirror.co.uk/news/uk-news/drug-dealers-work-care-homes-22989648>

This is a shocking reality for many child victims of modern slavery and without a transitional bridge the answer would be no one. Boa's case clearly evidences the need for specialist support for this client group so that they can access their rights and entitlements and engage effectively with appropriate support services.

Unregulated accommodation is unsuitable for young people particularly those with greater levels of need due to the high risk of going missing and being re-trafficked. Evidence shows this type of accommodation may place children at greater risk of exploitation by criminal gangs.³¹ The Government has consulted on the needed improvements to existing provision and regulation of existing accommodation in 2020, unfortunately, ECPAT UK and other children's rights organisations remained concerned that any changes made as a result of this consultation will be limited without addressing the impact of for profit companies within the care system, critical lack of specialist placements, including foster care, for child victims of trafficking as well as the consideration of the consultation did not extend to ensure consideration of children over the age of 16. Additional funding must be provided to local authorities to grow their own provision of accommodation that meets the needs of young people in their areas.

The changes to the Overseas Domestic Worker visa made in 2012 remain in place, despite evidence that this leaves this cohort of workers particularly vulnerable to exploitation, including domestic servitude. Domestic Workers have explained that the pandemic has heightened their likelihood of exploitation, leaving them with less negotiating room than ever, and employers either locking them in their homes/ workplace, making them work in spite of family members having infections, or kicking them out so they lose both their employment and accommodation. Domestic workers have reported that employers are breaking COVID restrictions, including hosting large parties which they are required to facilitate. They feel unable to challenge this due to their lack of options.

The ongoing precarious situation of migrant domestic worker on the ODW visa in the UK is particularly disappointing in the context of the government's independent review of the ODW visa, conducted in 2015 by James Ewins QC.³² Even the recommendations which the government committed to adopting, such as information session, have not been adopted. There has been no official explanation for the delay and no safeguards have been put in place pending the government making its decision on procurement. So while the UK government accept more needs to be done to protect ODW visa holders, nothing is being done in practice.

ATMG and others have concerns that the UK's new immigration systems following departure from the EU do not provide for immigration routes which enable key workers to exercise rights and challenge abuse³³. Visas which are time limited and tied to a specific employer

³¹ <https://www.bbc.co.uk/news/uk-49673455>; <https://howardleague.org/wp-content/uploads/2020/03/Victims-not-criminals.pdf> ; <https://www.crestadvisory.com/post/unregulated-care-homes-and-county-lines>

³²

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

³³ David Camp, allianceHR (2020) *The Impact of the New UK Immigration System on Human Trafficking into the UK*. Available at: https://mcusercontent.com/3c54676782d780a671a347fe3/files/59085942-f8e8-45f4-8aef-806ac18c32ea/The_impact_on_Human_Trafficking_of_the_new_UK_Immigration_System_October_2020.pdf

leave workers few options to challenge exploitation, creating vulnerabilities and playing into the hands of those who wish to exploit them. If the UK is serious about preventing trafficking it must learn the lessons from the Overseas Domestic Worker visa as well as from the Covid 19 pandemic as to the vital role of many workers deemed 'low skilled' by our immigration system. It must ensure that all visas include a safety net including recourse to public funds and healthcare entitlements, options to change employer, allowing for negotiation around poor working conditions and the ability to seek alternative work if these are unsuccessful, and access to UK employment law.

In relation to children and young people, despite the progress achieved, the best interests of child victims are not being assessed thoroughly particularly when decisions on their immigration status are made. The Government's punitive 'Hostile Environment' policy means that when migrant children turn 18 a range of protections stop.³⁴ ATMG has commended the Government for the implementation of the EU Anti-Trafficking Directive and the Council of Europe Convention Against Trafficking. Unfortunately, the Government has failed to implement a key portion of the Directive, mainly Article 16.2 requiring member states to provide a durable solution for child trafficking victims as defined in the Join General Comment No.22.³⁵ This means putting in place a process to ensure that there is a long-term sustainable arrangement³⁶ for each child. No such process is in place in the UK.³⁷

Figures recently obtained by ECPAT UK under the Freedom of Information Act show just how difficult it is for child victims of trafficking to regularise their immigration status. In the years 2016 – 2019, of the 4,695 individuals with a positive conclusive ground decision subject to immigration control, the Home Office granted a total of 549 applications for discretionary leave to both adults and children. Of these, only 28 grants of discretionary leave were issued to child victims. This means children made up less than 0.6% of those granted discretionary leave as victims of modern slavery.³⁸ The current system therefore undermines the ability of the child, or those supporting the child, to find an individual durable solution for that child and prevents local authorities making long-term plans for children.

Also, the "Dubs Amendment", was designed to ensure that the Government would continue to allow unaccompanied and separated refugee children in Europe the opportunity to be reunited with family members here in the UK after the Brexit process was completed. Under the scheme, a specified number of places for children to join their families have effectively been 'filled' with some 480 children being reunited with family members in the UK. With the amendment ending, there are currently thousands of children stranded with no other legal

³⁴ The 'hostile environment' policy was introduced by the Government in 2012 aimed at deterring illegal migration. It has far-reaching impacts on all aspects of the immigration system and makes it even more difficult for migrant and asylum-seeking children, especially the most vulnerable, to get the support and protection they need. The October 2020 Government announcement of an overhaul of the immigration system with the possibility of offshore asylum processing centres has raised serious concerns. BBC News, Priti Patel pledges to fix 'broken' asylum system in UK, 4 October 2020 <https://www.bbc.co.uk/news/uk-politics-54404554>

³⁵ Sigona, N, Chase, E, Humphris, R (2017) Becoming Adult Project: protecting the 'best interest' of the child in transition to adulthood: <https://becomingadultproject.files.wordpress.com/2017/12/ba-brief-3-low-res.pdf>

³⁶ UNICEF UK, (2015). Achieving a durable solution for trafficked children: https://downloads.unicef.org.uk/wp-content/uploads/2016/01/Unicef_DurableSolutions_ExecSummary.pdf?_ga=2.251870282.279355555.1531214147-375590463.1511369688; ECPAT UK (2017), Lighting the Way: Steps that lawyers, legal guardians and child trafficking advocates in the UK can take to better identify and protect children who may have been trafficked: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=1dcfdd01-44fd-4b0f-90c3-ccb36649a80>

³⁷ ECPAT UK. (2020) Child Trafficking in the UK: A Snapshot. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=b92ea99a-6dd8-480c-9660-e6c0f0764acf>

³⁸ Ibid, 28.

route that provides the same protection for unaccompanied children from Europe who might not have relatives in the UK.

Overall the statement of changes to the immigration rules of 22nd October 2020 provide for a number of circumstances where victims may have applications for leave to remain refused and/or existing leave cancelled. Many of the circumstances would be situations that victims would find themselves in either as a result of targeted vulnerability to exploitation such as homelessness, previous criminal convictions or resulting from their experience of exploitation e.g. entering into a sham marriage, homelessness, criminal offences committed as a result of their situation of exploitation, immigration offences due to clandestine entry. We have concerns without clear guidance on this and how such circumstances will be applied to victims who have rights and entitlements as a result of international obligations.³⁹

Immigration agencies do have lots of intelligence to offer around the issue of modern slavery and can play a role in identification/safeguarding of victims including collaborative work with law enforcement agencies. However, where there are multi-agency raids to detect potential victims we have seen thematically the following: -

- Where immigration enforcement is leading on the raid often potential victims have been quickly whisked away by immigration enforcement before wider agencies such as ourselves and the police have not had the chance to engage and identify whether there are potential victims.
- It is obvious from our experience of working on multi-agency raids that the presence of Immigration agencies strikes fear into the hearts of victims whose status is often 'illegal' and they often feel instantly criminalised which makes them less communicative in explaining the circumstances of their predicament in the UK. They face both the fear of instant deportation and retribution from traffickers who may be in earshot when initial engagement occurs.

Practitioners have had some dialogue and education over these issues and with more understanding around victims in more recent multi-agency interventions e.g. Walsall and Sandwell have tended to place 'Immigration Enforcement Officers' in the background of planned interventions. This has allowed NGO's and the Police to triage prospective victims first to assess indicators for Modern Slavery.

In addition, increasing numbers of police forces are adopting good practices of removing victims following police interventions to (multi-agency) reception centre where they can be spoken to away from the threats of exploiters in a neutral environment.

Also identified by agencies is a clear need for a firewall between immigration authorities and police so that those with irregular immigration status feel able to report offences to the police without fear of immigration consequences. Issues and recommendations were clearly

³⁹ section 9

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928751/CCS001_CCS1020373376-001_Statement_of_changes_in_Immigration_Rules_-_HC_813__PRINT_.pdf

identified in a report by the LEAG and Flex in their report of April 2020 Opportunity Knocks Improving Responses to Labour Exploitation with Secure Reporting⁴⁰.

The Prevent Modern Slavery Strategic Implementation Group have also produced a paper detailing clear recommendations for the government around these issues and we understand that practices are being put in place around some of these issues including practice around police operations.

4. What proactive measures did the government take to prevent official complicity in trafficking in persons crimes? How did the government respond to reports of complicity that arose during the reporting period, including investigations, prosecutions, convictions, and sentencing of complicit officials? Were these efforts sufficient?
5. Is there evidence that nationals of the country deployed abroad as part of a diplomatic, peacekeeping, or other similar mission have engaged in or facilitated trafficking, including in domestic servitude? Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals engaged in these activities?

Overview

6. What were the government's major accomplishments in addressing human trafficking since April 1, 2020? In what significant ways have the government's efforts to combat trafficking in persons changed in the past year? How have new laws, regulations, policies, or implementation strategies (e.g., substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally and in relation to court proceedings) affected its anti-trafficking response?

There have been considerable political developments in the UK. With changes in government administration and leadership, it is unclear whether modern slavery remains high on the government's agenda, despite some indications that Boris Johnson's government intends to continue this work.⁴¹ In England and Wales, the government is still operating under its 2014 strategy, structuring responses to the issue under the 'Four Ps': Pursue, Prevent, Protect, Prepare; and it reports annually on activities, including those related to child trafficking.⁴² In Scotland, significant effort continues to be undertaken within the current strategy (reviewed at the end of 2019), including with regard to children. Northern Ireland's has recently finalised a consultation regarding their new strategy, with the view to commit to longer term strategic outcomes which will take into account the recommendations made in the recent

⁴⁰ <https://www.labourexploitation.org/publications/opportunity-knocks-improving-responses-labour-exploitation-secure-reporting>

⁴¹ Mason, R. (2019). *Boris Johnson's speech to the Tory party conference – annotated*. Available at: <https://www.theguardian.com/politics/ng-interactive/2019/oct/02/boris-johnsons-speech-to-the-tory-party-conference-annotated>

⁴² Home Office. (2014). *Modern Slavery Strategy*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf

CJINI Report.⁴³ As the full impact of the Covid-19 pandemic emerges, it remains to be seen how much of existing government commitments and programmes of work will continue to be undertaken.

In 2019, an independent review of the Modern Slavery Act was conducted, examining specific provisions in the Act and producing 80 recommendations to government for action.⁴⁴ The provision that instituted the Independent Child Trafficking Advocates scheme was included in scope of the review. However, many areas of the Act that affect children were not included, and related areas fundamental to their protection but not covered by the Act were not scrutinised at all. The government's response to the review highlighted a number of areas that it plans to take forward⁴⁵ which is welcome, although the timeframe for implementation on many of them is unclear and we are still awaiting its response and full national rollout of the guardianship scheme for trafficked children in England and Wales.

The Government has also committed to test approaches to devolve NRM decision making for children to local authorities and local safeguarding partnerships. ECPAT UK and the Office of the Independent Anti-Slavery Commissioner undertook a review to identify good practice and learning that can be drawn from existing multi-agency decision making models to identify what works and inform thinking to shape the future models.⁴⁶

[1] Office of Independent Anti-Slavery Commissioner and ECPAT UK. (2020). *A review of what works in multi-agency decision making and the implications for child victims of trafficking*. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=ab255152-ebb7-42e0-be96-7454006c93ad>

⁴³ Scottish Government. (2020). *Trafficking and exploitation strategy: third annual progress report*. Available at: <https://www.gov.scot/publications/trafficking-exploitation-strategy-third-annual-progress-report-strategy-review/pages/9/>

⁴⁴ Field, F. (2019). *Independent Review of the Modern Slavery Act 2015: Final Report*. Available at: <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

⁴⁵ HM Government. (2019). *UK Government response to the independent review of the of the Modern Slavery Act 2015*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf.

⁴⁶ Office of Independent Anti-Slavery Commissioner and ECPAT UK. (2020). *A review of what works in multi-agency decision making and the implications for child victims of trafficking*.

