

# **Civil Legal Aid: Towards a Sustainable Future**

## **Joint response by organisations in the anti-trafficking and anti-slavery sector**

### **March 2025**

## **1. INTRODUCTION**

This joint response to the Consultation by the Ministry of Justice, *Civil Legal Aid: Towards a Sustainable Future* is by 16 civil society organisations working on trafficking and modern slavery. This includes organisations that are: survivor-led; provide direct assistance to victims and survivors including legal advice and representation, housing, medical support and therapy, as well as independent advocacy; focused on research, policy, campaigning, and coalition building; designated non-statutory First Responders; and contracted to deliver the Modern Slavery Victim Care Contract.

We are responding to this consultation because access to quality and timely legally aided advice and representation is crucial for survivors of trafficking and modern slavery to access safety, rights and justice.

Trafficking and modern slavery is a heinous crime, which affects tens of thousands of people in the UK every year. In 2023, 17,004 potential victims entered the National Referral Mechanism (NRM), the UK's two-stage system for formally identifying victims of trafficking and modern slavery. A further 4,929 adult potential victims declined to consent to enter the NRM, as reported in the duty to notify (DtN) process. In 2024, 19,125 potential victims entered the NRM, representing a 13% increase compared to the preceding year. A further 5,598 adult potential victims declined consent to enter the NRM, which also represents a 13% increase compared to the preceding year. This was the highest number of DtN reports in a year since the NRM began.<sup>1</sup> The 2023 Global Slavery Index estimates that on any given day in 2021, there were 122,000 people living in modern slavery in the UK.<sup>2</sup>

The true numbers affected by trafficking and modern slavery annually will be far higher than those referred into the NRM, referred into support, or captured in DtN statistics, as it does not reflect those currently trapped in exploitation or who leave their exploiter but do not come forwards to the authorities for help due to fear. Furthermore, DtN statistics are under representative of the numbers who decline an NRM referral, as it is only a requirement for statutory First Responders to complete them.

We welcome the Ministry of Justice's announcement of the first increase in civil legal aid fees in 30 years and your commitment to rebuilding a neglected civil legal aid

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<sup>1</sup> [Modern slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2024 - GOV.UK](#)

<sup>2</sup> [Global Slavery Index | Walk Free](#)

sector so that it is effective, efficient and sustainable.<sup>3</sup> We are also pleased to see, in your announcement<sup>4</sup> and the consultation foreword<sup>5</sup>, explicit recognition of the need to help survivors of modern slavery and trafficking to access legal advice when they need it, to navigate a complex legal system and get access to justice.

This response is informed by our partners and our direct experience of the challenges faced by survivors of trafficking and modern slavery in accessing legal advice and representation. It responds to questions 1 and 2 of the consultation, with regard to survivors of trafficking and modern slavery specifically. It provides our evidence on the importance of legal advice for survivors of trafficking and modern slavery, the huge gulf between need and availability, the causes of this crisis, and the solutions needed. An increase in civil legal aid fees is desperately needed, but it is just one part of the puzzle, and we hope that you will also take on board our recommendations as to additional changes needed to ensure that survivors of this grave crime can access safety, rights, justice and remedy.

This submission is coordinated by the Anti Trafficking and Labour Exploitation Unit (ATLEU). ATLEU has also submitted an individual response which responds in detail to all questions in the consultation from its perspective as a legal aid charity which provides dedicated and holistic legal advice and representation to survivors of trafficking, modern slavery and labour exploitation. For more information, contact [Kate@atleu.org.uk](mailto:Kate@atleu.org.uk)

## **2. SUMMARY: THE LEGAL ADVICE CRISIS FOR SURVIVORS OF TRAFFICKING AND MODERN SLAVERY**

Access to legal advice and representation is critical for survivors of trafficking and modern slavery to secure identification as a victim, support to assist their recovery, justice and freedom.

