

**ILPA Response to Ministry of Justice Review of Legal Aid for Trafficking and Modern Slavery Compensation Claims, 27 May 2016****In what capacity do you assist victims of trafficking and modern slavery?**

Other (please specify):

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative convened by Government departments, public bodies and non-governmental organisations.

As the secretariat of a representative body, the ILPA secretariat does not provide legal assistance directly to victims of trafficking and modern slavery but ILPA members practising in immigration, asylum and nationality law provide legal advice and representation to trafficked and enslaved persons and may be involved in referring them to specialist lawyers in other areas or for other support. NGO members of ILPA may identify and provide support services to victims of trafficking and modern slavery and make referrals to firms and organizations providing legal advice and representation.

**How do victims of trafficking and modern slavery come into contact with your organisation?**

Trafficked and enslaved persons may be referred to immigration law practitioners through first responders, specialist NGOs working with victims of trafficking and modern slavery and local authority departments as well as through general referral routes for advice in immigration and asylum law, including through NGOs and practitioners providing support to migrants, generalist advisers, legal practitioners providing specialist advice and representation in other areas of law, NGOs working with victims of trafficking and through services in both the public and voluntary sectors.

Trafficked and enslaved persons may be identified by immigration law practitioners among clients presenting with immigration problems or referred to them for advice on immigration by other agencies. They may be identified by legal practitioners operating advice surgeries in immigration detention centres or other venues.

It is recognised that there are numerous obstacles that prevent trafficked and enslaved persons from coming forward and make it particularly important that those coming into contact with them are able proactively to identify them.

Home Office guidance to frontline staff states that victims of trafficking may be fearful of disclosing their exploitation because of fear of reprisals from their traffickers, fear of the authorities in the UK or fear of discrimination from their family and community, but also identifies further reasons why persons may not present as victims or recognise themselves as having been trafficked or enslaved:

*The victims may be unwilling to disclose details of their experience for the following other reasons:*

- *they may be in a situation of dependency, perhaps due to their age*
- *there is stigma attached to trafficking - knowledge and understanding of the concept is limited and most individuals will associate the term with prostitution*
- *they may suffer from Stockholm syndrome, where due to unequal power, victims create a false emotional or psychological attachment to their controller – see above for more information on the psychological indicators of modern slavery*
- *exploited people may be unable and/or unwilling to think of themselves as ‘victims’*
- *they may see their current situation as temporary and blame it on their lack of understanding of the culture and labour market in the UK*
- *they may tolerate their situation because they see it as a ‘stepping stone’ to a better future and compare it favourably to experiences at home - in this situation you must consider objective indicators such as the seizure of identity documents or use of threats by the employer or exploiter; such indicators will help frontline staff identify if the person could be in a modern slavery situation*
- *children may not understand what modern slavery means*
- *they may have been groomed into believing that they are complicit in the process*
- *children may not have the same cultural understanding of childhood as is held in the UK and feel they are young adults responsible for earning money for their family - they may see an exploitative situation as a sacrifice to be made for their family*
- *they may not be aware of support structures and their entitlements and feel that they are dependent on traffickers.*

Home Office, *Victims of modern slavery- frontline staff guidance*, 18 March 2016 at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf), p.20-21

*You must not expect a person to feel or behave as a ‘victim’ (in the sense of being totally dependent on help and protection from someone else). Many victims do not recognise themselves as such, but as migrants who happen to be in a ‘difficult’ situation.*

Home Office, *Victims of modern slavery- frontline staff guidance*, 18 March 2016 at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509326/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf), p.22

The removal of immigration advice from the scope of legal aid presents a significant barrier to the identification of trafficked and enslaved persons. Immigration law practitioners play an important role in identifying persons who have been trafficked or enslaved among those in need of advice on their immigration situation. Many trafficked or enslaved persons will not have leave or will have concerns about their immigration status in the UK. They may therefore present or be identified by other agencies as individuals in need of advice on immigration. The general absence of funding for immigration advice acts as a barrier to victims of trafficking seeking advice on their immigration status from immigration law practitioners and to organisations referring individuals presenting with immigration difficulties for legal advice on their situation.

**Which geographical areas do you operate in?**

ILPA is a national organisation and has members across England, Scotland, Wales and Northern Ireland. A number of members provide advice and representation in countries outside the UK on immigration applications made under UK law.