In March 2020, the Home Office published statutory guidance (on victim support) to the Modern Slavery Act (section 49). This has recently been updated (January 2021).⁴⁷ Government has formed a reference group to consider updates to the group. It is disappointing that to date there is no structure by which survivors of trafficking can input to the reference group. We welcome government commitments to address this and hope that survivors will be facilitated to meaningfully input to the guidance reference group during 2021. We also welcome the government's commitment following the case of NN to transform the NRM system including creating a more end to end support service.

ATMG continues to monitor the Recovery Needs Assessment, introduced in 2019 following litigation (NN & LP vs Home Office, 2019) which found that support to survivors should depend on those survivors' individual needs, rather than arbitrary time frames. While ATMG welcomes the extension of support beyond 45 days following positive identification as trafficked we have ongoing concerns that the RNA is too restrictive and places the burden of evidencing ongoing needs on survivors, meaning that their and their caseworkers' time is spent on RNAs and securing extensions, rather than having security to know they can focus on recovery. In addition, the RNA considers whether a victim has any ongoing recovery needs arising from their modern slavery experiences, only. This is hugely problematic because modern slavery is not a clearly definable phenomenon nor is recovery from trauma; experience cannot be reduced to a single event or series of events.

In evidence shared by survivors and stakeholders, often RNA's are considered only at the point of destitution, e.g. at the point of an eviction or refusal of another service. This appears to go against the policy's stated aim: to move people on from the NRM and by extension their modern slavery experiences. In its current form, the RNA enables transition based on what individuals are entitled to or lucky enough to secure, not individual need. Instead of the onus within the RNA being demonstration of ongoing need, this is replaced by demonstrating that needs are met by engagement with other services and that there is either negligible or no risk of re-exploitation. As an assessment, it considers need comparatively by offsetting individuals' needs against specific entitlements or referrals to other services. In most cases, once an individual is signposted or referred to a service their need is considered met by the Single Competent Authority.

The Government's Response to the consultation on the Transparency in Supply Chains (TISC) provision of the UK Modern Slavery Act 2015 was published in September 2020. The Home Office proposed to take certain measures to strengthen the TISC provision: in particular, the extension of the Act to the public sector; and the introduction of a Government-run registry for modern slavery statements and new single reporting deadline, which will make it easier for civil society organisations to scrutinise company reporting. The Government will now mandate the areas that modern slavery statements must cover. Up until now, the government has provided guidance with suggested reporting areas, but now these areas will become mandatory. If organisations have not taken any steps within an area, they

47

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950690/January_2021_-_Modern_Slavery_Statutory_Guidance_E_W_Non-Statutory_Guidance_S_NI_v2.pdf

must state this clearly and provide a reason why. The Government has also committed to introduce financial penalties for a failure to publish a Modern Slavery Statement. This was repledged in January 2021 by the UK Foreign Secretary Dominic Raab.

To help organisations prepare for the changes above, the Home Office will publish updated transparency in supply chains guidance. This new guidance will include elements such as best practice approaches to reporting, the importance of transparency, risk-based action and industry level collaboration to address shared challenges. The Government is still to provide further detail on how companies will be held accountable for uploading adequate modern slavery statements on the new registry. We would welcome steps to set up a central repository for statements which will assist the government in monitoring compliance.

7. Over the past year, what were the greatest deficiencies in the government's anti-trafficking efforts? What were the limitations on the government's ability to address human trafficking problems in practice?

Prosecution

The UK's withdrawal from the European Union has weakened law enforcements investigative abilities. The government confirmed it will not seek membership of Europol or Eurojust, or participation in the European Arrest Warrant, and from the end of 2020 the UK is unable to access and share information via the Schengen Information System II which creates alerts for missing children.⁴⁸ The government is seeking to access similar capabilities through its negotiations, but it remains unclear what those will be. Loss of access to these key mechanisms for combating trafficking and safeguarding children will significantly decrease the UK's ability to identify and safeguard children from trafficking and investigate complex transnational cases. Additionally, children in migration will be more vulnerable to exploitation by traffickers as cross-border cooperation is essential to identify and safeguard these vulnerable children, and investigate and prosecute offenders often operating in transnational organised criminal groups.⁴⁹

There has been a gradual improvement in the implementation of the Modern Slavery Act (England and Wales) 2015, the Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015. In England and Wales it is unclear whether this legislation is leading to better outcomes for child victims of trafficking.

In recent years, there has been significant attention to the issue of child trafficking for criminal exploitation,⁵⁰ with the establishment of the County Lines Coordination Centre and

⁴⁸ UK Government (2020) The Future Relationship with the EU: The UK's approach to negotiations: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf

⁴⁹ ECPAT UK & Missing Children Europe (2019) *Interact: Towards a more efficient cooperation across borders for the protection of children in migration from trafficking and exploitation*: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=118849be-152f-40f5-b62e-c186eebae58b>

⁵⁰ Home Office (2020) 'Hundreds of arrests and deal lines closed as police crackdown on county lines gangs', th May 2020 <https://www.gov.uk/government/news/hundreds-of-arrests-and-deal-lines-closed-as-police-crackdown-on-county-lines-gangs>

improved awareness amongst professionals of this particular exploitation type following a report published in 2017 which raised the profile of the issue. The report found that 65% of police forces in the UK reported ‘county lines’ activity linked to exploitation of children, with 42% of forces specifically reporting children ‘running’ (moving drugs/money) on behalf of drug lines.⁵¹

The National Referral Mechanism has recently also improved the national reporting of statistics by disaggregating data on this exploitation type in the final quarter of 2019. However, the response has focused primarily on law enforcement rather than a national strategy which resources public health approaches to this most egregious form of child abuse.⁵²

Legal Guardianship

International standards⁵³ state that guardians should be appointed to every separated⁵⁴ migrant child to protect their rights, advocate for their best interests and help them access support. This is well established as a measure to assist in the identification and prevention of child trafficking.⁵⁵

Despite significant progress in this area, England still lacks the full roll out of guardianship to child victims of trafficking across all areas. Unlike Scotland and Northern Ireland, provision in England and Wales does not extend to all separated and unaccompanied children. This means children receive different standards of protection in each devolved nation.

Following a UK Government-commissioned Independent Review of the Modern Slavery Act and government response in 2019, the government reaffirmed its commitment to fully roll out the scheme across England and Wales,⁵⁶ as established in legislation.⁵⁷ A second independent evaluation of the service conducted in found it to be an extremely effective intervention for children, who have a consistent, trusted individual to ensure their voices are heard and their best interests are represented in the various processes (immigration, criminal justice proceedings and the National Referral Mechanism) children navigate.⁵⁸ Guardianship rollout

⁵¹ National Crime Agency (2017) County lines gang violence, exploitation and drug supply:

<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/234-county-lines-violence-exploitation-drug-supply-2017/file>

⁵² Joint report of Ofsted, Care Quality Commission, HMICFRS, HMIOP (2018) Protecting children from criminal exploitation, human trafficking and modern slavery: an addendum

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756031/Protecting_children_from_criminal_exploitation_human_trafficking_modern_slavery_addendum_141118.pdf

⁵³ Convention on the Rights of the Child, General Comment 6 (paras 33-38); Directive 2011/36/EU, Article 16; Directive 2001/55 Article 16 (1); Directive 2011/95/EU Article 31 (1)).

⁵⁴ Convention on the Rights of the Child, General Comment 6 (paras 33-38); Directive 2011/36/EU, Article 16; Directive 2001/55 Article 16 (1); Directive 2011/95/EU Article 31 (1)).

⁵⁵ European Union Agency for Fundamental Rights (2015) *Guardianship for Children Deprived of Parental Care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*
<http://fra.europa.eu/en/publication/2015/guardianship-children-deprived-parental-care/>

⁵⁶ Home Office (2019) ‘UK Government response to the Independent Review of the Modern Slavery Act 2015,’ July 2019:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf

⁵⁷ UK Government (2015) Modern Slavery Act (England and Wales) 2015

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

⁵⁸ Ibid.

has the support of the UK's Independent Anti-Slavery Commissioner⁵⁹ and 42 cross-party Parliamentarians.⁶⁰ However, despite expanding the 'pilot' sites in England the government has yet to provide a timeline for full implementation, leaving children in two thirds of local authorities without guardians.⁶¹ In fact, it has rolled back guardianship provision for children with parental responsibility, including children in care looked after under section 31, where the Local Authority has parental responsibility in July 2019; despite increasing numbers of British national victims identified year-on-year. There are therefore significant inequalities in provision of support for all children across the UK.

Additionally, the scheme remains accessible solely for children formally identified as potential victims of trafficking, despite well-established failings in identification of unaccompanied and separated children who are victims of trafficking, whom comprise significant numbers of potential victims,⁶² and the well-established ability of guardians to facilitate children's disclosures of exploitation. Unfortunately, the Independent Review of the Modern Slavery Act determined that guardianship for unaccompanied or separated children was outside the scope of its review;⁶³ despite research from The Children's Society which found that "*the stress of these experiences – and lack of a trusting adult protecting their best interests – can lead to negative mental health outcomes and even self-harm, or suicide in some cases*".⁶⁴

The Home Office and research institute Ipsos Mori also published the results of their assessment of the Independent Child Trafficking Guardians (ICTG) service's Regional Practice Coordinators (RPC) role,⁶⁵ which was created following the government's changes to the ICTG service in October 2018. The report's findings include the positive impact of RPCs on child victims of exploitation and the professionals supporting them. However, unlike direct worker guardians, who are still provided to children with no figure of parental responsibility in the UK, RPCs do not provide direct support to children; instead working with the professionals supporting them. ECPAT UK remains concerned about the apparent dilution of the ICTG service before its full national rollout. Additionally, we're concerned

⁵⁹ See UK Independent Anti-Slavery Commissioner interview by *The Independent* (2019) 1st March 2020:

<https://www.independent.co.uk/news/uk/home-news/county-lines-slavery-child-trafficking-drugs-protection-sara-thornton-a9365906.html>

⁶⁰ ECPAT UK (2020) '5th anniversary of the Modern Slavery Act: 42 MPs urge Home Secretary to act on promises made to children', 26th March 2020: <https://www.ecpat.org.uk/news/40-mps-urge-home-secretary-to-act-on-promises-to-children>

⁶¹ Home Office (2019) 'An evaluation of Independent Child Trafficking Guardians – early adopter sites', July 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819723/evaluation-independent-child-trafficking-guardians-final-horr111.pdf

⁶² [10] Europol (2018) Criminal networks involved in the trafficking and exploitation of underage victims in the European Union: www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu

⁶³ Home Office (2019) Independent Review of the Modern Slavery Act 2015: Final Report: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

⁶⁴ The Children's Society (2018) *Distress signals: Unaccompanied young people's struggle for mental health care* <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/distress-signals>

⁶⁵ <https://www.gov.uk/government/publications/an-analysis-of-independent-child-trafficking-guardians>

that children in care might not be allocated a direct worker if it is deemed that the local authority has parental responsibility for them. This would deny the child support from a direct worker who can advocate for their wishes and act in their best interest in all matters that affect them.

Lack of Governance or wrong governance, data, monitoring and evaluation.

Addressing modern slavery and human trafficking requires:

- Strategic governance and the setting and enforcement of robust professional standards.
- Coordination and collaboration across statutory and non-statutory agencies around information sharing, identification, investigation, prosecution and crucially, victim care.
- Transparency, robust data collection, monitoring and evaluation ensure the strategy is effective.

The National Audit Office report on Reducing Modern Slavery, Committee of Public Accounts on Reducing Modern Slavery 2018 and the Anti Trafficking Monitoring Group highlighted the lack of governance and evaluation in tackling modern slavery.⁶⁶ This needs to be urgently addressed in the UK if it is to be strategic and effective in the fight against modern slavery and human trafficking.

Law policy and practice on modern slavery is complex and doesn't neatly sit within one government department it straddles several including (but not limited to) Home Office, Department for Work and Pensions, Ministry for Justice, Ministry for Health, Department of Health and Social Care, Treasury, Ministry of Housing, Communities and Local Government, Department for International Development, Foreign and Commonwealth Office. Whilst one can understand why investigation and prosecution may sit within the Home Office, this appears to be completely the wrong governance structure for the NRM, a safeguarding, care and support system for victim. In addition, there is ongoing criticism of the government for failing to properly monitor and evaluate all its anti-slavery efforts. Steps have been made to improve, inspect, monitor and evaluate such things as victim care but this may be limited by the scope of the inspection regime.

