

Impacts of a lack of legal advice on adults with lived experience of modern slavery

Research Report

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Introduction

This project examined experiences of access to legal advice among adults with lived experience of modern slavery in the United Kingdom, as well as the impacts of a lack of access to (quality) legal advice on recovery, wellbeing and protection outcomes. The research was funded through an open call under the Modern Slavery and Human Rights Policy and Evidence Centre's ("Modern Slavery PEC") Responsive Research mechanism and was conducted by the British Institute of International and Comparative Law ("BIICL") in partnership with Unseen UK and their lived experience consultants group. It builds on the findings of a previous Modern Slavery PEC-funded project, which were published in the 2021 report on '[Access to legal advice and representation for survivors of modern slavery](#)'. Based on interviews with legal service providers and support workers, that report identified numerous barriers to accessing publicly funded immigration advice, while also highlighting the importance of legal advice for formal identification within the National Referral Mechanism ("NRM") and achieving a secure immigration status.¹ The present report expands on this study, exploring challenges of access in relation to a wide range of legal issues (including those less commonly considered in the context of modern slavery), while also drawing attention to the broad range of consequences that can flow both directly and indirectly from an inability to receive quality legal advice.

The contribution of this project to existing research is detailed further in the next section ('Background'). This is followed by a description of the approach employed in this study ('Methodology'). This introductory section concludes with an outline of the report ('Outline').

Background

This report should be read within the broader research context in this space, including other projects on access to legal advice for people with lived experience of modern slavery;² a wealth of reports on the impacts of legal aid funding cuts on the immigration sector broadly,³ and on the modern slavery sector in particular;⁴ and literature on the impacts of a lack of legal advice in other areas, such as domestic violence.⁵

¹ [Samantha Currie and Matthew Young](#), 'Access to Legal Advice and Representation for Survivors of Modern Slavery' (2021).

² *Ibid.*; [Samantha Currie and Johanna Bezzano](#), 'An Uphill Struggle: Securing Legal Status for Victims and Survivors of Trafficking' (Feb 2021); [RENATE and Bakhita Centre](#), 'Legal Assistance for Victims of Trafficking Across Europe' (2021); [Immigrant Council of Ireland](#), 'Upholding Rights! Early Legal Intervention for Victims of Trafficking – Comparative Report' (2015).

³ [Jo Wilding](#), 'No Access to Justice: How Legal Advice Deserts Fail Refugees, Migrants and Our Communities' (2022).

⁴ [Anti Trafficking and Labour Exploitation Unit \(ATLEU\)](#), "'It has destroyed me": A legal advice system on the brink' (2022); [Young Legal Aid Lawyers \(YLAL\)](#), 'A sector at breaking point: Justice denied for victims of trafficking' (2020); [Anti-Trafficking Monitoring Group \(ATMG\) et al.](#), 'Joint Submission to the Group of Experts on Action against Trafficking in Human Beings: Response to the Third Evaluation Round of the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings' (2020).

⁵ Shazia Choudhry and Jonathan Herring, 'A human right to legal aid? The implications of changes to the legal aid scheme for victims of domestic abuse' (2017) 39(2) *Journal of Social Welfare and Family Law* 152; [Bridget Anderson and Sue Conlan](#), 'Providing Protection: Access to early legal advice for asylum seekers' (2014).

The existing literature on legal advice for people with lived experience of modern slavery has focused predominantly on barriers to accessing this advice in specific legal areas, as well as the negative consequences that may flow from this. For instance, it is often highlighted how an inability to regularise immigration status due to a lack of legal advice can affect access to other rights (such as social welfare entitlements) and can be a source of instability with detrimental impacts on psychological recovery and overall wellbeing.⁶ Another common observation in the literature is that an inability to access quality legal advice can result in wrongful criminal convictions of people with lived experience of modern slavery, which can have additional consequences in terms of immigration status, parental rights, employment, and mental wellbeing generally.⁷ Increasingly, researchers and practitioners are recognising that legal advice may also be required to pursue compensation claims against traffickers, which can help clients feel a sense of justice and recognition for the wrong suffered.⁸

While aiming for our work to be complementary with existing research in the area, we have also attempted to contribute to it in two principal ways. Firstly, we set out to understand (as far as possible) the full range of issues where legal advice may be required for adults with lived experience of modern slavery – including some which are mentioned less frequently in this context, such as compensation and family law issues – as well as experiences of accessing advice in these areas. Secondly, we were interested in gaining a more complete impression of how the provision of quality legal advice contributes not only to specific legal outcomes, but can also directly impact the wellbeing of clients – for instance, by helping people with lived experience of modern slavery feel more in control of their situation or achieve a sense of justice. The prioritisation of these lines of enquiry is reflected in our methodological choices, which include an emphasis on incorporating the perspectives and concerns of adults with lived experience of modern slavery.

Methodology

The project deployed a process tracing methodology and used mixed methods consisting of: desk research (involving legal and policy analysis and a review of the academic and grey literature); a stakeholder survey (which received 60 responses); discussions and consultations with people with lived experience of modern slavery based in England and Wales (through focus groups); and a roundtable event with stakeholders. Process tracing is a qualitative analysis methodology.⁹ Its main purpose is to establish whether, and how, a potential cause or causes influenced a specified change or set of changes – in this case, whether and how an (in)ability to access quality legal advice influences recovery, wellbeing, and protection outcomes for people with lived experience of modern slavery. A preliminary literature review highlighted the positive correlation between access to legal services and effective recovery. Our empirical research built on existing findings to highlight the perspectives of practitioners and people with lived experience of modern slavery, an objective that could not have been achieved by relying solely on existing primary and secondary sources.

⁶ Currie and Young (n 1).

⁷ Currie and Bezzano (n 2).

⁸ [Hope for Justice](#), 'Supporting Adult Survivors of Slavery to Facilitate Recovery and Reintegration and Prevent Re-Exploitation' (2017) 2.

⁹ David Collier, 'Understanding Process-Tracing' (2018) 44(4) *Political Science and Politics* 823.

The stakeholder survey, which was designed with the participation of people with lived experience of modern slavery, was instrumental in obtaining quantitative and qualitative data on the accessibility, quality, and impact of legal advice from a range of professionals. While acknowledging the limitations of surveys as a tool to collect qualitative data, attempts were made to allow participants to provide, as much as possible, comments on each of the survey questions. Through the survey, BIICL and Unseen UK collected 60 responses from a broad range of stakeholders, including: NGOs providing non-legal support (33%), local authorities (25%), barristers (12%), law centres and NGOs offering legal services (11%), survivor-led organisations (10%), law firms (8%), and other public authorities, such as police and immigration officials (8%).¹⁰ The decision to include multiple stakeholders – as opposed to, for example, limiting the survey distribution to legal practitioners or support workers only – was based on the understanding (also reflected in our findings) that ensuring effective access to legal advice, as well as improving the prospects of this advice having a positive impact on the client, requires a wide range of actors. These actors were mapped through a scoping exercise prior to the survey design. With respect to other shortcomings, we are mindful of a significant geographical limitation of the data collected through the survey: while the survey was shared with stakeholders from across the United Kingdom, 95% of responses were submitted by respondents based in England and Wales, only 5% from respondents based in Scotland, and no response was received from stakeholders contacted in Northern Ireland. It was therefore not possible to undertake and provide a comprehensive comparative analysis of the findings, and the report primarily reflects the situation in England and Wales.