**Before this survey were you aware that advice and assistance, funded through legal aid, was available for human trafficking and modern slavery compensation claims?**

Yes

ILPA is aware that legal aid is technically available for human trafficking and modern slavery compensation claims under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. We are aware however that it is difficult in practice to access advice and assistance funded by legal aid for human trafficking and modern slavery compensation claims as a result of the limited number of legal aid firms and organizations able to provide specialist advice in this area and the limited number of matter starts that lawyers specialising in this area may undertake. The cases must be brought out of the firm or organization's allocation of matter starts for "miscellaneous" matters, an allocation of five matter starts per firm/organization.

Awareness among practitioners of the availability of legally aided advice in this area varies. The practical limitations on accessing legally aided advice and assistance in this area are a factor affecting awareness among legal practitioners and among other agencies providing support to trafficked and enslaved persons more generally that they may refer trafficked and enslaved persons for advice funded by legal aid in this area.

**Does your organisation currently provide advice of any kind (not just legal advice) to victims of trafficking or modern slavery on how to make a compensation claim?**

Immigration law practitioners who are members of ILPA are currently more likely to refer trafficked or enslaved persons to other specialist lawyers (internally or outside their organisation) for advice on private law compensation claims rather than provide advice in this area themselves, as these claims engage different areas of law from immigration law practice, specifically civil law remedies and employment law. Advice and representation to victims of trafficking and modern slavery will also form a specialist area of practice within these areas of law.

**Would you consider providing advice to victims on how to make a compensation claim in the future?**

Immigration law practitioners with a specialist practice representing victims of trafficking may wish to develop a practice in this area. For example, their firms or organizations may include immigration practitioners who undertake public law compensation claims on behalf of victims of trafficking and other migrants.

Similarly, some legal aid firms in which immigration law practitioners assisting trafficked and enslaved persons are based may wish to develop a practice in civil law remedies and employment claims, co-located with immigration specialists to assist people in bringing private law compensation claims. In both instances, the limitation on miscellaneous legal aid matter starts to five claims prevents investment in this specialist area from being viable.

Other immigration lawyers may instead advise clients on the possibility of making a compensation claim and refer to specialist providers for advice and representation in such claims as these engage different areas of law (civil law remedies and employment law) from usual immigration practice.

**Has your organisation ever referred victims to legal aid providers to seek legal advice and assistance in trafficking and modern slavery compensation cases?**

Yes

Immigration law firms and organizations vary in the extent to which they have referred trafficked and enslaved persons to legal aid providers for advice and assistance in compensation claims. There are a limited number of lawyers able to provide advice and assistance to victims of trafficking and modern slavery in compensation claims and the capacity of specialist projects such as the Anti-Trafficking and Labour Exploitation Unit (ATLEU) is limited by the number of claims they are permitted to bring under legal aid in this area.

We are aware of at least one law firm providing immigration advice and representation funded by legal aid that refers clients to a *pro bono* advice project run within a commercial law firm for advice and representation on compensation and remedies in the absence of accessible legal aid provision in this area. Even where legal advice and representation are given for free however, the costs of disbursements must still be met: interpreters and expert reports for example. This affects the amount of work that the *pro bono* firm can undertake and may affect the evidence they are able to submit. Moreover, persons without financial means are not protected from costs being awarded against them during litigation as they would be if the case were funded by legal aid.

**Please describe your process of referring a victim to a legal aid provider:**

Demand for specialist advice and representation to trafficked and enslaved persons funded by legal aid is greater than current capacity. This means that identifying a specialist with capacity to take the case and making referrals can be difficult and time-consuming. Lawyers and referring agencies need to rely on professional networks of practitioners in the same field and their awareness of individual practice specialisms to make referrals and often have to approach several firms or organizations to identify a specialist with capacity to assist. Referrals will often be initiated by telephone or email, with case papers provided where these exist. A referral often involves advocacy to persuade the person to take the case.

**Has your organisation ever made referrals to legal aid providers for legal advice more generally on other matters, e.g. immigration?**

Yes – victims of trafficking and individuals who haven't been a victim.

Immigration law practitioners make referrals to other legal aid lawyers in the areas of immigration, asylum and nationality law where they do not have capacity to assist an individual. They also make referrals for advice in the areas of criminal law, welfare support, community care, family law and other areas.

NGOs and other non-practitioners who are members of ILPA may make referrals to legal aid lawyers in these areas. Referrals are often made to immigration law practitioners in the first instance as this is usually the most pressing legal issue.