The UK continues to reveal a lack of forward planning and does not have a clear strategy for preventing and addressing trafficking (including preventing re-trafficking). The Home Office Strategy has not been updated since 2014 and given the speed that trafficking evolves this needs to be urgently updated to reflect the current situation. Many of the concerns highlighted by the National Audit Office in their 2017 report 'Reducing Modern Slavery'⁶⁷ remain. Numbers to the NRM have continued to rise each quarter (with the exception of the start of 2020. As mentioned above, this was undoubtedly due to the Covid 19 pandemic and a lack of opportunity for identification and referral rather than a lack of exploitation). These increases

⁶⁶ National Audit Office Report on Reducing Modern Slavery 2017 pages 8-13 sourced at <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf> and Report on House of Commons of Public Accounts on Reducing Modern Slavery 2018 sourced at <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/886/886.pdf>; The Anti Trafficking Monitoring Group Before the Harm is Done, Examining the UK's response to the prevention of trafficking September 2018.

⁶⁷ National Audit Office, (2017) *Reducing Modern Slavery*. Available at: <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>

are still a long way off the government's own figures for trafficked people in the UK (10-13,000 victims). The Global Slavery Index estimated that there were 136,000 people living in modern slavery in the UK in any given day in 2016.⁶⁸

Without a clear prevention strategy, including clear pathways and support to recovery for confirmed victims together with an assessment of outcomes, the purpose of identification is not clear. Many survivors talk of the NRM process as re-traumatising them, keeping them in a state of limbo for years, while they give evidence and wait to know if they will be believed, while being prevented from working and moving on with their lives. This compounds the influence and the trauma of the trafficking experience, particularly if at the end of the identification process there is no grant to leave to enable survivors to access justice and other entitlements. Ultimately without clear long term regularisation of status recovery, rehabilitation and reintegration is being built on a foundation of sand.

The clash between immigration control and anti-trafficking concerns remain an ongoing issue for the UK, likely only to worsen following our departure from the EU, making EEA nationals subject to immigration control. The January 2021 report by the Independent Chief Inspector of Borders and Immigration on use of penalties and sanctions is critical of the Home Office's continued failure to examine the impact of the hostile environment (on immigration):

*'For many this will seem to be a case of too little, and much too late. From ICIBI's perspective, in 2016, and again in 2018 and 2019, a series of inspection reports recommended that the Home Office should monitor and evaluate the impact of the hostile/compliant environment. These recommendations were only "partially accepted" and never implemented. Had they been, some of the harms suffered by the Windrush generation and others may have been avoided.'*⁶⁹

ATMG and others remain concerned that misplaced concerns around immigration control continue to outweigh concern for victims of slavery, undermining the identification, access to support, and recovery of victims, and prosecution of traffickers. We see this in decision making, a lack of granting of residence permits, the ongoing immigration detention of victims, a lack of access to independent First Responders (or funding for this role).

HFJ have flagged issues with the Provision of Leave/EU Settled Status Scheme. Whilst EEA nationals currently residing in the UK can apply for the EU Settled Status Scheme, if victims receive pre-settled status then they are currently only entitled to very limited welfare support. It does not currently appear that they can additionally apply for discretionary leave to remain (DLR) as a victim of human trafficking on the basis of cooperation with the police, pursuing a compensation case and/or personal circumstances. This would provide them with a safety net. Without DLR it's likely that many victims with pre-settled status many end up homeless and destitute at some point when they have left the NRM system without the safety net of DLR.

In addition there is currently no guidance clarifying the position of survivors with DLR if due to the above circumstances they apply for the EUSS post the deadline.

⁶⁸ <https://www.globallslaveryindex.org/2018/findings/country-studies/united-kingdom/>

⁶⁹ <https://www.gov.uk/government/news/inspection-report-published-an-inspection-of-the-home-offices-use-of-sanctions-and-penalties>

Case Study

Hope for Justice has an EEA national client who has been in the country 3 years, he has a positive conclusive grounds decision and is currently still receiving outreach support, subsistence and accommodation through the VCC. An application has been made for discretionary leave to remain as the victim would only be entitled to pre-settled status which would mean that he would have limited entitlements to recourse to public funds. The client will not reach the requirement for settled status of 5 years before the June deadline. He is keen to work but is struggling with mental health and the need to improve his language skills. The client is concerned that he has not applied for settled status under the EU Settled Status Scheme but if he does apply this could override his DLR and leave him destitute and at risk of re-exploitation.

In 2017 the UK committed to adopting the Human Trafficking Foundations Trafficking and Slavery Survivor Care Standards. These were updated in 2018 in conjunction with 32 expert organisations and endorsed by the UK's First Independent Anti Slavery Commissioner.

The Home Office have now confirmed that the standards have informed the inspection framework for the Victim Care Contract. This is a significant downgrade from adopting minimum standards. We are concerned the framework may not sufficiently cover standards of support for victims in outreach support and are disappointed to continue to learn of cases where victims are exited from support due to their complex needs and the lack of ability within the system to cope with these.

While the Modern Slavery Act and its Transparency in Supply Chains clause was groundbreaking when introduced, there is a growing consensus that reporting and transparency measures alone are insufficient to prevent human rights abuses in supply chains – as demonstrated by a 2020 study⁷⁰ which found that worldwide stakeholders across business, trade unions and civil society favour mandatory regulation over reporting requirements or voluntary measures. Other states have since introduced obligations to take preventative action through due diligence (e.g., Netherlands) and combined such obligations with legal liability when damage and loss occur (e.g., France). The EU plans to introduce a similar law in 2020.

There is an urgent need to go beyond reporting and the transparency requirements in the UK's Modern Slavery Act, which is insufficient on its own to achieve decent work and prevent forced labour. The Transparency in Supply Chains Provision of the UK Modern Slavery Act requires companies only to disclose the steps they are taking to prevent slavery in their supply chains, but does not oblige them to take those steps. While some companies have used transparency measures as an opportunity to advance efforts to address modern slavery, many have not.⁷¹ Although transparency is a prerequisite for responsible business, due diligence legislation mandates business to take responsibility to address risks and impacts

⁷⁰<https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

⁷¹ The independent review of the Modern Slavery Act, conducted by Frank Field MP, Maria Miller MP and Baroness Butler-Sloss, which was laid before Parliament on 22 May 2019. The reviewers note that the legislation is "light on detail" on reporting, and estimated 40 per cent of eligible companies are not complying with the legislation at all. Retrieved from <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

throughout their operations. Effective mandatory due diligence legislation also enables better access to justice and remedy for victims of corporate harm.

The UK's Global Resource Initiative Taskforce, a taskforce of leaders from business and environmental organisations, has urged the UK government to introduce a mandatory due diligence obligation covering both human rights and environmental risks and impacts. The GRI recommends to initially focus on forests and land conversion, before extending to wider impacts.⁷² A 2017 report from the Joint Committee on Human Rights also recommended that “the Government bring forward legislation to impose a duty on all companies to prevent human rights abuses...[which] would require all companies to put in place effective human rights due diligence processes [...] both for their subsidiaries and across their whole supply chain.”⁷³

The 2020 study ‘A UK Failure to Prevent Mechanism for Corporate Human Rights Harms’ by the British Institute of International and Comparative Law’s (BIICL) finds that a law to penalise companies that fail to prevent human rights harms, modelled on the UK Bribery Act, is legally feasible and desirable.⁷⁴

The UK must introduce a new law to mandate due diligence for all human rights and the environment, which would hold companies liable for their failure to prevent negative impacts. In tandem, Government must tackle the abusive practises of big brands that do not meet the threshold of modern slavery offences, but if left unchecked will lead to and drive modern slavery.

8. If the government had a national action plan to address trafficking, how was it implemented in practice? Were NGOs and other relevant civil society stakeholders consulted in the development and implementation of the plan? Did the government fund, partially fund, or not fund the plan?

Anti Slavery International Chairs and hosts the ATMG also Co- Chair’s the UK’s National group on victim support- the Modern Slavery Strategy and Implementation Groups Victim Support Task and Finish Group. We have found that communication and consultation with the group has left much to be desired. The group is frequently informed of, rather than consulted on decisions (such as the RNA framework) and we experience little transparency from the Home Office. Timeframes are unplanned, or not communicated and there is no funding available or support for participation, including for survivors.

⁷² Global Resource Initiative, Final Recommendations Report, March 2020. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876465/gri-taskforce-executive-summary.pdf

⁷³ Parliament UK, Human Rights and Business 2017: Promoting responsibility and ensuring accountability, Conclusions and recommendations, 2017. Retrieved from <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44311.htm>

⁷⁴ BIICL, A UK Failure to Prevent Mechanism for Corporate Human Rights Harms, February 2020. Retrieved from <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>

9. How has the COVID-19 pandemic affected the government's efforts to coordinate, execute, and monitor its anti-trafficking response, if at all? How have anti-trafficking officials, units, and coordinating bodies continued to operate and adapt?

As stated above, the UK government's principle monitoring system, the NRM, showed a decrease in referrals into the NRM early 2020, at the start of the pandemic in the UK. Experts agree that this is undoubtedly due to a lack of opportunities for escape and identification, rather than a decrease in exploitation.

During the UK's first lock down in May 2020 many front line services temporarily closed and workplace inspections halted. Positively, the Home Office announced that people in the NRM would not be moved on from safe house accommodation. However this did not apply to outreach support, with RNAs continuing to be conducted. While (theoretically at least) people should not have been moved on without support in place there was concern that RNAs continued, other than in circumstances where victims wanted to move on. People who are in the NRM but in outreach support may be sofa surfing or in asylum accommodation. The pandemic increased isolation and we felt strongly that time with caseworkers should be spent on recovery support rather than completing RNAs to justify continuing assistance.

There was widespread dismay in June 2020, when it became apparent that trafficked people in temporary catered asylum accommodation (section 98) were receiving no subsistence payments at all and were only provided with three meals a day. It was unclear what people were expected to do to procure clothes, toiletries, data for internet access (particularly crucial during the pandemic), access transport for key appointments or if they missed a meal. There were reports of victims begging for money and of their legal aid lawyers supplying them with essentials. Thankfully in August 2020, following a legal challenge, the government announced this cohort would be provided with £25.40. The methodology behind this amount, which is not enough to meet basic needs, let alone support recovery, is unclear.

Rules which entered into force on 1 December 2020 made rough sleeping grounds for removal of non-UK nationals.⁷⁵ We believe these rules will have severe consequences for confirmed and potential victims of modern slavery. The changes will have a significant impact on the Government's Modern Slavery Strategy and undermine the United Kingdom's position as a global leader in the fight against Modern Slavery. Under the new rules, permission to stay can be refused or even cancelled if the Home Office is satisfied a person has been rough sleeping. By definition this means "sleeping" or "bedding down" for example in streets and doorways. These are situations of human deprivation and want, which victims often find themselves forced into beyond their control. The breadth of the rough sleeping rule undermines the Government's claim that the provision will be used 'sparingly'. The potential operation of the rules is also troubling particularly where a predecessor rough sleeping policy affecting EU victims was struck down as unlawful. The links between destitution and exploitation are well known. The new rules are likely to affect both victims before they have been identified and those facing homelessness or destitution after being confirmed as victims but not yet granted status and struggling to access support. The rules will increase the number

⁷⁵ Statement of Changes in Immigration Rules Presented to Parliament 22 October 2020 (HC 813) Section 4 Additional grounds for refusal of permission to stay, Rough sleeping in the UK rules 9.21.1 and 9.21.2. This letter is without prejudice to concerns raised about the changes more widely

of cases where victims of modern slavery are wrongly arrested, detained and removed from the UK without being identified – sometimes to be re-trafficked to the UK or elsewhere. The rules risk facilitating abuse whereby exploitative employers will use the threat of destitution to coerce and exploit workers. In our experience, many migrant victims already face barriers coming forward because they fear that authorities will prioritise their immigration status over their experience of exploitation. Thus, the rules play into the hands of traffickers because the threat to victims that they will be detained and removed if they escape is a real one. The rules likely increase the risk of exploitation of the wider migrant homeless population including care leavers, who may feel they have no choice but to accept exploitative work and living conditions to avoid rough sleeping. The rules aggravate hostile environment policies including tying victims to exploitative employers under tied visa rules, and now by making a potential escape route to the street unlawful and risky. The introduction of these rules in the midst of a global pandemic is extremely concerning, since many workers, including migrant workers, are being affected by large scale dismissals and unemployment linked to the economic downturn. Many migrants face restrictions accessing state support which puts them at great risk of destitution and homelessness since they have little to no safety net to assist them and their families during these difficult times

10. Have investigative agencies and courts adapted to impacts from COVID-19? If so, how? Do police, prosecutors, and courts continue to process trafficking cases and/or has the volume of these cases changed? What has been the impact on officials' ability to collect evidence, including victim testimony?