The development of the project was based on an equitable partnership model between BIICL and Unseen UK. As part of the partnership agreement, Unseen UK (a charity based in southwest England) recruited adults with lived experience of modern slavery as project consultants. This group was made of up 10 consultants: B, N, J, O, P, A and C, as well as additional 3 participants who wished to maintain complete anonymity. Initially, consultants shared personal experiences of accessing legal advice in the UK in the context of small focus groups. These responses were recorded and incorporated into the design of the stakeholder survey, while also feeding directly into the findings presented in this report. A draft version of the survey and report were also presented to consultants in three separate information sessions, which were held in hybrid and online formats. The sessions were held in the interests of transparency, as well as to give consultants with lived experience of modern slavery an opportunity to comment on anything in the report that did not seem to match their experiences.¹¹

A draft report was also circulated amongst other stakeholders (some of whom had also participated in the survey) and was discussed with them at a roundtable event organised by BIICL and Unseen UK, where participants had opportunities to provide comments and feedback to the project team. Participants at our roundtable event consisted predominantly of legal practitioners with extensive experience of advising adults with lived experience of

¹⁰ Note that respondents were allowed to select more than one category, hence the total exceeding 100%. Where we quote the respondents directly in the report, we use the acronym SR ('survey respondent'), followed by the number assigned by our survey software and the category of organisation that they have selected.

¹¹ This part of the methodology responds to the observation that the perspectives of people with lived experience of modern slavery should be incorporated into any future research on challenges and good practices related to the provision of legal assistance. RENATE and Bakhita Centre (n 2) 88-89.

modern slavery – either independently as barristers or as part of teams based in law centres and other law-focused NGOs. Also present were academics who have published extensively on issues of access to legal advice for vulnerable groups, both in the context of modern slavery and immigration law generally, and support workers involved in providing non-legal support to adults with lived experience of modern slavery.¹² This feedback, together with the feedback provided by consultants with lived experience of modern slavery, has been incorporated into the relevant sections of the present report.

Outline

The report is organised as follows:

Part 1 briefly introduces the key international, regional, and domestic standards for the delivery of legal advice to people with lived experience of modern slavery in the UK, which are referenced in subsequent sections of the report.

Part 2 explores some of the challenges faced by people with lived experience of modern slavery in accessing quality legal advice, based on the qualitative research components of the study. This part distinguishes between access to legal advice outright, and factors which determine the quality of this advice and its potential to have a positive impact on the client.

Part 3 focuses on the impacts of a lack of quality legal advice, combining findings from the existing literature with those from the project's survey, focus groups, and stakeholder roundtable. We explore those impacts across a range of legal areas and in relation to more general wellbeing outcomes.

Part 4 concludes with a number of recommendations on improving access to quality legal advice for people with lived experience of modern slavery and links these to improved recovery, wellbeing and protection outcomes, based on findings from our research.

¹² Quotations taken from these discussions are referenced with the acronym RP ('roundtable participant'), followed by a randomly assigned number (to distinguish participants) and the category of their organisation.

Part 1: Key Legal Standards

Binding legal standards provide an important benchmark against which to assess access to legal advice for adults with lived experience of modern slavery. This section briefly introduces some of the relevant international, regional, and domestic standards binding on public authorities in the United Kingdom. It also highlights issues of compliance with these standards and broader protection challenges which have been identified by international monitoring bodies and various NGOs active on issues of modern slavery in the UK.

International and Regional Standards

At the global level, the primary source of legal obligations is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“UN Trafficking Protocol”).¹³ This instrument requires states parties to ‘consider’ adopting measures to facilitate the physical, psychological and social recovery of trafficked persons, including through the provision of ‘counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand’.¹⁴ The duty to inform trafficked persons of their rights and available services has been framed in stronger terms at the regional level in the Council of Europe Convention on Action against Trafficking in Human Beings (“ECAT”)¹⁵ and Directive 2011/36/EU (“EU Anti-Trafficking Directive”).¹⁶ The ECAT Explanatory Report clarifies that this information must cover a range of matters – including the options open to the trafficked person, the functioning of the criminal justice system, and requirements for legalising their presence in the state party’s territory – and generally ‘should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.’¹⁷

While encouraging states parties to inform trafficked persons of their rights and available services, the UN Trafficking Protocol stops short of enshrining a duty to provide access to legal advice. This shortcoming has been addressed at the regional level. Specifically, Article 15 of ECAT requires states parties to ensure that their domestic laws provide for the right to legal assistance and free legal aid for trafficked persons.¹⁸ In the context of criminal

¹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319. The UK ratified this instrument on 9th February 2006.

¹⁴ Ibid, Article 6(3)(a).

¹⁵ Council of Europe Convention on Action Against Trafficking in Human Beings (adopted 16 May 2005) CETS 197, Article 12(1)(d). This treaty entered into force in the UK in April 2009.

¹⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L 101/11, Article 11(5) & (6). While the UK originally decided to exercise its right to ‘opt in’ to this Directive, the domestic legal status of these provisions remains unclear in light of an equivocal provision inserted into the recently adopted Nationality and Borders Act 2022, at section 68.

¹⁷ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005) (“ECAT Explanatory Report”) para. 160.

¹⁸ ECAT, Article 15(2). The Explanatory Report clarifies that the Convention does not grant an automatic right to legal aid, and that it is for each party to this instrument to determine the conditions for accessing publicly funded

investigations and proceedings, meanwhile, countries bound by the EU Anti-Trafficking Directive are required to ‘ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation.’¹⁹ This provision goes on to stipulate that ‘[l]egal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.’²⁰

Domestic Standards

A number of laws and policies have been adopted in the UK to implement these standards. To fulfil its obligations of protection under ECAT, the UK established the National Referral Mechanism (“NRM”) in 2009. This operates as a general framework for identifying potential ‘victims’ of modern slavery (i.e., individuals subjected to trafficking, forced labour, slavery or servitude) and ensuring that they receive appropriate support.²¹ While the NRM system is operational across the UK, other aspects of human trafficking policy are devolved.²² This is reflected in different domestic standards relating to the duty to inform people with lived experience of modern slavery of their rights and available services (Section (a) below). Similarly, the conditions determining eligibility for free legal advice vary across England & Wales, Scotland, and Northern Ireland (Section (b) below).

a. Duty to provide information

In England and Wales, the duty to inform adults with lived experience of modern slavery of their rights and available services is detailed in policy guidance adopted pursuant to section 49 of the Modern Slavery Act (“MSA”).²³ This guidance sets out what the information must include and who is responsible for providing it at each stage of the NRM process (including prior to referral), while also identifying when additional support must be provided to facilitate access to the services available, including legal advice. With the adoption of the Nationality and Borders Act 2022 (“NABA”), this guidance will be underpinned by a statutory obligation to provide assistance and support, although this only applies to ‘potential identified victims’ (i.e. individuals with a positive ‘reasonable grounds’ decision).²⁴ In both Scotland and Northern Ireland, the duty to provide information on rights and available services (including the availability of free legal advice), as well as assistance in accessing these services, derives from statutory duties of support for people with lived experience of modern slavery.²⁵ These

legal advice. In applying these conditions, states parties must have regard not only for Article 15 of ECAT, but also Article 6 of the European Convention on Human Rights (‘right to a fair trial’). ECAT Explanatory Report, para. 196.

¹⁹ EU Anti-Trafficking Directive, Article 12(2).

²⁰ Ibid.