However, survivors of trafficking and modern slavery are not able to access specialist legally aided advice and representation when they need it due to a huge gulf in availability. In 2022, ATLEU found that a staggering 90% of support workers had struggled to find a legal aid immigration lawyer for a survivor, with 76% reported significant delays of up to three months or longer, and 43% reporting serious delays of up to six months or longer. This is having devastating consequences including homelessness, destitution, missed case deadlines, detention, removal, and risks of re-trafficking. 55% of respondents said it had left survivors they supported destitute or unable to access appropriate accommodation or support. An overwhelming 97% said it caused stress, anxiety or contributed to poor mental health including suicidal

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<sup>3</sup><https://www.gov.uk/government/news/historic-increase-in-legal-aid-to-support-most-vulnerable>

<sup>4</sup><https://www.gov.uk/government/news/historic-increase-in-legal-aid-to-support-most-vulnerable>

<sup>5</sup><https://www.gov.uk/government/consultations/civil-legal-aid-towards-a-sustainable-future/civil-legal-aid-towards-a-sustainable-future#foreword>

thoughts. 29% of respondents said the inability to access legal advice had left survivors in a situation of exploitation.<sup>6</sup>

The legal advice crisis for survivors of trafficking and modern slavery occurs in the broader crisis in civil legal aid, including the problem of decades-long underinvestment and woefully low fees that have remained static for 28 years. The primary cause, however, is the way in which trafficking and modern slavery cases are funded. They are uniquely complex, long-running and costly, often spanning different legal skill sets from criminal, domestic, immigration, civil and international law. They are ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out. The legal aid billing process for immigration cases is the most complex in civil legal aid at controlled work level and deters providers. Additionally, key areas of advice are out of scope for legal aid. The Legal Aid Means Test is causing barriers in access to legal aid, sometimes leaving victims trapped in exploitation, or unable to cover costs as well as not being able to access other benefits/work in case this income changes their eligibility but is not sufficient enough to cover legal fees privately.

### **3. RESPONSE TO THE CONSULTATION QUESTIONS**

**QUESTION ONE: Do you agree with our principles for setting fee levels within civil legal aid? Please state yes/no/maybe/do not know and provide reasons.**

**Yes.** The principles include the following that are important to ensuring quality legally aided provision for survivors of trafficking and modern slavery: “ensuring a sustainable housing and immigration legal aid market by remunerating at a rate which allows providers to attract and retain legal aid professionals...”, and “ensuring that high quality provision is available...”

These principles reflect the following challenges experienced by survivors of trafficking and modern slavery:

- At current, taking on trafficking and modern slavery cases is not financially viable for legal aid providers for a number of reasons, including rates of remuneration that are too low, but primarily a funding model that is unsuited to the cases.
- The above is resulting in legal advice ‘droughts and deserts’ for survivors of trafficking and modern slavery, who are unable to secure quality legally aided advice in a timely manner.
- The current payment structure results in very few providers developing trafficking expertise or being able to afford to run a trafficking case with the investment of time and disbursements it needs. This is causing poor quality advice.

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<sup>6</sup>ATLEU, (October 2022), ‘It has destroyed me’. A legal advice system on the brink. Available at: <https://atleu.org.uk/news/2022/10/17/it-has-destroyed-me-new-report>

We now provide further details on these issues to support our response:

### **The importance of legal advice for survivors of trafficking and modern slavery**

Legal advice and representation is foundational for survivors of trafficking and modern slavery. Survivors have complex legal and support needs, which often intersect, across a range of legal matters including housing, community care, immigration and asylum, criminal law (non-prosecution), civil and criminal injuries compensation, family law, welfare benefits and public law. Survivors need independent advocacy and support which is ongoing to enable them to even understand their ability to access legal aid and continue to access legal representation in the first place. The legal and policy framework on trafficking and modern slavery regressed substantially under the previous government, meaning that access to legal advice is even more crucial for this group.

Survivors of trafficking and modern slavery are a group for whom access to legal aid is vital. The vast majority of those who are unable to get legal aid will be forced to go without legal advice and representation, as they cannot otherwise afford to pay for it. Others may borrow large sums to do so, ending up in debt, which drives vulnerability to further exploitation.

When survivors are able to access quality and timely legally aided advice, the results are transformational. They are able to access safe housing, support, secure status, and formal recognition as a victim. It makes an immeasurable difference to their mental health. They are more likely to engage with criminal proceedings against perpetrators and to pursue compensation which can unlock financial security to rebuild their lives. They are less likely to fall victim to further exploitation. The potential downstream benefits of civil legal aid are significant. When advice and support can be secured at an early stage, an issue can often be prevented from building to crisis point.

### **A legal advice crisis for survivors of trafficking and modern slavery**

Survivors of trafficking and modern slavery cannot access quality legally aided advice when they need it. Survivors are facing lengthy delays to find a solicitor with capacity to take on a new case and many cannot find one at all. Others have to travel long distances to a solicitor with capacity, or rely on remote advice provision that often is not suitable. It is particularly challenging to find a solicitor prepared to take on a complex case; such as reconsiderations (of trafficking identification decisions), fresh claims, and an immigration case without an asylum claim.