Hope for Justice have seen positive work collaboratively with law enforcement agencies to identify and safeguard potential victims and despite challenges around resourcing have seen swift action from law enforcement agencies especially around the identification and safeguarding of potential victims.

Hope for Justice have many clients who are currently already engaged with criminal justice processes. The IMSA's are continuing to liaise with clients and law enforcement personnel to obtain updates on current investigations. Our experience is that as the Covid crisis unfolds there are multiple demands on law enforcement services, which are considerably stretching their resources and diverting their investigative role to the emergency response. Law enforcement currently play a vital role in this crisis response, but this may well have secondary implications further down the line as investigations could be on hold during this period. Hope for Justice's experience is that if cases are not swiftly investigated, vital evidence can be lost, perpetrators will continue to exploit others and may evade future prosecution for instance by leaving the country. This could create secondary impact on government policy of creating a hostile environment for traffickers as well as denying justice to victims.

Case Study

Hope for Justice contacted the police about a new client to obtain an update for them on the criminal investigation. The response of the police officer explained, "unfortunately due to current situation this investigation has been placed on hold for the time being so no further action is being taken for the foreseeable future."

Case Study

Hope for Justice liaised with the police around a new referral. Police responded to take a fast approach, were able to quickly arrange a welfare check and also feedback on their response offering ongoing assistance around the case.

The majority of tribunal cases relating to immigration and or civil matters have been moved to virtual hearings.⁷⁶ This has also been the case for some cases heard in the criminal court

11. Please provide additional information and/or recommendations to improve the government's anti-trafficking efforts overall.

The UK government needs to have a clear slavery prevention strategy. This strategy needs to look outside of the role of the Home Office and the NRM identification and support system and consider the structural factors which contribute to slavery and prevent recovery. These include restrictive immigration rules, the hostile environment on immigration, criminalisation of 'illegal working' (Immigration Act 2016) and lack of realistic access to UK employment law and to assistance from the authorities. At present many trafficked people in the UK know that if they come forward to report exploitation they will be criminalised rather than recognised as a victim. There needs to be a clear separation of powers between law enforcement and immigration enforcement.

The UK needs to put survivors of slavery at the centre of its strategy. Leadership for this area needs to move outside of the Home Office and intersect with health and social care. Victims need guarantees of security and stability with an increased focus on access to work, education and training, as well as compensation and justice. Many victims would love to see their traffickers prosecuted but cannot risk giving evidence without knowing they will not be back at the mercy of these same traffickers in the near future.

Support for survivors needs to be on a statutory footing, with minimum standards of support and early access to specialist legal advice to ensure access to entitlements. A positive trafficking decision needs to lead to a minimum of 12 months leave to remain. This should be renewable.

All visas should ensure visa holders can access employment law and exercise rights in practice. At minimum this includes recourse to public funds, sick leave, healthcare, the ability to change employer and apply to renew the visa and a route to settlement.

12. Please highlight effective strategies and practices that other governments could consider adopting.

⁷⁶Upper Tribunal Immigration And Asylum Chamber Amended Presidential Guidance Note No 1 2020: Arrangements During The Covid-19 Pandemic. Available at: <https://www.judiciary.uk/wp-content/uploads/2020/11/UTIAC-Guidance-Note-19-November-2020.pdf> p.3

The Bright Futures Programme⁷⁷ an employment programme run by civil society and business has shown to be highly effective for rebuilding lives. It does depend on survivors having the right to work.

Prosecution

13. Please provide observations regarding the implementation of existing laws, policies and procedures. Are there gaps in anti-trafficking legislation that could be amended to improve the government's response? Are there any government policies that have undermined or otherwise negatively affected anti-trafficking efforts within that country?

See responses above regarding the hostile environment on immigration, restrictive visas and lack of recourse to public funds which leave victims without realistic options to challenge abuse, or approach the authorities for assistance.

Even for those who are able to come forward, are identified as potential victims and who enter the NRM, a lack of security and certainty undermines their ability to unpack what has happened to them and to cooperate with the police knowing the lack of certainty for the future and the fact they may in the future be back reliant on their exploiter for basic security such as food and shelter.

Anti-trafficking organisations such as Hope For Justice (“HfJ”) who have assisted victims in participating in criminal processes explain that practice varies significantly as to when police are informed of an NRM referral and the rigour of any investigation which follows. HfJ inform us that referrals by the SCA to the police have not always happened in the past; or alternatively they have not been passed to the right person to be recorded and investigated, or are passed between police forces due to disagreement as to where any possible crime of trafficking took place.⁷⁸

The Modern Slavery Act (2015) provides for confirmed victims to be granted a residence permit (discretionary leave to remain) on the basis of personal circumstances. It is hard to think of a situation when a confirmed victim of slavery would not have ongoing personal circumstances. However grants of leave are only a small proportion of confirmed victims who are visa nationals. In 2015, 123 survivors with positive conclusive grounds were granted discretionary leave, in 2019 it was 70 and in the first three months of this year it was only eight. A private members bill - the Modern Slavery (Victim Support) Bill- has tried to rectify this but not been given parliamentary time. This is also not consistent with the Explanatory Report to ECAT which promotes a range of circumstances where leave on the grounds of personal circumstances may be granted for instance at para. 184. "The personal situation requirement takes in a range of situations, depending on whether it is the victim's safety, state of health, family situation or some other factor which has to be taken into account.

Compensation/ Reparation orders

⁷⁷ <https://www.co-operative.coop/ethics/bright-future>

⁷⁸ Hestia, 'Underground Lives; Police responses to victims of modern slavery', March 2019 <https://www.hestia.org/Handlers/Download.ashx?IDMF=952a9bfc-b57e-42f0-9ff3-6efcafb5db6f> (accessed 2 June 2020)

The criminal courts can make orders for compensation on the conviction of a perpetrator pursuant to section 130 – 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (Compensation Order). More specific to modern slavery, section 8 of the Modern Slavery Act 2015 gives the Criminal Courts power to make a slavery and trafficking reparation order if the person has been convicted of an offence pursuant to sections 1, 2 or 4 of the Modern Slavery Act 2015 and if a confiscation order has been made. In large or complex cases, the question is more likely to be a matter for the civil courts. The Court of Appeal has also discouraged criminal courts from undertaking complicated investigations to establish the extent of the loss (see *R v Bewick* [2007] EWC Crim 3297). HfJ have had victims recover compensation via a compensation order in the criminal courts. A parliamentary question as of 21st November 2018 reveals no Slavery and Trafficking Reparation Orders had been made according to parliamentary questions made at that time.⁷⁹

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

14. Do government officials understand the nature of all forms of trafficking? If not, please provide examples of misconceptions or misunderstandings. Did the government effectively provide or support anti-trafficking trainings for officials? If not, how could they be improved?

In addition to the conflict between immigration control and anti trafficking provisions, with possible victims also being criminalised, there are significant issues around training and funding for officials' time. Issues include the variable resources available to, and expertise of, "First Responders" who have the principal evidence-gathering role in the NRM process; the poor quality of evidence often obtained during the NRM process; and the lack of clarity around training and relevant experience of staff in the Single Competent Authority.

First Responders are a varied group of professions and agencies, and many are not trained in a "Trauma-Informed Approach" to facilitate trust and disclosure, gathering evidence, assessing the relevance of information collected or identifying the relevant information to disclose to the SCA. Without suitable safe spaces or other pre-NRM support or guarantees around residence permits, First Responders are in the difficult position of needing to secure the trust of victims, so that victims feel able to disclose the grave ill-treatment and abuse that has happened to them. This is often at a point when the First Responders cannot offer the potential victim any security and little if any support and the victim may still be under the control or influence of their exploiter, who has taught them not to trust authorities and threatened them with repercussions from disclosure.

⁷⁹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-11-21/194087/>

Organisations which have been designated as First Responders have varying degrees of expertise in human trafficking. Some First Responders are charities with expertise in human trafficking and modern slavery case work (e.g. Kalayaan) and are able to provide pre-referral support to facilitate informed consent and disclosure, have access to translators to collect evidence from potential victims and support a challenge, if necessary, to a Reasonable or Conclusive Grounds decision. Other First Responders have more limited expertise and experience with the NRM process (e.g. some police forces and local authorities) and are more likely to see their involvement in the process as at an end following a brief referral. In 2018, a large proportion of NRM referrals were made by Home Office UKVI (2,096; 30%), predominantly as part of an asylum claim, and the police and National Crime Agency (2,097; 30%).⁸⁰

It is disappointing that, despite the government's 2017 to introduce 'safe spaces' to support informed consent into the NRM there are still no clear plans for these to be introduced (see below).

15. Please provide observations on overall anti-trafficking law enforcement efforts and the efforts of police and prosecutors to pursue trafficking cases. Were any trafficking cases investigated and/or prosecuted, and were any traffickers convicted during the reporting period—including under trafficking-specific laws and non-trafficking laws? Is the government equally vigorous in pursuing forced labor and sex trafficking, internal and transnational trafficking, and crimes that involve its own nationals or foreign citizens? If not, why?

(See points above)

16. Please note any efforts to investigate and prosecute suspects for knowingly soliciting or patronizing a sex trafficking victim to perform a commercial sex act. Does law enforcement pursue trafficking cases that would hold accountable corporations for forced labor in supply chains within the country?

Current UK policy does not impose a legal obligation on companies. A major gap in the Transparency in Supply Chains clause of the Modern Slavery Act is the lack of penalties for non-compliance. We are of the view that five years on from the introduction of the Modern Slavery Act, a more proactive approach must be taken to enforcing the Transparency in Supply Chains Clause. The independent review of the Modern Slavery Act noted that an estimated 40 per cent of eligible companies are not complying with the TISC provision at all. The current failure to address companies' non-compliance undermines the effectiveness of the legislation. Robust and holistic enforcement mechanisms are essential if other changes to the TISC provision are to be effective.

⁸⁰ HM Government, *2019 UK Annual Report on Modern Slavery*, October 2019, p.10
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf (accessed 2 June 2020)

17. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? Do they implement and encourage trauma-informed practices in their courts?

Some judges are sensitive to cases involving trafficking however this is not universal and there is still a need for widespread training for the judiciary on the complexities of human trafficking and trauma informed approaches to survivors. For instance some judges consider forced labour cases to not be too serious and really a civil matter.

18. What sentences have courts imposed upon traffickers? Are these sentences generally strict enough to reflect the serious nature of the crime, and are they comparable to sentences for other similar crimes, such as rape and kidnapping? How common are fines, suspended sentences, and prison time of less than one year for convicted traffickers?

Despite the Modern Slavery Act 2015 increasing sentences for cases involving slavery, servitude and forced and compulsory labour and human trafficking to a maximum life sentence. The Sentencing Council Bulletin of 2019 advises that "The statutory maximum sentence for the offence of Slavery, servitude and forced or compulsory labour is life imprisonment, although since its inception in 2015, no sentences have exceeded a determinate sentence of 11 years imprisonment."⁸¹

In 2019, the longest custodial sentence length for this offence was 11 years. The average custodial sentence length (ACSL)³ over the past three years has been 5 years and 4 months.⁸²

In 2019, the longest custodial sentence length for this section 2 offence was 17 years. The average custodial sentence length (ACSL)⁶ over the past three years has been 5 years and 4 months. This compares to ACSLs of four years and two months and five years for the predecessor offences sentenced under the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and the Sexual Offences Act 2003, between 2009 and 2019 respectively, which both had a comparatively lower statutory maximum of 14 years.⁸³

So on average there has been a small increase in the length of average sentence with the introduction of the Modern Slavery Act 2015.

This has also been hampered by a lack of sentencing guidelines. A draft sentencing guideline has recently been consulted on which may improve the situation along with judicial training.

Protection

19. Did the government make a coordinated, proactive effort to identify victims of all forms of trafficking? If the government had any written procedures for screening for trafficking, were those procedures sufficient and implemented effectively by officials?

⁸¹ Statistical Bulletin: Modern slavery offences 3

⁸² pages 2 and <https://www.sentencingcouncil.org.uk/wp-content/uploads/Modern-slavery-statistical-bulletin.pdf>

⁸³ Page 4 <https://www.sentencingcouncil.org.uk/wp-content/uploads/Modern-slavery-statistical-bulletin.pdf>

What steps do officials take if a potential case of human trafficking is identified? Are those steps sufficient? Did officials effectively coordinate among one another and with relevant nongovernmental organizations to conduct screenings and refer victims to care? Is there any trafficking screening conducted before deportation or when detaining migrants, including unaccompanied minors? Are interpreters available for screening foreign victims? If commercial sex is legalized or decriminalized, how did health officials, labor inspectors, or police identify trafficking victims among persons involved in commercial sex? If commercial sex is illegal, did the government proactively identify trafficking victims during raids or other encounters with commercial sex establishments? How has the COVID-19 pandemic affected the government's victim identification and referral efforts, if at all?