²¹ Home Office, ‘National Referral Mechanism Guidance: Adult (England and Wales)’ (updated 19 May 2022).

²² Immigrant Council of Ireland (2015) (n 2) 7.

²³ Home Office, ‘Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland’ (Version 2.11, updated 20 September 2022).

²⁴ Nationality and Borders Act 2022, section 64. This will enter into force on 30 January 2023, as per the Nationality and Borders Act 2022 (Commencement No 4) Regulations 2023.

²⁵ Respectively, Human Trafficking and Exploitation (Scotland) Act 2015, section 9; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, section 18.

standards can be supplemented, where relevant, with the (non-statutory) guidance published under s49 of the MSA, as well as with NRM guidance published by the Home Office.²⁶

Given the scope of the present report, this section focuses on the duty to inform people with lived experience of modern slavery of the availability of publicly funded legal advice, as well as a duty to provide support in accessing such advice.²⁷ The table below provides a cross-jurisdictional comparison of: (i) when these duties arise; (ii) what their legal and/or policy basis is; (iii) which actors are responsible for discharging the duty; and (iv) what the duty consists of in terms of content. Section (i) refers to different stages of the identification procedure within the NRM, which is composed of: a pre-referral stage; a window between referral and the adoption of a 'reasonable grounds' (RG) decision; a stage following a positive RG decision; and a stage following a positive 'conclusive grounds' (CG) decision. Note that this table reflects changes introduced by sections of the Nationality and Borders Act 2022 which are yet to enter into force at the time of publication.²⁸

²⁶ Home Office, 'National Referral Mechanism Guidance: Adult (Northern Ireland and Scotland)' (updated 19 May 2022).

²⁷ In the UK, the right to receive such advice on a publicly funded basis is dictated by separate rules on legal aid, which are set out in subsection (b). The present section is thus limited to information on the availability of this advice, as well as assistance in accessing it through signposting and referrals.

²⁸ See (n 24). As per section 87(1) of the Nationality and Borders Act 2022, the entry into force of these provisions is subject to the adoption of commencement orders.

Table 1: Legal and policy basis for informing people with lived experience of modern slavery of the availability of free legal advice and providing support in accessing this advice.

PRE-NRM (pre-referral)	LEGAL/POLICY BASIS	ACTORS	CONTENT
England & Wales	<ul style="list-style-type: none"> ➤ s49 Statutory Guidance Home Office, 'National Referral Mechanism Guidance: Adult' (England and Wales) 	<ul style="list-style-type: none"> ➤ First Responders (public authorities and NGOs) 	<ul style="list-style-type: none"> ➤ There is no statutory duty to assist potential victims prior to NRM referral. ➤ The s49 Statutory Guidance requires first responders to ensure informed consent to referral into the NRM by explaining how the NRM mechanism works and what support is available within it. This includes informing individuals of the availability of legal aid for immigration advice, but, under the s49 Guidance, there is no express duty to signpost to legal advisers at this stage.
Scotland & Northern Ireland	<ul style="list-style-type: none"> ➤ s49 Non-Statutory Guidance Home Office, 'National Referral Mechanism Guidance: Adult' (Northern Ireland and Scotland) 	<ul style="list-style-type: none"> ➤ First Responders (public authorities and NGOs) 	<ul style="list-style-type: none"> ➤ There is no statutory duty to assist potential victims prior to NRM referral. Authorities may choose to follow s49 Non-Statutory Guidance (as above). ➤ The Home Office NRM Guidance for Scotland & Northern Ireland also stipulates that, to ensure that adults can give informed consent to be referred into the NRM, first responders must explain the support available within that mechanism, which can include legal advice.
PRE-RG (post-referral)	LEGAL/POLICY BASIS	ACTORS	CONTENT
England & Wales	<ul style="list-style-type: none"> ➤ s49 Statutory Guidance Home Office, 'National Referral Mechanism Guidance: Adult' (England and Wales) 	<ul style="list-style-type: none"> ➤ First Responders (public authorities and NGOs) 	<ul style="list-style-type: none"> ➤ The s49 Guidance makes no provision for additional responsibilities in the window between referral into the NRM and the issue of a RG decision.
Scotland	<ul style="list-style-type: none"> ➤ s49 Non-Statutory Guidance Home Office, 'National Referral Mechanism Guidance: Adult' (Northern Ireland and Scotland) 	<ul style="list-style-type: none"> ➤ First Responders (public authorities and NGOs) 	<ul style="list-style-type: none"> ➤ The s49 Guidance makes no provision for additional responsibilities in the window between referral into the NRM and issue of a RG decision.

Northern Ireland	<ul style="list-style-type: none"> ➤ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, s18 	<ul style="list-style-type: none"> ➤ Migrant Help ➤ Belfast & Lisburn Women's Aid 	<ul style="list-style-type: none"> ➤ The statutory duty to provide assistance is triggered at this stage. This may include: <ul style="list-style-type: none"> - <i>Appropriate information on any matter of (potential) relevance to the circumstances of the person;</i> - <i>Translation and interpretation services;</i> - <i>Assistance in obtaining legal advice or representation.</i>
POST-RG (positive)	LEGAL/POLICY BASIS	ACTORS	CONTENT
England & Wales	<ul style="list-style-type: none"> ➤ s50A Modern Slavery Act (amended by s64 NABA) ➤ s49 Statutory Guidance. ➤ Human Trafficking Foundation, 'The Slavery and Trafficking Survivor Care Standards'²⁹ 	<ul style="list-style-type: none"> ➤ Salvation Army ➤ Modern Slavery Victim Care Contract ("MSVCC") subcontractors 	<ul style="list-style-type: none"> ➤ The statutory duty to provide assistance is triggered at this stage. According to the s49 Guidance, this may include: <ul style="list-style-type: none"> - <i>Information on rights and available services, including access to legal aid, legal representatives, and legal advice;</i> - <i>Translation and interpretation services;</i> - <i>Support in accessing certain services, including assistance with submitting legal claims (where appropriate, based on individualised need assessment.</i> ➤ The duty to provide assistance terminates after a conclusive grounds decision (CG), pending a 'Recovery Needs Assessment' (see below). ➤ Currently, assistance must be guaranteed for a minimum of 45 days, although this is to be reduced to 30 days under NABA (s 64(4)).
Scotland	<ul style="list-style-type: none"> ➤ Human Trafficking and Exploitation (Scotland) Act (2015), section 9 	<ul style="list-style-type: none"> ➤ Migrant Help ➤ Trafficking Awareness Raising Alliance (TARA) 	<ul style="list-style-type: none"> ➤ The statutory duty to provide assistance is triggered at this stage. ➤ Based on an individual needs assessment, support may relate to: <ul style="list-style-type: none"> - <i>Accessing legal advice;</i> - <i>Providing information about other services available to the individual;</i> - <i>Language assistance and interpretation.</i> ➤ The duty to provide assistance terminates after a CG decision or 90 days after the RG decision, whichever comes sooner. However, this period may be extended as appropriate. Under NABA (s 64(4)), a

²⁹ The UK government has committed to incorporating the Human Trafficking Foundation's 'Slavery and Trafficking Survivor Care Standards' into its Victim Care Contracts. These contain additional guidance for support workers on making referrals to legal practitioners.