In 2022, ATLEU's research found that 90% of support workers had struggled to find a legal aid immigration solicitor with capacity, with 76% reporting significant delays of up to three months or longer, and 43% reporting serious delays of up to 6 months or longer.<sup>7</sup> Calls to ATLEU's advice line for sector professionals suggest that the situation has worsened considerably since 2022.

The legal advice crisis is having devastating consequences for survivors, including homelessness, destitution, and mental health problems including suicidal thoughts.

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<sup>7</sup>ATLEU, (October 2022), *'It has destroyed me'*. Available at:  
<https://atleu.org.uk/news/2022/10/17/it-has-destroyed-me-new-report>

Unrepresented survivors are far more likely to experience poor outcomes in their cases including negative decisions on National Referral Mechanism (NRM) identification, and disqualification from NRM support. They risk detention, criminalisation, and being re-trafficked.

The legal advice crisis is also costly in terms of undermining the outcome of spending on the UK's systems of trafficking and modern slavery protection including funding the costs of the National Referral Mechanism (NRM) and the Modern Slavery Victim Care Contract (MSVCC). The hours of time support workers spend trying to find a solicitor with capacity is detracting from their ability to focus on core support services and the recovery of survivors.

### **Causes of the trafficking and modern slavery legal advice crisis**

We acknowledge that your government has inherited a legal aid sector in crisis. The problem of legal advice 'droughts and deserts' are well known. In February 2024, the Law Society updated its five heat maps showing the shortage of providers across the country for community care, education, housing, immigration and asylum and welfare benefits. In housing 44% of people do not have access to a local provider, and in immigration and asylum 63% of people do not have access to a local provider.<sup>8</sup> The legal advice crisis for survivors of trafficking and modern slavery occurs within this broader context. This includes woefully low rates of remuneration for civil legal aid, which this proposal begins to address by proposing a raise in legal aid fees for housing and immigration.

However, the primary cause is the way in which trafficking and modern slavery cases are funded. Immigration and asylum cases are enormously variable and one size does not fit all. It is this approach which has fundamentally undermined the financial viability of legal aid for those assisting survivors of trafficking and modern slavery. Trafficking and modern slavery cases are uniquely complex, long running and costly. They are therefore entirely ill-suited to the current funding method of a standard legal aid fixed fee, which does not change to reflect the time taken or level of work carried out. Those cases which escape the fixed fee (by twice their value) are not paid until the conclusion of the case which will typically take 3+ years. Poorly remunerated legal aid providers simply do not have the cash flow available to run cases that last for several years without receiving payment for this work.

Trafficking and modern slavery cases often involve complicated and interconnected legal issues, across multiple areas of law. Survivors have experienced, or are still experiencing, significant trauma. Building up trust with their legal representative can be lengthy and disclosure of key, sensitive information is often phased. The average length of a trafficking and modern slavery case is significantly longer than other immigration cases due to these factors alongside the long delays that come from the NRM system. In our experience, a positive Conclusive Grounds trafficking decision will usually take at least two years and sometimes takes more than three years. In 2024, according to published Home Office data, the average (median) waiting time from referral to a conclusive grounds decision was 637 days, an increase on 526

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<sup>8</sup><https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

days in 2023.<sup>9</sup> Analysis by the IOM found that the median waiting time for women was 1329 days.<sup>10</sup>

The long running nature of the cases and investment required means that taking on trafficking and modern slavery cases is not viable or sustainable for many legal aid providers. A report by ATLEU and the Rights Lab at the University of Nottingham, *Access to legal advice and representation for survivors of modern slavery* (2021)<sup>11</sup>, found that within larger firms, with a number of different legal departments, there was an acceptance within the firm that trafficking cases would run 'at a loss' but be offset by gains in different departments. This strategy enabled them to run the case in a more expansive way than otherwise would have been possible. Clearly, this was not an option available to those lawyers in smaller, less diversified law firms.

The current payment structure results in very few providers developing trafficking expertise or being able to afford to run a trafficking case with the investment of time and disbursements it needs. This is causing poor quality advice, where providers fail to run important trafficking arguments, or do not spend the time to explain a victim's case properly or take the time necessary to present the right supporting evidence. It is also leading to a market failure resulting in the legal advice droughts and deserts for survivors of trafficking and modern slavery with devastating consequences.