## **Bringing a claim**

**We would now like to ask you some questions on the process a victim of trafficking or modern slavery might go through prior to engaging with a legal provider.**

**In your experience, at what stages in a victim's recovery process might seeking compensation arise as a potential option?**

We refer to the following research undertaken by Anti-Slavery International which discusses the timing and role of compensation in the trafficked or enslaved person's recovery:

*As with any victim of a serious crime, a person who has been rescued from a trafficking situation often experiences trauma and a wide range of physical and psychological injuries. The rehabilitation of victims can be viewed in distinct phases: first, a period of recovery and then a period of rebuilding their lives.*

*Through each of these phases, a victim's needs change. Immediately after escaping from the situation, a victim will have short-term survival needs, which include basic necessities such as safe housing, food, clothing, medical care, legal services and advocacy within the criminal justice system, interpretation services and immigration assistance. Once these short-term needs are met, the intermediate needs of the individual must be considered and addressed in order to help them continue to recover and rebuild their lives. These include continued medical care, mental health counselling, transitional housing, education and language classes, job training and work authorisation. Long-term needs include integration and re-settlement skills (e.g., accessing public transportation, decision making and managing finances), risk assessments and safety planning and contact with family and friends.*

*Compensation is often overlooked in favour of the individual's short-term survival needs. As victims start to rebuild their lives, the importance of compensation becomes increasingly important. Compensation helps the victim to recover from physical, emotional and financial losses, enables the victim to pay for treatment and have the opportunity to restart his or her life. Compensation also plays a preventative and deterrent function. Many trafficked persons are in debt, which persists even after they have escaped the exploitation. They may have come to seek work in the UK due to economic need and poverty in their home country. The majority of them come to the UK with a clear vision of earning money and thereafter wish to return to their home country. If, as a result of abuse, they were prevented from earning any money whatsoever, or if their debt persists, then they would be unable to return. They remain in a very vulnerable situation, or become even more vulnerable due to an increased debt. In such cases, compensation could play an important role in preventing the re-trafficking of these individuals or assist with re-integration in their original community.*

*The restorative function of compensation can be a very important element in the process of recovery of trafficked persons. It is not just the financial aspect of compensation that benefits the trafficked person, but also the sense of justice and recognition that they were victims of a serious crime and deserve compensation. If the victim receives compensation directly from the trafficker, for some the sense of justice might be even stronger.*

Janice Lam and Klara Skrivankova (2009) *Opportunities and obstacles: ensuring access to compensation for trafficked persons in the UK* (London: Anti-Slavery International)

It is important for immediate survival needs to be met for trafficked and enslaved persons to feel safe enough to engage with legal processes. It is usually not until after a positive conclusive grounds decision has been made and some form of leave to remain has been granted that seeking compensation is a potential option that may be explored with clients. Prior to this, the uncertainty around immigration status and fears about this tend to preoccupy clients and addressing these issues takes priority.

**In the last 12 months, approximately how many victims of trafficking or modern slavery has your organisation had contact with? (leave blank if you don't know)**

It is not possible for us to provide a figure for the global number of victims of trafficking or modern slavery that immigration law practitioners who are members of ILPA were in contact with over the last 12 months.

**Has the number of victims in contact with your organisation changed in recent years and do you expect it to change in the future?**

See above.

We are aware that 3,266 potential victims of trafficking and modern slavery were referred to the National Referral Mechanism in 2015 and that this represented a 40% increase in referrals from 2014.

ILPA members report that numbers of trafficked and enslaved persons have increased over the last few years and that this trend is continuing. We consider that this trend is due to increases in the numbers of people trafficked and enslaved as well as some improvements in the identification of victims. As practitioners develop more expertise in the immigration, accommodation and financial support issues affecting trafficked and enslaved persons they also see increased numbers of referrals.

**Of those that you have had contact with in the last 12 months, approximately how many would have been willing to engage with a legal provider? (leave blank if you don't know)**

Trafficked and enslaved persons are willing to engage with legal providers as this is necessary to access protection as a victim of trafficking or slavery and receive assistance with the other difficulties they face in accessing services and compensation.

Previous experiences of exploitation may make it difficult for victims of trafficking and modern slavery to engage with lawyers. Specialist practitioners in this field have expertise in building trust with victims to support them in making the necessary disclosures of abuse and exploitation and in navigating the very difficult legal processes of establishing that they are trafficked or enslaved as a matter of law and accessing protection. The time needed to build trust, take statements and provide advice to these needs to be reflected, however, in the amount of legal aid provided.

**In your experience, why might victims of trafficking or modern slavery be unwilling to engage with legal providers?**

Some trafficked or enslaved persons may be unwilling to engage with lawyers in relation to a compensation claim for fear of repercussions to themselves or to their families as a result of pursuing action against their trafficker.

As above, fear and lack of trust as a result of experiences of exploitation are also issues that may make it difficult for trafficked and enslaved persons to engage with lawyers as well as with other services.

By far the greater problem, however, is that of trafficked and enslaved persons being able to access advice to determine whether they have a claim that they wish to pursue and then representation in pursuing that claim. This is discussed further below.