			minimum assistance period of 30 days is to be introduced, undermining existing standards. ³⁰
Northern Ireland	<ul style="list-style-type: none"> ➤ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, s18 	<ul style="list-style-type: none"> ➤ Migrant Help ➤ Belfast & Lisburn Women's Aid 	<ul style="list-style-type: none"> ➤ The statutory duty to provide assistance continues. As above, this may include: <ul style="list-style-type: none"> - <i>Appropriate information on any matter of (potential) relevance to the circumstances of the person;</i> - <i>Translation and interpretation services;</i> - <i>Assistance in obtaining legal advice or representation.</i> ➤ The duty to provide assistance can be terminated after a negative RG decision or after a CG decision, whether this is positive or negative. The Department of Justice may extend this period on a case-by-case basis as it sees fit. ➤ Currently, the Human Trafficking and Exploitation Act requires assistance to be guaranteed for a minimum of 45 days following a RG decision, although this is set to be reduced to 30 days through NABA (s 64(4)).³¹
POST-CG (positive)	LEGAL/POLICY BASIS	ACTORS	CONTENT
England & Wales	<ul style="list-style-type: none"> ➤ s49 Statutory Guidance ➤ Home Office, "Recovery Needs Assessment: Process Guidance" 	<ul style="list-style-type: none"> ➤ Salvation Army ➤ Modern Slavery Victim Care Contract ("MSVCC") subcontractors 	<ul style="list-style-type: none"> ➤ Following a positive conclusive grounds (CG) decision, a formal assessment is conducted as to whether the individual has a continued need for legal advice and/or representation, and whether ongoing contact with support workers through the MSVCC is required for this purpose.
Scotland & Northern Ireland	<ul style="list-style-type: none"> ➤ Home Office, 'National Referral Mechanism Guidance: Adult' (Northern Ireland and Scotland) 		<ul style="list-style-type: none"> ➤ In Scotland & Northern Ireland, the relevant NRM guidance does not specifically provide for an additional needs assessment following a positive conclusive grounds (CG) decision.

³⁰ For a discussion of whether this recovery period continues to fall under devolved competence, see [Brodies LLP](#), 'Opinion for JustRight Scotland & the Scottish Refugee Council concerning the Nationality and Borders Bill' (2021) paras. 3.23-3.24.

³¹ See [Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland](#), 'Joint NIHR/ECNI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill' (2022) para. 4.6.

The implementation of these standards has attracted criticism from regional monitoring bodies and NGOs active on modern slavery issues.³² ECAT’s monitoring body – the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) – has echoed the concerns of UK-based anti-trafficking NGOs that ‘[p]resumed victims who do not enter the NRM process are unlikely to obtain a clear picture of their rights and of the NRM process itself.’³³ This stems from a general observation that the information provided by first responders is ‘inconsistent and fragmentary’ and unlikely to facilitate informed decision-making regarding referral into the NRM and/or the pursuit of other avenues of protection, such as asylum.³⁴ In response, GRETA has recommended training for first responders to ensure that information is provided in a manner that takes into the account the psychological state of individuals with possible lived experience of modern slavery.³⁵ This GRETA report also underlines that support provided within the NRM should include systematic referral to specialised services, such as legal practitioners.³⁶

b. Duty to provide access to legal advice

The major differences in the provision of legal aid between UK jurisdictions (not restricted to the context of modern slavery) concern (i) the scope of legal issues which qualify for publicly funded advice and (ii) who is qualified to provide it.³⁷ In general terms, access to legal aid is limited to a narrower range of issues in England and Wales. Moreover, in England and Wales, legal aid work can only be performed by a qualified lawyer who holds a contract (civil or criminal) in that specific area of law, whereas in Scotland and Northern Ireland, legal aid work can be undertaken by any registered practitioner. The relevance of these distinctions for adults with lived experience of modern slavery has been highlighted at various stages by participants in our survey and roundtable event, as discussed in subsequent parts of this report.

This section focuses predominantly on the scope of legal aid available for people with lived experience of modern slavery in England and Wales, which has emerged as a key issue since the adoption of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO 2012”). Schedule 1 of this instrument provides an exhaustive list of issues which are in scope for civil legal aid, provided that the individual in question meets the ‘means’ and ‘merits’ tests. For people with lived experience of modern slavery, section 47 of the Modern Slavery Act 2015 inserted new provisions into Schedule 1 of LASPO, covering access to civil legal services in relation to immigration, employment, and damages claims.³⁸ However, for immigration issues which would ordinarily fall outside of the scope of legal aid, services will only be available to individuals in receipt of a positive reasonable or conclusive

³² It is worth noting that most of this commentary dates from before the Nationality and Borders Act 2022 was passed into law.

³³ [Group of Experts on Action against Trafficking in Human Beings \(GRETA\)](#), ‘Evaluation Report – United Kingdom: Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’ (“GRETA UK Report”) (2021) para. 68.

³⁴ ATMG et al. (n 4) 6-9.

³⁵ GRETA UK Report (n 33), para. 72. See also Hope for Justice (n 8) 6: ‘First Responders should be trained in order to develop the necessary expertise to [...] give information and secure additional advice as needed to inform consent.’

³⁶ *Ibid.*

³⁷ Jo Wilding (n 3) 41.

³⁸ LASPO 2012, Sch 1, Part 1, para. 32(1) – (3); para. 32A(1) – (3).

grounds decision.³⁹ Moreover, advice on referral into the NRM and applications for awards by the Criminal Injuries Compensation Authority (CICA) both remain outside the scope of legal aid following these amendments. Both of these issues have been highlighted in GRETA's recent monitoring report, which notes that 'the absence of legal aid prior to [...] access to the NRM [...] prevents [possible victims] from giving properly informed consent as to whether to enter the NRM,'⁴⁰ and also recommends that legal aid be made accessible to victims seeking compensation before the Criminal Injuries Compensation Authority through the Exceptional Case Funding regime.⁴¹ Beyond civil legal services, it is not clear whether legal aid is available for supporting people with lived experience of modern slavery through the criminal process, as required by the EU Anti-Trafficking Directive. Legal advice may be required in these instances to ensure access to specific support services, or to review the decisions of public authorities in relation to the investigation and prosecution of offences.⁴²

The Nationality and Borders Act 2022 has recently introduced further amendments to the scope of legal aid for people with lived experience of modern slavery.⁴³ In line with calls from civil society, the Act makes provision for the inclusion of legal advice on referral into the NRM as an 'add-on service' for individuals with possible lived experience of modern slavery who already qualify for legal aid via a substantive immigration or asylum issue.⁴⁴ However, this amendment excludes individuals who are not subject to immigration control – such as British nationals – and potentially those with uncertain immigration statuses, such as EEA nationals.⁴⁵ While the Ministry of Justice has recently proposed implementing these amendments through a £75 'bolt-on' fixed fee for advice prior to an NRM referral,⁴⁶ a recent joint response from the anti-trafficking NGO sector has criticised the calculation of the proposed fixed fee, as well as the lack of clarity regarding issues that fall within the scope of this pre-NRM advice.⁴⁷ Moreover, the Nationality and Borders Act fails to remedy the fact that advice on identification within the NRM (either in relation to a potential or a refused trafficking claim) continues to remain outside the scope of legal aid.⁴⁸

³⁹ LASPO 2012, Sch 1, Part 1, para. 32(1), 32A(1).

⁴⁰ GRETA UK Report (n 33), para. 87. As ATLEU have noted, the Legal Aid Agency generally rejects claims that this should be covered by Exceptional Case Funding]. [Anti-Trafficking and Labour Exploitation Unit \(ATLEU\)](#), 'Submission to the Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (2018) 7-8.