There is very little or no support or access to legal advice before a Reasonable Grounds decision is taken. The resource constraints prior to a referral means that many referrals are made under circumstances when a victim is not able to give the most complete account of events (e.g. if the individual was given limited time to give their evidence or was hungry, cold, tired and scared). They are unlikely to have access to an interpreter, nor be familiar with the language of slavery or trafficking or understand what information the First Responder is seeking for them to disclose. Accordingly, the referral is necessarily often made based on brief and incomplete evidence, but this becomes the factual starting point for the later Conclusive Grounds decision, and may lead to later inconsistencies. It may also result in an adult victim of trafficking not giving consent to an NRM referral or to not disclose certain information to the SCA.

The Government has previously recognised the need for resources, including safety and time, to inform consent and the information on an NRM referral form in its 2017 commitment to provide 'Safe Spaces' to possible victims of trafficking.⁸⁴ In November 2018, ATLEU, ATMG, British Red Cross and the Human Trafficking Foundation set out ten core principles which should underpin these places of safety.⁸⁵ To date Safe Spaces have not been implemented by the government.

The March 2020 Statutory Guidance formalises a review mechanism for negative Conclusive Grounds decisions by the Multi-Agency Assurance Panels, (MAAPS) but it remains to be seen how effective this will be in practice. The purpose of the MAAPs is to ensure robust and consistent decision-making processes in the NRM. The MAAPs review all negative conclusive grounds decisions but the panels do not have the power to overturn an SCA decision but instead

⁸⁴ Human Trafficking Foundation, '*The Slavery and Trafficking Survivor Care Standards*' (October 2018), p.38 <https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf> (accessed 1 June 2020).

⁸⁵ '*Principles that underpin early support provision for survivors of trafficking*' (November 2018) <https://drive.google.com/file/d/0B3ufXgp97I93V3Q5Tnlsa2tCb2dvU3ExMWZsNHytNktMSzVn/view>

are only able to ask the SCA to reconsider their decision. The panel is not informed of any revision of the decision.

In Spring 2019 ATMG circulated a survey to all potential panellists in order to gather information on expectations and experiences regarding the MAAP development process. 32 responses were received. The principal concern is that MAAPS are advisory only (as decision-making remains with the SCA) and, being restricted to the evidence before them, are unable to introduce greater rigour into the quality of evidence that is being used to decide trafficking decisions. They cannot rectify a situation where a trafficking victim has not received the protections under ECAT including support and investigation of their trafficking situation. Nor is there a mechanism for panellists to raise broader concerns where processes as set out in the SCA guidance and ECAT have not been followed, this is particularly relevant for potential victims serving pre-trial or custodial sentences in Her Majesty's Prison Service.

There is a growing concern regarding the identification of trafficked persons who are detained under immigration powers in the UK. As the UK leaves the European Union, there are proposed changes in policy regarding this issue.

On 21 July 2020 the Secretary of State for the Home Department made a statement in the House of Commons which included the following:

I am changing the Home Office's openness to scrutiny. Policy and decision making must be rigorously examined to ensure that any adverse impact on any corner of our society is identified and acted on quickly. To ensure that we better understand the groups and communities that our policies affect, we are overhauling the way in which we build up our evidence base and engage with stakeholders across the board.⁸⁶

Despite these commitments, in 2020 there were significant proposals made regarding the detention of trafficked persons, including changes to Modern Slavery guidance for detained potential victims of trafficking. The reasons for this change stem largely from a legal challenge that had been brought and settled by the Home Office who as part of the settlement agreed to review the policy.⁸⁷ Although there was a commitment to review the document and consult with relevant NGOs, to date the consultation has been extremely punishmentpoor, with little to no trafficking organizations consulted. Engaging with relevant organisations is vital because of the proposed changes.

⁸⁶ <https://hansard.parliament.uk/Commons/2020-07-21/debates/CF88BF2D-55E5-4672-8103-E28A1136C3F1/details>

⁸⁷

[https://www.duncanlewis.co.uk/news/Home_Office_to_review_policy_on_detention_of_trafficking_and_slavery_survivors_as_a_result_of_legal_challenge_brought_by_a_survivor_of_trafficking__\(18_May_2020\).html](https://www.duncanlewis.co.uk/news/Home_Office_to_review_policy_on_detention_of_trafficking_and_slavery_survivors_as_a_result_of_legal_challenge_brought_by_a_survivor_of_trafficking__(18_May_2020).html)

Under the changes, the Adult at Risk (AAR) policy will see victims of trafficking detained, while making it considerably harder for them to be released. The change will see trafficking survivors grouped together with other adults at risk, where they will have to provide professional evidence that a period of detention would be likely to cause harm. This is in addition to the recognition from the Home Office Single Competent Authority that they have potentially been trafficked. The negative impact of immigration detention on a detainee's mental and physical health is well documented, and in the case of trafficked persons who have already experienced great trauma, detention is very likely to cause harm to their mental health. There is an additional risk that detaining someone who has experienced trafficking could prevent them disclosing trauma, which they do not feel safe enough to disclose in the detention setting, and so prevent identification. This proposal is a mechanism to allow the detention of suspected and confirmed victims of trafficking to continue in spite of a wealth of evidence advising against such practice. The Mental Health and Immigration Detention Working Group (MHIDWG) discovered that "high proportions of immigration detainees display clinically significant levels of depression, posttraumatic stress disorder (PTSD), anxiety, intense fear, sleep disturbance, profound hopelessness, self-harm and suicidal ideation."² They also indicate that the 'negative effects of detention on mental health are compounded by the long-term or indefinite nature of immigration detention in the United Kingdom'.³ Findings from the Shaw Review⁴ highlight how a longer detention increases the negative impact that detention has on a detainees mental health.

We believe the proposed changes to the Adult at Risk (AAR) policy enables the degrading and cruel detention of trafficked persons to continue, while also making it harder for them to be released. It will fail to ensure the safe identification of trafficked persons, and will add to the trauma they have already experienced. The Government should consider why historically it took the decision not to detain this category of people, knowing this would be viewed as a penalty and breach international law and the principles of non-punishment: "Trafficking persons should not be held in immigration detention centres, [or] other forms of custody."¹ The proposed changes will only result in more people being detained unlawfully. It is unethical to attempt to justify the continued detention of trafficked persons and others by so called 'needs led' medical and psychological processes.

Northern Ireland

The current guidance, Co-operating to Safeguard Children and Young People in Northern Ireland, acknowledges the additional vulnerabilities faced by children and young people 'living in a post-conflict society which is still experiencing legacy issues associated with paramilitarism'⁸⁸. It recognises that, within some communities, 'there can be an acceptance of

⁸⁸ Co-operating to Safeguard Children and Young People in Northern Ireland

the use of violence as a response to perceived anti-social behaviour, crime committed by individuals or as a method of control over children and young people'. The guidance highlights that 'children may also be abused or exploited by adults who hold power within their communities, where fear is used to coerce the child or young person into compliance'. Additionally, the 2015 Fresh Start agreement sets out the Northern Ireland Executive's commitment to tackling paramilitary activity and associated criminality. The Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland by the Committee of the Rights of the Child stated at paragraph 47 (b) 'In Northern Ireland, children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, as well as recruitment by such non-State actors.'. The Committee recommended the United Kingdom 'take immediate and effective measures to protect children from violence by non-State actors involved in paramilitary-style attacks as well as from recruitment by such actors into violent activities, including through measures relating to transitional and criminal justice.'

A recent briefing provided an overview of child sexual exploitation of boys and its link to paramilitarism.⁸⁹ The study cites other forms of exploitation as well such as one case where a young male victim assumed his role in life as 'drug running' for a paramilitary group, a role in which he was also sexually exploited. These examples support the view that child criminal exploitation is also an issue in the context of Northern Ireland which is currently not being identified as such. The Anti-Slavery Commissioner highlighted in her report that there are interventions that had been developed to address the grooming of children by paramilitaries⁹⁰, but these are absent from the strategy. Similarly, the development of practice does not provide for commitments to develop Contextual Safeguarding strategies⁹¹ which recognise a need for alternative approaches to child protection given that a significant amount of risk relating to the exploitation of children also comes from environments outside the home. ATMG recommend that there is a commitment to consistent identification and safeguarding of children, focused on a child-centred and collaborative approach for all agencies responding to paramilitarism, CCE, CSE and child trafficking.

20. Does the government operate a hotline for potential victims? If so, what are the hours of operation? What languages could it accommodate? Were victims identified and cases referred to law enforcement as a result of calls to the hotline? What did the

⁸⁹ <https://www.safeguardingni.org/sites/default/files/sites/default/files/imce/Briefing%20paper%20No.2.pdf>

⁹⁰ https://www.antislaverycommissioner.co.uk/media/1461/ccs207_ccs0520602790-001_iasc_annual-report-2019-2020_e-laying.pdf

⁹¹ Carlene Firmin (2017), 'Contextual Safeguarding: An overview of the operational, strategic and conceptual framework': <https://www.csnetwork.org.uk/assets/documents/Contextual-SafeguardingBriefing.pdf>.

government do to publicize the hotline? Did it remain in operation during the COVID-19 pandemic?

The UK has a Modern Slavery Helpline, run by Anti-Trafficking Charity Unseen, this relies on charitable funds. As stated above we are concerned that the Salvation Army referral helpline is not funded as part of the Victim Care Contract to take referrals and so the ability to refer people into the NRM will depend on charitably funded capacity or being able to access a statutory First Responder.

21. What victim services are available and provided (legal, medical, food, shelter, interpretation, mental health care, employment, training, etc.)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise? Are these service providers required to be trained on human trafficking and victim identification? How has the COVID-19 pandemic affected government and NGO efforts to provide shelter, medical, and psycho-social care to victims?

Under the government contract the provision does offer a number of these but often inconsistent delivery depending on your circumstance.

- Shelter – this is provided through the NRM. If an adult consents to enter and are considered destitute, homeless and at risk then they can access safe house accommodation. However, if the person is a non-EU citizen and accessing housing through the asylum system they often remain in these houses. This can be beneficial as they are not moved around the country multiple times but this housing is often sub-standard and not appropriate for survivors of trafficking. One inconsistency that became apparent during the pandemic was that of accessibility. Asylum accommodation does not have wifi. Therefore any survivor in these houses were immediately more isolated from community, education, healthcare and support.

Secondly, in recent years, British victims have found it harder to access safe shelter through the NRM system. The latest response is that British victims have recourse to public funds and therefore are able to access housing under the local authority. However, this can often be dangerous if the local area is where they were trafficked and the person is not often allowed to move local area through the local government system. This creates a ‘back and forth’ between the NRM contract holder and the local authority leaving a victim of trafficking vulnerable in the middle of this.

This creates the following issues:

1. Most local authorities across the country have no specialist support for victims of human trafficking.
2. There are long delays in assessments for instance section 9 assessments under the Care Act.

3. Whilst there are disagreements between in the local authority and the VCC victims can experience significant instability and destabilisation which can place them at risk of disconnecting with services and risks of re-exploitation.
4. Services must respect basic principles of non-discrimination within both ECAT and the Equality Act 2010.

After an NRM decision, a person is not given any automatic leave and therefore is often at risk of destitution. Recovery Needs Assessments have been introduced which can reduce the risk in certain circumstances. However, EU citizens are often the most at risk of destitution and homelessness as they do not have recourse to public funds without any form of leave and no ability to access asylum accommodation. This means that they either have to remain in safe house accommodation for as long as it takes to access leave, live with 'friends' (which is not often safe) or are placed in precarious situations of housing. Having been confirmed as a survivor of trafficking they have no guarantee of stability or a position from which to safely recover.

- Legal – survivors of trafficking are entitled to free legal advice through legal aid. However, legal aid is not easily accessible in every part of the country.
- Food – this can be provided by the NRM support provider or through a survivor's own subsistence.
- Mental health care – this is not provided under the NRM contract. Contractors are encouraged to use the NHS mental health services but this usually has at least a 6 months waiting list and is often not appropriate. Newest guidance in the contract states that if a client needs counselling outside of the NHS, the support worker would need to make an application for approval for this.

Training – employees are expected to be trained in various topics. There is no specification on previous experience working with vulnerable people. Although training is expected on knowledge (e.g. understanding trafficking, DV, FGM etc), there is no expectation for skills training (e.g. how to carry out risk assessment, needs analysis, working with trauma etc). Furthermore, the training time is not financially provided for under the contract. Although it is expected it is not paid for.