**In your experience, why might victims of trafficking or modern slavery be *unable* to engage with legal providers?**

Trafficked and enslaved persons may still be under the control of their traffickers in the UK and the latter may prevent or control access to legal advice and representation and to support services.

The removal of immigration advice from the scope of legal aid acts as a significant barrier to trafficked or enslaved persons' engaging with lawyers on financial grounds.

As discussed above, trafficked and enslaved persons may not present as trafficked or enslaved or even recognise themselves as such. As many will be not have leave or not be meeting the conditions of their leave and will have fears about their immigration status in the UK, they may present to lawyers or other agencies as individuals in need of general immigration advice. The knowledge that legal aid is not generally available for immigration advice is a barrier to victims presenting or being referred to lawyers, preventing subsequent identification by legal representatives.

Trafficked or enslaved persons identified as such by lawyers or other agencies suffer the effects of a further protection gap in that the exception created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 intended to facilitate access to legal aid for immigration advice to trafficked or enslaved persons only applies once a person has successfully navigated the (unsatisfactory) National Referral Mechanism.

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 persuades a person to engage with the National Referral Mechanism in the first place. Firstly, 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. Secondly, without the assistance of legal representatives, a person is less likely to be identified correctly by the decision-maker. Thirdly, even if a person does manage to navigate the National Referral Mechanism successfully, alone, by the time the reasonable grounds decision has been made, they may have missed important deadlines for their immigration case. The absence of legal aid at an earlier stage leaves the trafficked or enslaved person in a catch-22 situation: the individual is not identified as trafficked or enslaved because they are unrepresented, and because they are not identified as trafficked, or enslaved they cannot access representation.

In addition, and as discussed above, the demand for specialist legal advice and representation in immigration is greater than existing supply, with advice deserts in certain areas of the country.

As it is usually necessary for persons to be in a situation of safety before being able to contemplate bringing compensation claims against their traffickers or those who have enslaved them, access to immigration advice and representation for trafficked and enslaved persons plays a necessary role in ensuring that persons have a sufficiently secure immigration status in order to bring such claims.

In terms of compensation claims, and as discussed above, there are limited numbers of lawyers able to provide advice and assistance to trafficked and enslaved persons bringing claims in this area and the capacity of specialist projects such as the Anti-Trafficking and Labour Exploitation Unit (ATLEU) is limited by the number of claims they are permitted to bring under legal aid in this area.

Removal from the UK is a barrier to pursuing a compensation claim and makes it more difficult for a person to work with a legal representative in the UK and to pursue their case at all.

### **How might victims of trafficking more easily access legal advice with reference to bringing a compensation claim?**

The possibility of bringing a compensation claim should be raised and explored with victims of trafficking and modern slavery as part of the advice they receive on other legal matters such as immigration, community care and housing. Legal aid in these areas should support the provision of this advice.

Legal aid should be made more widely available for persons to bring compensation claims. The current restrictive number of matter starts operates to impede compensation claims. If, contrary to what ILPA advocates, the Legal Aid Agency continues to use matter starts to apportion legal aid, firms or organizations should be able to bid for matter starts to do these cases, as they would bid for immigration and asylum matter starts. This would allow lawyers who are specialists in this area to develop this area of practice, establish centres of excellence and provide training to other practitioners. It would also enable legal providers who already have the skills and experience to represent trafficked and enslaved persons in other fields to develop a practice in this area and widen the availability of advice and representation to this group.

### **In your experience, what do victims do if they are unsuccessful in accessing legal help in these cases?**

Persons unable to access advice and representation on their immigration status funded by legal aid are at risk of further exploitation through being unable to access the protection needed to escape the control of their trafficker/s and other abusive individuals and regularise their stay.

Persons unable to access legal help for pursuing a compensation claim against their trafficker or the person who has enslaved them will be unable to pursue this remedy and simply do not pursue these claims.

Rights under article 4 of the European Convention on Human Rights, the prohibition of slavery and forced labour risk being breached where trafficked and enslaved persons are unable to access the advice they need to escape exploitation and abuse or pursue remedies against their traffickers and those who have enslaved them and compensation which may contribute to helping them to rebuild their lives. The UK also has positive obligations towards victims of trafficking under



Article 4 of the European Convention on Human Rights, as established by *Siliadin v France*, 73316/01, European Court of Human Rights, 26 July 2015 and *Rantsev v Cyprus and Russia*, 25965/04, European Court of Human Rights, 7 January 2010.

**Do you have any other comments?**

We should be pleased to provide further information or meet to discuss the issues raised at any further stage as there has been very limited time to respond to the consultation.