⁴¹ GRETA UK Report (n 33), para. 92. Exceptional Case Funding (ECF) applies for matters which do not fall within the scope of the issue areas identified in Schedule 1, but where a failure to provide legal aid would result in a breach of the individual's Convention rights (within the meaning of the Human Rights Act 1998) or any right to the provision of legal services relating to retained EU law. This is pursuant to a determination made by the Director of Legal Aid Casework of the Legal Aid Agency. LASPO 2012, section 10.

⁴² We thank one of our roundtable participants (RP13, NGO (Non-Legal)) for bringing this to our attention.

⁴³ As explained above (n 24), these provisions set to enter into force on 30 January 2023.

⁴⁴ These are set out in sections 66 and 67 of the Nationality and Borders Act 2022.

⁴⁵ [University of Nottingham Rights Lab and Human Trafficking Foundation](#), 'Consideration Paper: Nationality and Borders Bill Part 5: Modern Slavery' (2021) para. 323.

⁴⁶ Ministry of Justice, 'Immigration Legal Aid: A consultation on new fees for new services' (Updated 15 August 2022), available here: <https://www.gov.uk/government/consultations/immigration-legal-aid-a-consultation-on-new-fees-for-new-services/immigration-legal-aid-a-consultation-on-new-fees-for-new-services>.

⁴⁷ [ATMG, ATLEU et al.](#), 'Immigration Legal Aid: A consultation on new fees for new services' (2022) 35-39.

⁴⁸ At present, such advice only falls within the scope of legal aid if it can be demonstrated to form an integral element of an in-scope matter (such as an international protection claim or a challenge to immigration detention). Steven Bird and Lindsay Cundall, 'Public funding for victims of trafficking', in Southwell, Brewer and Douglas-Jones (eds.), *Human Trafficking and Modern Slavery Law and Practice* (Bloomsbury Press 2020) 13.133.

This information is summarised in the table below, which lists issue areas which are commonly of concern for people with lived experience of modern slavery. For each issue area, the table indicates whether these are in scope for legal aid in England and Wales – either under LASPO 2012 as originally adopted, or through subsequent amendments made by the Modern Slavery Act 2015 and the Nationality and Borders Act 2022.⁴⁹

⁴⁹ Note that this table is not exhaustive of the legal issues that may arise for a person with lived experience of modern slavery and which may be in scope for legal aid in England and Wales..

Table 2: Issues in scope for people with lived experience of modern slavery in England and Wales – by legal instrument.

ISSUE AREA	LASPO 2012	MSA 2015	NBA 2022	RELEVANT CONDITIONS
Community Care & Welfare Benefits	✓	✓	✓	For appeals relating to welfare benefits, legal aid is only available at the Upper Tribunal level and above. As such, there is no legal aid for general advice in this area.
Breach of Convention Rights (Human Rights Act)	✓	✓	✓	-
International Protection Claims	✓	✓	✓	-
Homelessness	✓	✓	✓	-
Immigration Detention & Residence Restrictions	✓	✓	✓	-
Other Immigration Issues (Excluded from LASPO)	x	✓	✓	Client must have been issued a positive RG and/or CG decision. A negative CG decision terminates entitlement to legal aid on immigration issues not listed in LASPO.
Employment Claims	x	✓	✓	-

Damages Claims (Trafficking & Exploitation)	x	✓	✓	-
Referral into NRM	x	x	✓	Proposed as 'add-on service' for individuals who already qualify for legal aid via a substantive immigration or asylum issue.
Criminal Injuries Compensation	x	x	x	-
Identification within NRM Process	x	x	x	-

Part 2: Challenges in Accessing Quality Legal Advice

Through desk-based research and consultations with stakeholders through our survey, roundtable, and Unseen UK-led focus groups, the project identified a range of challenges faced by people with lived experience of modern slavery in accessing quality legal advice. As indicated in our preliminary literature review, access to legal advice alone is often insufficient to positively impact recovery, wellbeing and protection outcomes in the absence of indicators of quality. As a result, we distinguish between access to legal advice outright (i.e., barriers to accessing any advice at all) and factors which determine the *quality* of this advice (i.e., its potential to positively impact the client's wellbeing).

Challenges of access can broadly be divided into three categories:

1. Supply (related to the availability and capacity of legal aid providers);
2. Awareness of rights (on behalf of both potential clients and referring organisations);
3. Support issues (related to the facilitation of access in practice).

Factors that affect the quality of legal advice include:

1. The technical expertise of legal service providers (specifically on the range of different legal problems people with lived experience of modern slavery may present with);
2. Implementation of a 'holistic approach' (a model of legal advice provision that addresses other aspects of the client's wellbeing);
3. Communication (both in the sense of maintaining regular contact with clients and providing advice in a way that is easy to understand and trauma-informed);
4. Timeliness (ensuring legal advice is available when it is required).

A) Access

1. Supply

When asked about the key issues limiting access to legal advice for people with lived experience of modern slavery, most of our survey respondents highlighted issues around supply. It was made clear that many of the problems in this respect stem from the availability of legal aid – an issue already identified in various studies on access to legal advice in the context of immigration, modern slavery, and a host of other areas.⁵⁰ Some responses in this area drew attention to formal eligibility criteria, such as the scope of legal aid in England and Wales (addressed in Part 1 above), or the stringency of legal aid means testing – an issue which has been recognised by GRETA as raising potential issues of compliance with ECAT

⁵⁰ See listed publications (n 4 and n 5).

across England and Wales, Scotland, and Northern Ireland.⁵¹ As noted by survey respondents, means testing often results in potential clients who are on low incomes not meeting the threshold to qualify for free legal advice, even though they lack the financial means to afford private legal services:

[...] some will not meet the threshold for legal aid. This can be a particular problem for those who are on an income that is just above the legal aid threshold, i.e. those who have a low income, who can't afford large legal bills. (SR28, NGO (Non-Legal))

More respondents, however, focused on the broader impacts of cuts to legal aid funding across a range of areas in which people with lived experience of modern slavery often require advice. In particular, responses drew attention to the low rates of fixed fee remuneration offered under immigration legal aid contracts in England and Wales, which are even lower when dealing with compensation claims.⁵² Other research participants highlighted the complexity of legal aid administration and the fact that, to receive payment, practitioners are required to wait until the resolution of cases (which, owing to chronic delays in decision-making within the NRM, often last several years). It was also highlighted how legal aid practitioners must assume considerable financial risk in taking on certain types of work – for instance, when preparing judicial reviews.⁵³

These factors, among others, combine to restrict the amount of legal aid work that private firms are willing to take on and disincentivise practitioners from entering the sector in the first place.⁵⁴ Participants in our roundtable event also highlighted how the lack of viable funding has precipitated a 'brain drain' effect, forcing professionals with the requisite knowledge out of the modern slavery sector.⁵⁵ The reduction in the overall number of legal aid providers with expertise on modern slavery and related issues across the UK means that those who *are* qualified to provide advice are often operating at full staff capacity and are therefore unable to take on new cases. This has been noted as a particularly prevalent issue for people with lived experience of modern slavery seeking immigration advice.⁵⁶ Asked about key barriers to accessing legal advice, our respondents explained:

The problem is one of overall capacity in the legal aid system. There are not enough practitioners with expertise to meet demand. That has been caused by cuts over many years that make legal aid practice unviable. (SR2, Barrister)

⁵¹ GRETA UK Report (n 33), para. 83. For a detailed analysis of this issue, see [ATLEU et al.](#), 'Joint response to the Legal Aid Means Test Review: Access to Legal Aid for Survivors of Trafficking and Modern Slavery' (2022).