The existing legal aid regime is unnecessarily complex and bureaucratic and places a heavy burden on both legal aid providers and the state. The legal aid billing process for immigration cases is the most complex in civil legal aid at controlled work level.

Finally, the following act as barriers to legal advice for survivors of trafficking and modern slavery:

- Key areas of advice are out of scope for legal aid in England and Wales for the vast majority of survivors: immigration advice prior to an NRM referral, advice on trafficking identification, and applications to the Criminal Injuries Compensation Scheme.
- The Legal Aid Means Test excludes many survivors from legal aid, despite their inability to afford legal advice otherwise.

## **QUESTION TWO: Do you agree that we should increase the fees paid for Housing and Immigration work?**

**Yes.** We welcome the Ministry of Justice's proposals to raise legal aid fees for housing and immigration work. This is an important step in the right direction.

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<sup>9</sup><https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-end-of-year-summary-2024/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2024#:~:text=In%202024%2C%20the%20Home%20Office,record%20from%20the%20previous%20year.>

<sup>10</sup><https://unitedkingdom.iom.int/news/more-women-and-girls-ever-are-being-given-negative-decisions-through-national-referral-mechanism>

<sup>11</sup>Access to legal advice and representation for survivors of modern slavery, May 2021, available at <https://modernslaverypec.org/assets/downloads/Legal-advice-report.pdf>

However, it is clear that a more significant increase to fees is needed to save a collapsing legal aid sector. In 2024, the National Audit Office calculated that in real terms civil legal aid fees are now approximately half what they were 28 years ago. Further, given that survivors of trafficking and modern slavery interact with a number of categories of law, increases to fees are needed across all categories of civil legal aid.

Please refer to our response to question one, which highlights the importance of legal advice for survivors of trafficking and modern slavery, the availability crisis, the devastating impact on affected individuals, and the changes needed to ensure that survivors can access legally aided advice and representation when they need it.

## **4. CONCLUSION AND RECOMMENDATIONS**

In addition to raising civil legal aid fees to a sustainable level that would attract and retain quality providers, there are other practical changes that would improve the sustainability of legal aid and remove barriers to providers taking on trafficking and modern slavery cases:

### **Put in place an appropriate funding model for trafficking and modern slavery cases:**

- Immigration legal aid for trafficking and modern slavery cases should be paid on an hourly basis with rates of remuneration raised to a sustainable level.

### **Put in place an efficient and streamlined administrative system**

- An efficient, streamlined process for opening, reporting and billing legal aid matters should be introduced to replace the overly complex, burdensome and financially crippling bureaucracy that deters so many legal aid providers.
- A system of frequent and regular payments should be introduced (so providers do not wait for 3+ years for payment) to ensure that those providing legal advice are properly supported to deliver quality advice and are sustainable.

### **Remove other barriers to legal advice**

- Bring the following areas of law into scope of legal aid for all survivors: pre-NRM immigration advice; advice on identification as a victim of trafficking and modern slavery; and advice on the Criminal Injuries Compensation Scheme.
- Survivors of trafficking and modern slavery should receive non-means tested legal aid.

### **Collect and routinely publish data on the numbers of survivors who are accessing legal aid including:**

- The number of survivors of trafficking and modern slavery that are currently in the National Referral Mechanism and how many are currently without legal representation and for how long.
- The number of survivors who gain access to legal aid under different categories of law.

**In addition, we urge the Ministry of Justice to undertake actions to make trafficking and modern slavery a high risk, low profit, crime**

- Financial investigations need to be a policing priority for trafficking and modern slavery cases, with more rigorous use of the Proceeds of Crime Act.
- Establish in law a civil remedy of trafficking and modern slavery, to make it easier to recover compensation from a perpetrator.

## 5. CO-SIGNING ORGANISATIONS

Anti-Slavery International

Anti Trafficking and Labour Exploitation Unit (ATLEU)

Anti-Trafficking Monitoring Group (ATMG)

ECPAT UK (Every Child Protected Against Trafficking)

Focus on Labour Exploitation (FLEX)

Helen Bamber Foundation

Hestia

Hope for Justice

Justice and Care

Kalayaan

Latin American Women's Rights Service (LAWRS)

Migrant Help

The Salvation Army

Snowdrop Project

The Voice of Domestic Workers

Unseen