There are no training requirements to be a first responder (those who can identify victims). E.g. any local authority employee is a first responder. However, there are programs available. For example, The Home Office has recently developed online training for first responders which is a welcome step forward.

Covid – During the first lockdown, the country was informed that exits from the NRM would be paused, evictions from asylum accommodation would not happen and people would not be moved accommodation. Although this was followed in the majority of cases there were times it did not. However, when the first lockdown was released, this caused larger numbers of exits. For post-NRM services (not government contracted), referrals tripled and saw far more complex cases. As people still entered the NRM but did not leave, clients were less attended to and therefore had more challenges upon referral. In the third lockdown, asylum evictions were not put on hold but move on housing under the local authority was not easily available and reduced staffing meant clients were put up in hotels or lacking communication about what was happening to them.

As mentioned previously, one of the main challenges was connectivity. Many clients needed to be provided with devices and mifi or wifi access. Even when devices could be provided this was a challenge for some clients especially those with learning disabilities.

During lockdown there has been an increased need to provide extra food parcels especially for those who are self isolating or shielding

22. What was the overall quality of victim care? How could victim services be improved? Was government funding for trafficking victim protection and assistance adequate? Are there gaps in access to victim services? Are services available regardless of geographic location within the country? Are services victim-centered and trauma-informed?

In the last few years the 'Recovery Needs Assessment' has been created to reduce the sudden exit of survivors with a positive decision from the NRM. Although this is useful to have provision for this, it has become apparent that this often relates more to accommodation and subsistence and not psycho-social needs. Furthermore, it is often assessed whether the need is directly related to trafficking or not. If it is not, it is not deemed applicable. However, post-NRM providers have often found that vulnerabilities, risk and needs are often interconnected even if they were not directly created from the trafficking situation itself. It is still problematic to see 'Trafficking issues' as separate from the whole person. Support could be improved if the person were seen through a holistic lens of support and potentially more integrated into social care provision, particularly when cases are particularly complex or under safeguarding.

Support could be improved by putting a minimum requirement of experience or training for working with survivors and provide for organisations to pay support workers more than minimum wage. Most areas of social care that require this level of expertise have this requirement. Due to the lack of requirements there is a high staff turnover and burn out rate leading to inconsistent support and further barriers to developing trust.

Many organisations have witnessed that support after the NRM is required in order for people to remain safe and recover and, in order to provide this, must apply for charitable funding to make this happen (examples include Snowdrop Project, ISP (City Hearts), Phoenix Project (Hestia), Move-On (Medaille), Spring Housing Project). Yet again, this creates a postcode lottery around the UK.

Other suggestions include:

Improved Data Collection

- Increased monitoring and evaluation which is measured against the Slavery and Trafficking Survivor Care Standards. This should be included as part of the work within the Modern Slavery Unit (Home Office's) NRM reforms.

- Need for greater research into the long term outcomes for survivors including those who have repatriated back to their country of origin including systems analysis – understanding the impact of fractures in wider systems such as criminal justice, immigration, social care and housing systems. For instance, a snapshot of data of survivors within HfJ’s advocacy programme (HFJ IMSA) in January 2020 (just prior to the pandemic lockdown) revealed 61% of our clients required advocacy to prevent homelessness.

Ensuring Better Survivor Support

- The NRM, which should be a safeguarding and support system currently sits within a ministry focused on immigration, law and order and security. This is the wrong governance structure for a safeguarding and support system. Going forward we would like to see at least the support element (VCC) with appropriate funding of course - sit within a ministry focused on safeguarding and support such as the Department for Health and Social Care or Ministry for Housing, Communities and Local Government. This would promote greater integration of care into wider safeguarding and support mechanisms at a local level, greater sustainability but still recognise that survivors do need specialist support.
- In light of Brexit, there is an even greater need to incorporate international survivor rights into domestic law so this is clear to all statutory and non-statutory services. This needs to include clear long-term regularisation of immigration status without which we are building support and reintegration on a foundation of sand and we will continue to see survivors fall through the gaps in systems. (see Lord McColl’s victim care bill sets minimum standards of support and automatic leave provisions).
- There is a for greater involvement of survivors in developing the NRM system and wider support programmes. Office for Security and Cooperation in Europe have just announced the first international survivors advisory council - survivor leaders who are dedicated to providing their expert knowledge around legislation, policy, practice and programmes. The US also have a national survivor council. We recommend the development of a survivors advisory council in the UK including one to sit within each devolved administration. Survivors should be funded for their work on the group and the group needs to be facilitated to ensure that participation is meaningful and that there is accountability to the group.
- There is a need for a range of recovery and support services for survivors and clear boundaries of what will and what will not be provided. This is important for building trust with survivors and also so that wider services understand what is and what is not provided. There is also a need for a range of services including for those with complex support and legal needs where signposting does not work often due to trauma, lack of language skills, lack of trust and wider vulnerabilities such as learning difficulties.
- There is a need to ensure that in assessing care and support needs we do not just look at survivors needs in the context of their trafficking experience but their history and what made them vulnerable to exploitation in the first place (the root causes of their exploitation) – this is crucial if we are to reduce risks of re-exploitation and doing no more harm.
- There is a need for greater collaboration between the NRM and wider survivor services as well as mainstream statutory services.

-There is a need for the development of information sharing protocols between agencies. Improved data sharing between agencies where there is informed consent would allow informed and smooth transition into wider services.

23. Are services provided adequately to victims of both labor and sex trafficking? Adults and children, including men and boys? Citizens and noncitizens of all ethnic backgrounds or nationalities? LGBTI persons? Persons with disabilities? Were such benefits linked to whether a victim assisted law enforcement or participated in a trial, or whether a trafficker was convicted? Could victims choose independently whether to enter a shelter, and could they leave at will if residing in a shelter? Could adult victims leave shelter premises unchaperoned? Could victims seek employment and work while receiving assistance?

As detailed already in this response the Victim Care Contract- which provides support for people within the NRM cannot currently provide for complex needs. Restrictions, such as lack of right to work for people which do not already have immigration status which allows for this, do much to prevent support provided by the VCC addressing root causes of slavery- such as poverty and debt.

Safe house accommodation only makes up 15% of the VCC provision. 85% of people in the contract only receive outreach support. There is a consistent issue that there are not enough best spaces for those with physical disabilities and the VCC isn't able to accommodate those with complex needs. Support under the VCC is not conditional with cooperation with a police investigation. Different support providers within the VCC also have different rules around shelters.

24. Do service providers and law enforcement work together cooperatively, for instance to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service providers and law enforcement?
25. Were there means by which victims could obtain restitution from defendants in criminal cases or file civil suits against traffickers for damages, and did this happen in practice? Did prosecutors request and/or courts order restitution in all cases where it was required, and if not, why?

In theory, mechanisms to provide remedy, including compensation to victims are in place, but in practice these remain largely inaccessible. A number of the Modern Slavery Act's

provisions are yet to come into force, and tensions with immigration and drugs legislation means that many victims are still criminalised.

Compensation plays an important role in assisting victims to hold those responsible to account, provide for their families, and rebuild their lives. Yet, numerous barriers are encountered by those attempting to access their right to compensation. There is still no civil remedy for victims of trafficking and modern slavery, without which, civil lawyers attempt to shoehorn cases into existing causes of action and remain unable to recover damages for the specific act of being trafficked or held in slavery. The current employment tribunal and High Court and County Court claims for victims of trafficking are remarkably lengthy and complex. It is frequently in excess of 18 months to reach a full trial. The Modern Slavery Act introduced a bespoke Reparation Order to ensure that more money from those convicted of slavery goes directly to their victims. However, Slavery and Reparation orders set out in the Modern Slavery Act are underused. According to answers to Parliamentary questions, none had been made at end of 2017,⁹²In 2019 the Minister said the data could not be separated so did not provide a clear answer as to the orders made to victims.⁹³ In any case reparation orders require the conviction of the defendant, and convictions for modern slavery offences remain low.

In a January 2020 submission to the UN Human Rights Committee,⁹⁴ several anti-trafficking NGOs noted that there is still no civil remedy for victims of trafficking and modern slavery, and that the two available mechanisms are flawed. In practice, compensation from perpetrators of trafficking is unavailable for many.

The Deduction from Wages (Limitation) Regulations 2014, introduced as secondary legislation during the passage of the Modern Slavery Act with no parliamentary oversight, significantly limits the ability of victims of trafficking to recover the National Minimum Wage (NMW). It prevents victims from obtaining more than two years owed in NMW, despite the fact that they may have been paid little or nothing for several years. Prior to the introduction of this legislation, a victim of trafficking or servitude could recover wages for the entire period that they were held in servitude. The ‘family worker exemption’, contained in the NMW Regulations 2015⁹⁵, provides that live-in domestic workers are not entitled to receive the national minimum wage or any payment at all, if the worker is “treated as a member of the family”. This Exemption is frequently used as a litigation tool by traffickers to defend court or tribunal claims.

The case of *Puthenveetil v Alexander & George, & Others* 2361118/2013⁹⁶ involved a trafficked domestic worker who was employed for 9 years. She asserted that she had been required to work up to 119 hours a week, for which she had received irregular payments of salary and that on some occasions her salary equated to just 92p per hour. The employer

⁹² <https://questions-statements.parliament.uk/written-questions/detail/2018-11-21/194087>

⁹³ <https://www.theyworkforyou.com/wrans/?id=2020-02-21.18940.h>

⁹⁴ Available at: <https://www.antislavery.org/wp-content/uploads/2020/01/Submission-HRC-modern-slavery-in-UK-Jan20.pdf>

⁹⁵ Regulation 57 of the National Minimum Wage Regulations 2015

⁹⁶ *Puthenveetil v Alexander & George, & Others* 2361118/2013

successfully argued she had been treated as a member of their family. The family worker exemption was challenged and The Secretary of State for Business, Energy and Industrial Strategy was joined as a Defendant. The Employment Tribunal held the exemption to be indirectly discriminatory as it applies to more women than men and places women at a particular disadvantage when compared to men and as such, in the absence of evidence of a legitimate aim, should be disapplied. The Secretary of State neither sought to defend the claim at the Tribunal nor to appeal the judgment. Although it is widely recognised that the family worker exemption is a loophole for modern slavery and a tribunal has now found it to be unlawful there has, regrettably, been no indication that the Government intends to change the law. As this is a first instance decision the judgment is not binding on other courts or tribunals. Although the judgment will be persuasive, it leaves each victim having to challenge the family worker exemption in the course of their individual proceedings, creating additional barriers and costs for victims litigating in this already complex area.

Compensation or Repatriation Orders:

In England and Wales, a judge has power to order the defendant to pay compensation, on conviction, for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence, under s.130 of the Powers of Criminal Courts (Sentencing) Act (PCC(S)A) 2000.⁹⁷ Following the introduction of the Modern Slavery Act in 2015, section 8 states that a “*Court must consider making a reparation order to compensate the victim following the conviction of the perpetrator for a modern slavery offence (slavery, servitude, forced labour or human trafficking) and the making of a ‘confiscation’ order*”.

However, as ATMG identified in 2013:

*“obtaining compensation through this method is difficult as orders can only be considered if the defendants’ assets are realisable i.e. they have been seized and confiscated immediately. Furthermore, judges are very unlikely to impose compensation orders if they impose a custodial sentence on the trafficker. Applications for such orders can be made by the police or prosecutor, but have not been requested as a matter of course. For prosecutors, compensation orders appear to be a secondary consideration with the primary focus being on securing a conviction.”*⁹⁸

Employment Tribunal and Civil Compensation Claims

There currently is no specific tort (civil wrong) of human trafficking or other types of modern slavery, therefore if victims pursue a civil compensation claim they have to try to fit their circumstances into another type of tort e.g. false imprisonment, trespass to the person, protection from harassment. The lack of a specific tort can create barriers in accessing legal aid and also accessing a civil remedy. This gap in the law was identified in the case of Taiwo

⁹⁷ Anti-Slavery International (2013) ‘In the dock: Analysing the UK’s Criminal Justice response to Trafficking’, p. 89. Available at: https://www.antislavery.org/wp-content/uploads/2017/01/in_the_dock_final.pdf.

⁹⁸ Anti-Slavery International (2013) ‘In the dock: Analysing the UK’s Criminal Justice response to Trafficking’, p. 90. Available at: https://www.antislavery.org/wp-content/uploads/2017/01/in_the_dock_final.pdf.

v Olaigbe and another [2016]. This needs to be rectified and could facilitate greater levels of perpetrator accountability, particularly where it has not been possible to meet the criminal threshold for the Crown Prosecution Service to pursue a criminal prosecution.