⁵² ATLEU (2018) (n 40) 8. Issues around low rates of remuneration were also highlighted by stakeholders in Scotland.

⁵³ This point was made by RP1, Barrister.

⁵⁴ For a comprehensive treatment of these issues, see ATLEU (2018) (n 40).

⁵⁵ This point was made by RP8, NGO (Legal).

⁵⁶ As Jo Wilding concludes in her recent study, '[f]or all parts of the UK, the number of non-UK nationals referred into the National Referral Mechanism (NRM) as possible victims of human trafficking far outstrips the availability of specialist trafficking and immigration legal advice.' Wilding (n 3) 13.

Poor legal aid rates, leading to lack of retention, barriers to recruitment of solicitors and need for limitation of work carried out within private firms. (SR43, Law Firm)

Our survey respondents also drew attention to regional discrepancies in the availability of legal aid providers with expertise on modern slavery issues, as well as the major challenges this creates for referring organisations, which frequently struggle to find a legal adviser of any kind. In this respect, respondents noted:⁵⁷

[G]eographical location is a big issue – some regions are truly lacking good advisers. (SR50, NGO (Non-Legal))

There is a dearth of expertise in trafficking/modern slavery in the country as a whole and especially outside London. (SR2, Barrister)

It is incredibly difficult to find a quality legal representative who has capacity to take on a case. We often have to contact a significant number of representatives and there are instances where we are unable to find representatives for a person for several months. (SR12, NGO (Non-Legal))

Due to this situation, an overwhelming majority (80%) of survey respondents employed in law firms and legal NGOs explained that they have had to turn away people with lived experience of modern slavery, even if they would formally qualify for legal aid.⁵⁸ Among those forced to turn people away, this happened frequently – ‘often’ (50%) or ‘very often’ (25%). The main reason for having to turn away individuals with lived experience of modern slavery was a lack of capacity (identified by 58% of respondents), followed by lack of available funding (identified by 37%).⁵⁹ As a result, organisations have had to apply discretion in deciding which clients they can take on, developing additional criteria for determining which cases to accept (based, for instance, on the vulnerability of the client or the complexity of the case).⁶⁰

This is related to another challenge identified in our survey – namely, a preference for certain types of immigration cases amongst legal service providers, such as those attached to domestic violence or asylum claims. This corroborates findings from other studies, which have attributed a preference for asylum-related modern slavery cases to the fact that they are considered less time-consuming and therefore more viable in line with fixed fee remuneration under current immigration legal aid contracts.⁶¹ As survey respondents noted:

⁵⁷ As noted in YLAL’s study, in many cases, clients had left the NRM support system without having been able to secure advice from an immigration adviser. YLAL (2020) (n 4) 11.

⁵⁸ This is especially true for legal charities specialising in taking on modern slavery cases. As SR33 commented: ‘We take a fraction of the cases that we are referred - the demand is high as we are a specialist service. However we are small and our capacity is highly limited.’

⁵⁹ This reflects general findings in the immigration sector that legal aid practitioners are limited more by capacity than by the availability of legal aid in the form of matter starts. See Jo Wilding’s discussion of ‘illusory provision’, (n 3) 68.

⁶⁰ Response by SR33, NGO (Legal).

⁶¹ Currie and Young (n 1) 28.

In our experience, service users that have domestic violence stories are often prioritised as they can go down the DDVC [destitution domestic violence concession] route and get discretionary leave without claiming asylum. (SR20, NGO (Non-Legal))

Solicitors refuse to take on NRM cases without an asylum case as well. (SR31, NGO (Non-Legal))

A preference for certain types of cases was also one of the main issues raised in the Unseen UK-led focus groups amongst people with lived experience of modern slavery. Consultants highlighted that they had sometimes felt unfairly treated, with solicitors failing to provide reasons for why they were able to take on certain cases but not theirs. Moreover, the focus group and survey responses drew attention a range of legal issues which people with lived experience of modern slavery were less likely to have received advice on. These include issues currently excluded from the scope of legal aid – for instance, advice prior to entering the NRM, identification within the NRM, or certain family issues. Another underrepresented issue identified by research participants was compensation, despite the fact that these claims technically fall within the scope of legal aid for people with lived experience of modern slavery.⁶²

Generally, people do not have access to legal advice regarding identification or referrals to the NRM unless they already have a legal representative for other issues [...] A significant issue is finding legal representatives for family reunion matters. (SR12, NGO (Non-Legal))

[A]rea[s] that [are] under-utilised and available to be applied via the NRM [...] are [...] compensation and redress which should be supported by a legal professional or case worker e.g., criminal compensation claims via the court or an employment claim in the employment tribunal. [...] I am aware that many trafficked victims who have entered the NRM and are receiving legal support often also have family law proceedings ongoing. Due to mental health issues or trauma, they may have had children removed or there could be proceedings over contact or custody between them and an ex-partner or even the exploiter / perpetrator. (SR5, Local Authority)

Despite the multitude of issues around the provision of legal aid, respondents to our survey recognised few alternative avenues for securing legal advice. This is in large part due to the fact that most people with lived experience of modern slavery cannot afford to pay for private legal services. However, as some respondents observed, it is also because there is very little expertise on modern slavery issues outside the legal aid sector. As such, private legal services are more variable with respect to the quality of the service offered:

⁶² ATLEU, 2018 (n 40) 17. ATLEU estimate that only about 1% of individuals with lived experience of modern slavery receive advice in relation to compensation claims.

In my experience those who have been able to raise funds to pay for a solicitor have often been given defective legal advice/representation by solicitors (criminal and immigration) who are not specialists in modern slavery. (SR9, Barrister)

Similarly, most respondents considered *pro bono* work to be an unsuitable alternative for individuals who cannot secure access to legal aid. This, again, is largely owing to the shortage of expertise outside of the legal aid sector, as well as the limited time allocated to *pro bono* work in private firms:⁶³

Pro bono solutions are inadequate for the majority of the types of advice survivors need – they tend not to have the level of expertise required to work with this group and are unable to make the time commitment required for cases lasting between 1-5 years. (SR33, NGO (Legal))

In the current situation, however, the scarcity of capacity in the legal aid market dictates a ‘needs-must’ approach to securing advice wherever available. As one of the respondents to our survey noted:

I think Legal Aid should be by far the primary source of such legal advice, but in the current climate it is necessary for everyone to play a role, with or without funding. (SR44, Barrister)

Rather than pursuing different sources of funding, research participants argued that higher rates of legal aid remuneration would be the most effective way of boosting the capacity of organisations and firms who have already developed expertise in this area and bringing back individuals into the sector who have been forced out by the untenable financing situation.⁶⁴ Given the unique complexity and time-consuming nature of cases involving persons with lived experience of modern slavery, research participants agreed that a system of hourly rates akin to those applied for immigration advice for unaccompanied minors would be appropriate for modern slavery cases, rather than the piecemeal changes that have been proposed thus far (for instance, through the pre-NRM ‘bolt-on’).⁶⁵ It was also suggested that, to address the critical lack of expertise in this area, greater flexibility should be introduced into the legal aid contracting process to allow entry into the market outside of the fixed periods (separated by lengthy intervals) currently foreseen in the tendering cycle.⁶⁶

⁶³ This reflects the findings of other studies. See, in particular, Currie and Bezzano (n 2) 31-32. This report highlights the considerable time that must be invested into casework to bring out positive results for clients with lived experience of modern slavery. This results from the complex and often intersecting nature of the legal issues at stake, difficulties in accessing relevant documentation, and challenges experienced by clients in recollecting distressing events.

⁶⁴ As one participant put it, ‘we want to tap into the advice which is already there and bring people back.’ RP8, NGO (Legal).

⁶⁵ This position is widely supported in the literature. See recommendations made in Currie and Young (n 1) and ATMG, ATLEU et al. (n 47).

⁶⁶ This point was made by RP3 (Academic) at our roundtable event.

In terms of promising practices, research participants highlighted how shortages in the availability of legal aid in Scotland and Northern Ireland have been offset to some extent by public funding of dedicated programmes designed to provide specialist legal advice to people with lived experience of modern slavery. One such programme is the weekly legal surgery run by JustRight Scotland and the Trafficking Awareness Raising Alliance, which focuses on providing basic advice prior to NRM referrals to help ensure informed consent:⁶⁷

We provide free legal surgeries offering pre-NRM advice and information as well as access to the legal surgery at any stage of the process, where no other solicitor is instructed. (SR46, NGO (Legal))

In their monitoring report, GRETA has also highlighted that the Northern Ireland Department of Justice provides direct funding to Migrant Help and Belfast & Lisburn Women's Aid to provide independent legal advice and representation as soon as possible once an individual with possible lived experience of modern slavery comes to their attention.⁶⁸ By contrast, in England and Wales, most specialist law centres rely on legal aid funding to provide free legal advice.⁶⁹ While a system reliant on legal aid may be more likely to ensure independent advice than direct government funding (which could introduce conflicts of interest), in the current situation, availability falls drastically short of what is required.

2. Awareness

While most of the challenges identified by respondents relate to the availability of advice funded by legal aid, some responses also drew attention to challenges on the demand side. Specifically, when asked about the key issues limiting access to legal advice for people with lived experience of modern slavery, several survey respondents underlined a lack of awareness of rights and of the options available for accessing (free) legal advice among members of this group.⁷⁰ This reinforces the important role played by first responders and support workers in informing people with lived experience of modern slavery of their rights – including the right to receive free legal advice – as recognised in regional and domestic UK standards.⁷¹ As one support worker explained:

[S]ervice users often come to the safe house with no knowledge of legal proceedings or what they are entitled to. (SR20, NGO (Non-Legal))

Lack of awareness may also be related to broader issues in the identification of people with lived experience of modern slavery, especially by first responders. On this topic, survey respondents noted:

⁶⁷ On this initiative, see [Scottish Justice Directorate](#), 'Trafficking and Exploitation Strategy – Fourth Annual Progress Report' (2022) 11-12.

⁶⁸ GRETA UK Report (n 33), para. 81.

⁶⁹ Comment by SR33, NGO (Legal).

⁷⁰ SR7, Law Firm.

⁷¹ See Part 1 above.

[...] often indicators of trafficking are missed by other professionals, so people do not receive support they are entitled to. (SR37, Law Firm)

[...] failure by first responders to refer to the NRM even where there are obvious signs. (SR51, Barrister)

3. Support

A related challenge concerns the facilitation of access to legal advice by mediators, such as support workers. As one of the participants in our roundtable explained:

[I]t's not just lack of awareness, it's the ability of support providers in the system to have the time in quite limited contracts to do the types of referrals and signposting survivors need [...]. (RP13, NGO (Non-Legal))

As indicated in Part 1 of this report, under existing arrangements, much of the onus is placed on support workers to facilitate access to legal advice. This reflects the fact that people with lived experience of modern slavery will often not be able to access legal advice without signposting and additional assistance. However, various research participants noted that this can create an excessive burden on those who are already responsible for providing care in relation to a range of complex needs.⁷² This issue is exacerbated by the fact that, within the NRM system, contracted support workers have a relatively narrow window in which to identify the needs of people with lived experience of modern slavery and to ensure their referral to appropriate legal services.⁷³ Moreover, additional needs may arise after this period of specialised support within the NRM has terminated – for instance, due to the emergence of new information (such as developments in a criminal case or the issue of debt repayment notices), or changes in the mental wellbeing of the individual. With regard to the latter, various studies have drawn attention to the fact that people with lived experience of modern slavery often have ‘fluctuating needs’ in their personal journey of recovery.⁷⁴ Even once some degree of stability has been achieved in terms of an individual’s immigration status or housing situation, additional issues may emerge that need renewed support and, in many cases, additional legal intervention (for instance, in relation to community care).⁷⁵

An additional challenge consists in the fact that, for clients who present with complex needs (such as trauma, cultural disorientation, or language and communication difficulties), support may be required not only to make initial contact with a legal adviser, but also to ensure continued engagement in a manner which is not harmful to that individual’s wellbeing. This is critical considering the typically lengthy nature of legal proceedings

⁷² This point was made by our project partner at Unseen UK, and is supported by the wider literature. For instance, Hope for Justice have estimated that, in their organisation, approximately 20% of support workers’ time is dedicated to finding a legal advisor, which can detract from the performance of other care responsibilities. Hope for Justice (n 8) 15.

⁷³ For changes to this window under NABA 2022, see Part 1.

⁷⁴ On this, see [Carole Murphy](#), ‘A Game of Chance? Long-term Support for Survivors of Modern Slavery’ (2018).

⁷⁵ For a treatment of this issue in relation to asylum, see Sophie Walker et al., ‘Mental health of forced migrants recently granted leave to remain in the United Kingdom’ (2021) 67(2) *International Journal of Social Psychiatry* 188.

involving people with lived experience of modern slavery. This point was made by a participant at our roundtable event, who, reflecting on their experiences, explained that:

We initially signposted survivors [to legal advisers] but soon [...] changed to a supported referral model as there were effectively no positive outcomes from referrals as there was quick disconnection or no engagement to start with. (RP13, NGO (Non-Legal))

It was also highlighted by the same participant that the trust developed in the context of supported referrals may be 'invaluable' in identifying the individual's legal and other support needs.

When asked for recommendations on how to improve access to legal advice for adults with lived experience of modern slavery, several survey participants highlighted the need to streamline referral practices – for instance, by developing partnerships between support organisations and solicitors, or making systematic changes to the ways in which referrals are made. In the latter case, it was suggested that legal advice could be integrated within the range of services made available under the Modern Slavery Victim Care Contract in England and Wales, which may in turn ease pressures on support workers:

Legal representatives should be assigned to clients that enter the NRM from beginning. (SR24, NGO (Non-Legal))

I would suggest a standardised approach to all those who are entered into the NRM, or who seek support through the Victim Care Contract. Legal advice should be provided as a standard approach, which doesn't have to be taken up or carried on, but it should be offered at every occasion. (SR49, Police)

B) Quality

The literature on access to legal advice identifies various criteria that are indicative of a 'quality' legal service. These include the expertise of the provider⁷⁶ and the timeliness of the advice,⁷⁷ as well as the degree to which the advice empowers the client to make informed decisions.⁷⁸ Based on the existing literature and survey responses, we have identified four main quality criteria in the modern slavery context: (1) expertise, (2) implementation of a holistic approach, (3) communication, and (4) timeliness. These are addressed below in turn.