Also civil proceedings are typically stayed behind criminal proceedings. Currently many cases of human trafficking involve protracted investigations and prosecutions lasting several years. This has now been exacerbated by Covid 19 significant delays in criminal proceedings. For instance a case that Hope for Justice dealt with in 2013, the civil case is still in progress some of the protracted litigation in the civil case is due to the repeated failure to provide legal aid resulting in satellite litigation. In addition victims often require ongoing support to empower engagement in these processes but cases may come to fruition many years after they have left support services.

Enforcement

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

Kalayaan has reported that there are no mechanisms in place to ensure that perpetrators are held into account following a costs order against them. In one particular case reported by Kalayaan, a survivor was awarded one-hundred thousand pounds in compensation at the Employment Tribunal, but was then tasked to enforce the order by herself or employing an enforcement agency, with no legal aid or support provided to her by UK authorities. Kalayaan also noted that the July 2017 Matthew Taylor Review of Modern Working Practices⁹⁹ recommended that the process for employees to receive compensation awards was simplified -to no avail, in the best of Kalayaan's knowledge.

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

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

A reparation order can be granted regardless of whether the victim remains in the UK after giving evidence. Practically if the victim has not taken steps to update the Police of any change

⁹⁹ Taylor M. et al (2017) 'Good Work: The Taylor Review of Modern Working Practices'. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

in contact details because of the gap between sentencing and POCA proceedings they will not be aware that an order has been made. If the CPS cannot contact them they will not receive payment.

Each UK legal system contains several procedural avenues that could theoretically allow a survivor of labour exploitation to access compensation through civil procedures. However, compensation orders remain a contested issue. Article 12 provides that the trafficked person shall have access, without delay, to free-of-charge legal counselling, including for the purpose of claiming compensation. It can be argued that none of the possible avenues for compensation in the UK are in accordance with the Convention. As aforementioned, the Scottish Legal Aid Board monitored the availability and accessibility of legal services in the area of human trafficking in 2015. It also highlighted the same report's comments that access to compensation/other civil remedies "in practice was rarely successful and that compensation was one of the weakest rights and often the most inaccessible".¹⁰⁰ It stated that it is not clear whether this results from systematic problems with the availability of solicitors rather than other barriers which may relate to a person's experiences.

CICA Scheme

The Criminal Injuries Compensation Scheme (CICS) is a government scheme which exists to provide compensation to victims of violent crime. Although the CICS was amended to explicitly include survivors of trafficking in 2012 there remain significant barriers to survivors of trafficking and slavery accessing compensation under the scheme. Sadly, the length of time taken to obtain funding and an initial CICS decision has seen survivors die before the conclusion of their application. The recent ATLEU report 'Survivors of trafficking and the Criminal Injuries Compensation Scheme'¹⁰¹ found:

47% of survey respondents had experience of trafficking survivors waiting two to three years for the Criminal Injuries Compensation Authority (CICA) to determine their applications and award compensation, with 5% of respondents reporting delays of four years or more.

88% of respondents had experience of survivors giving up due to the length of time taken to deal with their application

60% of respondents had experience of survivors being refused compensation on the basis that they had not suffered a crime of violence

65% of respondents had experience of applications to CICA being refused because survivors' had not submitted the application within two years

¹⁰⁰ See: <https://www.slab.org.uk/app/uploads/2019/03/SLAB-Monitoring-Report-2017.pdf>

¹⁰¹ [Survivors of Trafficking and the Criminal Injuries Compensation Scheme](#), ATLEU, November 2020

60% of respondents had experienced applications being refused on the basis that the survivor had not reported to the police as soon as reasonably practicable

67% of respondents said that they did not help survivors apply for compensation as they did not have the requisite knowledge or experience.

Page 3 of the report sets out a series of recommendations for improving the CICS.

Currently advice on CICS is out of scope for legal aid and would require an exceptional case funding application to be made to the Legal Aid Agency (LAA). These are rarely granted for victims to make the initial CICA application. In HfJ's experience, victims of modern slavery face multiple barriers in accessing the scheme, including vulnerability, language barriers and cultural disorientation. These factors impede the ability of a victim to fill in the form without support. This is then compounded by issues that victims face meeting the clear criteria for the scheme. Such issues include

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

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

For instance, of a sample of HfJ's current advocacy cases between 2013 —2019, out of a sample of 44 cases where victims have made an application for criminal injuries compensation:

- 20 are pending the initial CICA decision (44%)
- 14 of these were rejected on the basis of CICA not considering modern slavery a crime of violence (32%). This means that 58% of the decided cases were rejected on the basis that modern slavery is not a crime of violence. Of these, 3 are in the process of appeal on this basis and 8 are pending review of the negative initial decision. A further three of the 14 individuals died whilst the review was in process.
- 2 applications of the 44 have been successful in awards, one on the initial application and one went to review on quantum (4%).
- 8 individuals had applications rejected on another basis (20%).

None of the current cases listed above have yet gone to appeal at a tribunal despite the fact that these cases go as far back as 2013. This is due to lengthy criminal processes and the lengthy delays in the CICA process. The reasons for this are first, many applications are stayed pending the outcome of criminal proceedings which for cases involving modern slavery can take 2-3 years before the case comes to trial. Secondly, some cases are stayed behind a civil case. Thirdly, the processing of applications is currently fairly slow and CICA can take approximately 12 months to process the initial application even when there are no pending criminal proceedings. In addition, I understand there have been some delays with reviews and also adjournments of appeals. For instance, one first tier tribunal appeal had been adjourned because the tribunal didn't have the specific expertise to deal with the case.

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

Case Study

An identified victim of modern slavery submitted a CICA application with the support of HfJ. The case was rejected on the basis of failure to cooperate with a police investigation. HfJ referred the case to a specialist charity, ATLEU, and supported the victim to be able to access this advice and supported him through the process of appeal, which was difficult and distressing for him. He also needed assistance gathering evidence of means. ATLEU persisted in getting exceptional case funding, although this was refused on multiple occasions. They obtained expert medical evidence and submitted complex legal arguments as to entitlement to compensation. HfJ also submitted witness evidence in support of the application. Without this legal assistance and ongoing advocacy support, the victim would most likely not have recovered compensation. However, with this specialist legal assistance the victim recovered a five figure sum of money. CICA at the appeal also stated that they would look to change the aspect of the scheme relating to non-cooperation with a police investigation.

Case Study (Provided by ATLEU)

S was trafficked to the UK for the purpose of labour exploitation. S was required to work lengthy hours in a textile business for which she received no payment. S was subjected to threats were she to disclose her treatment. S was eventually assisted by the Police and gave evidence at trial leading to the conviction of her trafficker. Prior to the criminal trial, S and her family were threatened with violence were she to give evidence. S was diagnosed as suffering from a mental injury attributable to her experiences. S was refused compensation on the basis that she had not suffered an immediate threat of violence; the time between threat and the work

she was compelled to do amounted to a threat to harm in the future. S was refused legal aid on the basis that she would not require legal advice or assistance to make representations to CICA, this was despite S being illiterate in both English and her mother tongue, and in the alternative could attend and represent herself at any appeal hearing.

26. How did the government encourage victims to assist in the investigation and prosecution of trafficking? How did the government protect victims during the trial process? If a victim was a witness in a court case, was the victim permitted to obtain employment, move freely about the country, or leave the country pending trial proceedings? How did the government work to ensure victims were not re-traumatized during participation in trial proceedings? Could victims provide testimony via video or written statements? Were victims' identities kept confidential as part of such proceedings? In what ways could the government support increased participation of victims in prosecutions against their traffickers?

Victims are entitled to access special measures including screens and video links pursuant to section 46 Modern Slavery Act 2015 as they are automatically considered intimidated witnesses. Victims who have been subjected to sexual violence are automatically entitled to anonymity but there is no automatic similar provision for victims of other types of trafficking such as trafficking for forced labour. An application could be made for anonymity under wider legislation for instance, applications for witness anonymity can be made pre-trial under sections 74 to 85 of the Coroners and Justice Act 2009 under certain circumstances. Applications can also be made in respect of reporting restrictions.¹⁰² In practice, HfJ have not seen applications around reporting restrictions or anonymity applied for victims of trafficking for forced labour.

However witness risk assessments, safety and protection is often considered on a short term basis and does not take into account the longevity of protection a witness might need for instance, during proceedings, post conviction and post an offender being released from prison. This is an area of policy and practice that needs to be developed.

Hope for Justice also have been involved in criminal cases where there were attempts to deport prosecution witnesses.

Overall if the government is to encourage engagement in criminal process it needs to ensure that witnesses are protected, have appropriate long term advocacy and support, including through criminal process and clear long term regularisation of status.

¹⁰² See sections 45 and 46 Youth Justice and Criminal Evidence Act 1999 (YJCEA)

27. Did the government provide, through a formal policy or otherwise, temporary or permanent residency status, or other relief from deportation, for foreign victims of human trafficking who may face retribution or hardship in the countries to which they would be deported? Were foreign victims given the opportunity to seek legal employment while in this temporary or permanent residency? Were such benefits linked to whether a victim assisted law enforcement, participated in a trial or whether there was a successful prosecution? Does the government repatriate victims who wish to return home or assist with third country resettlement? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated, or are they deported? Did the government extend additional immigration relief to victims who would otherwise be deported or repatriated to countries with a high risk of COVID-19 infection or who could not return to their home countries due to travel restrictions?

A potential victim of trafficking within the NRM is prevented from deportation while their case is being considered. However, once the decision is made there is no protection provided from deportation. There is provision for application for discretionary leave under certain circumstances but can often take months if not years to obtain. These are not easily given (for example, in the first quarter of 2020 only 8 were granted). When providing post-NRM support, the average support time is 12 – 18 months (without complex mental health or a police investigation). However, where a person does not have an leave in the country, it is interesting to note that *once* leave is given, it *then* takes 12 – 18 months to support them to independence. It is like the persons life and recovery is on hold until some level of security is granted. Lord McColl's Victim Support Bill would allow for 12 months of automatic leave to be granted following a positive CG in order to recover but this has been rejected on a number of occasions.

Once a person has temporary or permanent residency they are able to access the labour market. The Coop and City Hearts created a program called 'Bright Futures' which connects ethical business to survivors looking for work opportunities. However, this is not government funded.

During Covid, the Home Secretary brought in a new policy which gave provision to immediately deport someone who came in via illegal means (e.g small boats etc). However, this was successfully challenged through strategic litigation as this took away the provision to assess whether that person was a victim of trafficking and thus have further rights to support and care.

28. Does the government effectively assist its nationals exploited abroad? Does the government work to ensure victims receive adequate assistance and support for their repatriation while in destination countries? Does the government provide adequate assistance to repatriated victims after their return to their countries of origin, and if so, what forms of assistance?

Hope for Justice in recent months have seen an increase in numbers of victims identified wishing to return home. Currently aside from ad hoc local services there is no clear route for victims to return home pre conclusive grounds decision of trafficking. Victims are only

entitled to access the voluntary returns scheme (VRS) once they have a conclusive grounds decision. In addition the VRS is not designed for victims of trafficking and is not a supported returns programme. Returning agencies report that they have had survivors returned to them with infectious diseases, limited clothing, no information about their circumstances or the support they have received in the UK which then inhibits a returning support agency to prepare the support that a survivor needs on return. In addition, there is currently no monitoring and evaluation of the outcomes for survivors who do return. Overall there is no consistent approach to risks assessments or returns pathways in the VCC.

29. Does the government arrest, detain, imprison, or otherwise punish trafficking victims (whether or not identified as such by authorities) for unlawful acts their traffickers compelled them to commit (forgery of documents, illegal immigration, unauthorized employment, prostitution, theft, or drug production or transport, etc.)? If so, do these victims disproportionately represent a certain gender, race, ethnicity, or other group or particular type of trafficking? Does law enforcement screen for trafficking victims when detaining or arresting individuals engaged in commercial sex or individuals that may be at particular risk of human trafficking?

Prevention

30. What efforts has the government made to prevent human trafficking? Please describe any government-funded anti-trafficking information or education campaigns or training, whether aimed at the public or at specific sectors or stakeholders/actors. Did these campaigns or trainings target potential trafficking victims, potential first responders or other trusted authorities, known trafficking sectors or vulnerabilities, and/or the demand for human trafficking (e.g., buyers of commercial sex or goods produced with forced labor)? Does the government provide financial support to nongovernment organizations working to promote public awareness?

“Re-trafficking” occurs when a victim who has become known to the authorities and has received an NRM referral then re-enters a situation of exploitation and is once again subject to human trafficking/modern slavery. This can arise for a variety of reasons such as continuing vulnerability and dependency on their traffickers together with a lack of alternative options for survival; debt bondage; fear of their traffickers; and control and influence exercised by their traffickers. It is often accompanied by an absence of protective measures to enable their rehabilitation. There is little or no published evidence on re-trafficking as by its very nature people who are re-trafficked are unlikely to be supported when this happens. However there is significant concern that victims of trafficking who have not been correctly identified as trafficked find themselves back in the same circumstances from which they believed they had escaped, having found themselves in the situation where, ineligible for further support, they re-enter exploitation to avoid destitution. Positive identification is of course no guarantee against

re-trafficking, but it commonly arises where trafficked persons are denied the protection and assistance that they need from the authorities on an earlier occasion.¹⁰³

There is little data collected or published on the numbers of people who are re-trafficked following negative Conclusive Grounds decisions because people who are re-trafficked are predominantly those who are not receiving support from organisations who would collect this information. There is some anecdotal evidence, for example in evidence to the Work and Pensions Committee inquiry ‘Victims of Modern Slavery’ 2016-17,¹⁰⁴ there is an account of a police officer reporting referring the same person into the NRM three times, as each time they had left and been re-trafficked.¹⁰⁵ There are recent decisions of the Administrative Court which concern victims of trafficking who have been re-trafficked and recognise the likelihood of such an occurrence: *R (TDT (Vietnam)) v. SSHD* [2018] 1 WLR 4922 and *R (CP (Vietnam)) v. SSHD* [2018] EWHC 2122 (Admin).

31. How did the government regulate, oversee, and screen for trafficking indicators in the labor recruitment process, including for both licensed and unlicensed recruitment and placement agencies, individual recruiters, sub-brokerages, and microfinance lending operations? Did it maintain labor attachés abroad and were they trained on human trafficking indicators? How effective were these efforts in preventing abuse?
32. What did the government do to regulate recruitment practices that are known to contribute to trafficking in persons? Specifically, did the government prohibit (in any context) charging workers recruitment fees? Also indicate if the government prohibited the recruitment of workers through knowingly fraudulent job offers (including misrepresenting wages, working conditions, location, or nature of the job), contract switching, and confiscating or otherwise denying workers access to their identity documents. If there are laws or regulations on recruitment, did the government effectively enforce them?
33. What steps did the government take to minimize the trafficking risks faced by migrant workers departing from or arriving in the country and to raise awareness among potential labor migrants about the risks of human trafficking, legal limits on recruitment fees, or their rights while abroad? Did the government coordinate with other governments (e.g., via bilateral agreements with migrant labor sending or receiving countries) on safe and responsible recruitment that included prevention measures to target known trafficking indicators? To what extent were these implemented? Are workers (both nationals of the country and foreign nationals) in all

¹⁰³ International Organization for Migration, ‘*The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database*’ (2010), p.35.

https://publications.iom.int/system/files/pdf/causes_of_retrafficking.pdf (accessed 2 June 2020)

¹⁰⁴ House of Commons Work and Pensions Committee, *Victims of Modern Slavery* (HC 803, 30 April 2017), §19 <https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/803.pdf> (accessed 1 June 2020).

¹⁰⁵ *ibid*, §19.

industries (e.g., domestic work, agriculture, etc.) equally and sufficiently protected under existing labor laws?

34. What did the government do to ensure that its policies, regulations, and agreements relating to migration, labor, trade, and investment did not facilitate trafficking?

35. How did the government's response to the COVID-19 pandemic affect the ability of migrant workers to continue earning an income, to enter and exit the country, and to maintain their immigration status? What steps did the government take to mitigate the increased risk of human trafficking some migrant workers may have faced due to the pandemic (job creation or placement for out-of-work labor migrants, extension of immigration relief, etc.)?

36. If the government has entered into bilateral, multilateral, or regional anti-trafficking information-sharing and cooperation arrangements, are they effective and have they resulted in concrete and measurable outcomes? If not, why?

ATMG's 2017 Brexit report¹⁰⁶ set out the importance of international cooperation and the potential impact of Brexit on these measures. Modern slavery, and in particular human trafficking, is predominantly a cross-border crime. Trafficking networks can span several countries or continents. Modern slavery victims are recruited and transported from one country to another to be exploited. Although numbers of UK nationals continue to rise, over 70% of potential victims of modern slavery were foreign nationals in the time period evaluated. Given the transnational nature of this crime, international cooperation in fighting it is crucial. The EU has adopted a collaborative and coordinated approach to combatting human trafficking, as well as other serious organised crimes, such as cybercrime.

Numerous institutions, organisations and partnerships have been established by the EU, such as Europol and Eurojust, to aid with information-sharing and cross-border cooperation for the purposes of security and law

The UK has negotiated the right to "opt-in" to EU measures related to criminal justice and security, such as the European Arrest Warrant, so that it can decide on a case-by-case basis whether it is in the national interest to do so. If it does not choose to opt-in, it is not bound by the EU measure in question.

Use of JIT in a successful human trafficking case in July 2015:

11 defendants were sentenced for the trafficking of at least 250 women from Hungary to be sexually exploited in 50 brothels in London and Peterborough. The women they exploited were forced to hand over up to half of their earnings. One of the defendants, Zsolt Blaga, 38, was

¹⁰⁶ Anti-Trafficking Monitoring Group (2017) 'Brexit & the UK's fight against modern slavery'. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

jailed for 14 years for trafficking offences and two rape offences. Other offences that the defendants were convicted of included conspiracy to traffik and conspiracy to control prostitution. In total, the gang were sentenced to a total of 60 years' imprisonment. The arrest and prosecution of these defendants was made possible by the joint working between the Crown Prosecution Service (CPS), the Metropolitan Police Service (MPS), and the Hungarian authorities, who in 2013 established a Joint Investigation Team (JIT) through Eurojust. Eurojust funding and support enabled the JIT partners to work closely over a period of almost 3 years to gather the necessary evidence to build a case strong enough to ensure the defendants were convicted. This support facilitated strategy and planning meetings between UK and Hungarian police and prosecutors, enabled witness statements to be obtained from vulnerable witnesses across Europe, paid for interpreters, and facilitated the planning and execution of simultaneous arrests in each country. When the defendants were located and arrested in Hungary, European Arrest Warrants (EAW) were issued which allowed them to be extradited to the UK to stand trial. In the absence of a JIT being created, the authorities would have had to make repeated requests for Mutual Legal Assistance (MLA), which would have been time-consuming given the complex nature of the case.¹⁰⁷ See CPS press release, '11 sentenced in one of largest sex worker trafficking cases prosecuted in London', 16th July 2015.

In addition, Modern Slavery Annual Report of October 2019 details overall law enforcement efforts tackle the issue at pages 14 – 20.¹⁰⁸

This is further compounded in the case of children. with ECPAT highlighting:

“The UK’s decision to leave the European Union poses a risk to children’s rights in the UK, as well as specific risks in regards to children at risk of exploitation. A paper prepared by the Anti-Trafficking Monitoring Group outlines these concerns in more detail.¹⁰⁹ Currently, the nature of EU membership means that where national law is silent on the implementation of specific, positive obligations contained in an EU directive, the provisions of the directive may become directly applicable nonetheless. In other words, individuals could still rely on those unimplemented provisions before the national courts. Brexit jeopardises that possibility. Without the full transposition and protection of the rights contained in the EU Trafficking Directive at the point of leaving the EU, child victims of trafficking in the UK will be unable to rely on EU law directly and will have more limited protection under domestic law. Even for those measures that have been transposed, the terms of the Withdrawal Bill allow the Government to modify parts of the directive which do not conform with domestic legislation without further parliamentary scrutiny.

¹⁰⁷ Crown Prosecution Service (2015) '11 sentenced in one of largest sex worker trafficking cases prosecuted in London', 16 July 2015

¹⁰⁸ HM Government (2016) '2019 UK Annual report on Modern Slavery'. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf

¹⁰⁹ Anti-Trafficking Monitoring Group (2017) 'Brexit & the UK's fight against modern slavery'. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

It is also unclear whether the UK will continue to have access to cross-border intelligence-sharing programmes that support child protection and safeguarding.¹¹⁰ Access to cross-border agencies and agreements will terminate in the event of a no-deal Brexit. These agencies and agreements are critical for the purposes of safeguarding children across borders which include Europol, Eurojust, European Arrest Warrant, European Criminal Records Information System (ECRIS), European Protection Order, second-generation Schengen Information System (SIS II) and Supplementary Information Request at the National Entries (SIRENE bureaux) channel. EU national children in the UK who are at risk of exploitation are also made more vulnerable due to uncertainty around their immigration status.¹¹¹

37. Did the government provide assistance to other governments in combating trafficking in persons through trainings or other assistance programs?
38. What measures has the government taken to reduce the participation by nationals of the country in international and domestic child sex tourism?
39. Did the government take sufficient measures to establish the identity of local populations, including birth registration and issuance of documentation, citizenship, and nationality?

Child Soldiering

40. Did government officials engage in, support, or otherwise facilitate the unlawful recruitment or use of children in the government's armed forces, police, or other security forces? [NOTE: This can include combat roles as well as support roles, but please be specific in this regard if possible.] Did the government provide support to any armed groups that recruited and/or used child soldiers in combat or support roles? What was the extent of the support (e.g., in-kind, financial, training, etc.)? Describe the conditions of military detention of child soldiers and/or children accused of association with armed groups, including: (1) The typical length of time the children are held; (2) access to legal aid and rehabilitation services; (3) the conditions of the detention facility including food, sanitation, crowding, etc. and whether children are segregated from adults and by gender; (4) allegations of suspected sexual exploitation while in detention, including of female child soldiers; and (5) allegations children and/or child soldiers are used for labor, intelligence gathering, or to screen other detained persons.
41. Please provide observations regarding government efforts to address the issue of unlawful recruitment or use of children by governmental armed groups and/or non-state armed groups. Describe the government's efforts to disarm and demobilize child soldiers, to provide protection services and reintegrate former child soldiers, and to monitor the wellbeing of such children after reintegration. Does the government have

¹¹⁰ Ibid.

¹¹¹ ECPAT UK submission

any children held in military detention due to their suspected roles as child soldiers? Do international monitoring organizations (e.g., UN, ICRC, HRW) have unhindered access to interview these detained children and/or child soldiers and monitor the conditions of their detention? Describe the conditions of military detention of child soldiers and/or children accused of association with armed groups. Does the government have and/or use any hand-over procedures to transfer these children to civilian authorities?

ECPAT UK is concerned that currently, the numbers of children identified in Northern Ireland remains low. In the United Kingdom, the Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland by the Committee of the Rights of the Child stated at paragraph 47 (b) 'In Northern Ireland, children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, as well as recruitment by such non-State actors.' The Committee recommended the United Kingdom 'take immediate and effective measures to protect children from violence by non-State actors involved in paramilitary-style attacks as well as from recruitment by such actors into violent activities, including through measures relating to transitional and criminal justice.'

As set out by the Independent Anti-Slavery Commissioner, during her visits to Scotland and Northern Ireland, she spoke with officials to understand why fewer victims are being referred there than in England and Wales. She was told that child criminal exploitation (CCE) is not yet a significant issue in these regions and this is likely to be a contributing factor.

The on-going issues regarding the exploitation of children are not being identified in Northern Ireland, a concern also highlighted by the Northern Ireland Commissioner for Children and Young People (NICCY) in her submission to the draft Modern Slavery Strategy 2018/19. The current guidance Co operating to Safeguard Children and Young People in Northern Ireland acknowledges the additional vulnerabilities faced by children and young people 'living in a post-conflict society which is still experiencing legacy issues associated with paramilitarism'. It recognises that, within some communities, 'there can be an acceptance of the use of violence as a response to perceived anti-social behaviour, crime committed by individuals or as a method of control over children and young people'. The guidance highlights 'children may also be abused or exploited by adults who hold power within their communities, where fear is used to coerce the child or young person into compliance'.

Additionally, the 2015 Fresh Start agreement sets out the Northern Ireland Executive's commitment to tackling paramilitary activity and associated criminality. A recent briefing provided an overview of child sexual exploitation of boys and its link to paramilitarism. The study cites other forms of exploitation as well such as one case where a young male victim assumed his role in life as 'drug running' for a paramilitary group, being sexually exploited as well. These examples support the views that child criminal exploitation is also an issue in the context of Northern Ireland which is currently not being identified as such. The Anti-Slavery Commissioner highlighted in her report that there are interventions that had been developed to address the grooming of children by paramilitaries, but these are absent from the strategy. Similarly, the development of practice does not provide for commitments to develop Contextual Safeguarding strategies which recognise a need for alternative approaches to child protection given that a significant amount of risk relating to the

exploitation of children also comes from environments outside the home. ECPAT UK recommends there is a commitment to consistent identification and safeguarding of children, focused on a child-centred and collaborative approach for all agencies responding to paramilitarism and child trafficking.