1. Expertise

⁷⁶ Anderson and Conlan (n 5), ATLEU, 2018 (n 40).

⁷⁷ Hope for Justice (n 8); [Kirsty Thomson](#), 'Upholding Rights! Early Legal Intervention for Victims of Trafficking – Best Practice Principles' (2015).

⁷⁸ Jacqueline G. Lee and Bethany L. Backes, 'Civil Legal Aid and Domestic Violence: A Review of the Literature and Promising Directions' (2018) 33 *Journal of Family Violence* 421.

Our survey respondents identified scenarios in which adults with lived experience of modern slavery are likely to have access to some form of legal advice. Specifically, it was noted that individuals arrested for a criminal offence (whether or not this was committed as a direct result of their exploitation) or detained as part of immigration proceedings will usually have access to legal advice as an inherent part of these processes. However, respondents also expressed concerns around the quality of legal advice provided in these cases, especially with respect to the expertise of the provider:

The issue is with the quality of legal advice. Many of those [people with lived experience of modern slavery] I represent are in the course of appeals against conviction, where they were poorly advised at first instance. (SR8, Barrister)

One point to flag up is that whilst some victims of modern slavery did have access to some legal advice, this was not from advisors who specialised in modern slavery; as a consequence the advice / representation was often defective and years later, numerous further legal challenges had to be issued. (SR9, Barrister)

[G]enerally, people are struggling to find quality legal advice and often when they come to our services they have had poor legal representation and we have to try and find them alternative representation. We are seeing more people turn to private reps that have been recommended within the community who have no or limited experience in trafficking (or asylum) cases. (SR12, NGO (Non-Legal))

As these responses indicate, poor-quality legal advice can seriously damage a client's case and can often only be rectified (if at all) through subsequent legal challenges, which are costly to the state and time-consuming. A participant in our roundtable event added that bad advice can be 'doubly damaging' – not only can it result in unjust outcomes, but this advice also 'provides a veneer of legitimacy to bad decision-making' that may further damage the prospects of a successful appeal.⁷⁹

When asked about indicators of quality legal advice, respondents specified that the expertise of the service provider needs to be 'comprehensive' in encompassing the separate and often intersecting legal issues that people with lived experience of modern slavery commonly present with. In this respect, high-quality advice was understood to include an ability to identify the relevant legal issues, even if the adviser is not necessarily specialised in providing advice directly in each of these areas:⁸⁰

A solid understanding of all potential issues which affect victims of modern slavery (which span a range of areas: identification,

⁷⁹ This participant noted that this problem is particularly acute in the sphere of immigration and asylum law, where 'there is a perception that if someone had a lawyer early on, they were therefore properly represented and can't retrospectively blame potentially life-changing mistakes on their poor legal representation.' RP4, Barrister.

⁸⁰ This has been referred to as 'issue-spotting' in the literature. Sarah Dohoney Byrne, 'Meeting the Legal Needs of Human-Trafficking Survivors' (2017) 52 *Wake Forest Law Review* 379, 388-389.

immigration matters, criminal matters, compensation matters, welfare and support), the ability to identify relevant issues arising in a particular individual's case, and to provide advice which takes account of the intersecting nature of modern slavery experiences. (SR9, Barrister)

To address this challenge, participants at our roundtable suggested making training available for legal aid providers to support them in identifying pertinent legal issues and to highlight additional factors that may need to be considered in cases involving adults with lived experience of modern slavery. Alongside increasing legal aid funding, training opportunities were also frequently mentioned by survey respondents as a key measure for advancing access to quality legal advice for clients:

Better provision of legal aid funding and funding for local advice centres and specialist charities. Better training opportunities for advisors/representatives. (SR9, Barrister)

Increase funding for legal aid lawyers so that they can in turn employ more people and increase capacity. Increased training to ensure specialist knowledge. (SR12, NGO (Non-Legal))

Better training for solicitors – criminal and immigration solicitors particularly. (SR46, NGO (Legal))

At the same time, it was highlighted by several participants at our roundtable event that solicitors contracted to provide immigration and asylum legal aid in England and Wales are already required to have undergone an accreditation scheme that includes a module on modern slavery and the NRM process.⁸¹ These participants argued that additional compulsory accreditation requirements (which are both costly for lawyers and time-consuming) are likely to prove an excessive burden that may deter specialisation in this area.⁸² As a result, it was suggested that any additional training on modern slavery issues should be integrated into existing requirements or should be provided on a voluntary basis and funded by a public body, such as the Home Office or the Legal Aid Agency.⁸³ These opportunities may also be targeted at legal aid practitioners who are likely to work with people with lived experience of modern slavery but who have not undergone compulsory training in this area – for instance, those specialising in housing or family issues.

2. Holistic approach

Legal proceedings involving people with lived experience of modern slavery are often complex in nature and can cover a range of issues related to the client's immediate and long-term needs. As a result, research participants pointed out that a holistic approach to legal service provision must involve consideration of the full range of legal issues that a particular case presents, as well as the adoption of a long-term perspective on any issues that may foreseeably arise in the future. RP5 (NGO, Legal), for instance, highlighted how advisers will

⁸¹ This was also reflected in responses to a question on training experiences in our survey.

⁸² This argument was made by RP8, NGO (Legal).

⁸³ This recommendation was made by RP12, Academic.

frequently only focus on securing immediate outcomes without taking into account the fact that these may only temporarily address the client's legal needs (for instance, in the case of focusing solely on achieving a short-term grant of leave to remain). Another concern was that clients may be represented by different legal professionals on a range of issues, thereby raising issues of coordination and heightening the possibility of re-traumatisation:

One problem I see often is that victims of modern slavery who are fortunate enough to have representation are represented by a number of solicitors (one for immigration matters, one to challenge NRM decisions and support, one to challenge criminal convictions). All of the issues overlap and need to be considered holistically to achieve the best possible outcome for the client, but this rarely happens. As a consequence, clients become worn down having to repeat their accounts to a range of solicitors, and issues which are vital to one element of a claim are missed. (SR9, Barrister)

As a participant noted at our roundtable event, the issue of plural representation is not easily resolved under the English legal aid model, given that this system requires specialisation through accreditation in specific areas of law.⁸⁴ In response, participants reflected on whether the Scottish legal aid model, given the greater flexibility that it affords, can potentially result in more 'holistic' provision. A Scottish legal aid practitioner (RP2, NGO (Legal)) noted that legal professionals in Scotland can indeed register to provide legal aid across a range of different areas. However, this greater level of flexibility also gives rise to risks of 'overreach' – a legal professional 'dabbling' in criminal law without the requisite experience or expertise will be prone to providing poor legal advice with potentially harmful consequences for the wellbeing of the client.

In addition to addressing the full spectrum of legal issues that present with a certain client, a holistic approach to legal advice can also be understood in the sense identified elsewhere in the literature – namely, as 'not just about achieving a successful legal outcome but ensuring that a victim of trafficking has been protected throughout any legal process and is able to move on successfully with their lives.'⁸⁵ In line with this, participants at our roundtable identified collaboration between legal practitioners and support workers as a critical feature of a holistic legal advice model that positions the wellbeing of the client at its centre. This kind of coordination can assume the form of partnerships, as well as more informal networks, and can contribute to successful referrals and timely access to legal advice, as well as supporting clients in disclosing their account to legal representatives. This vision of holistic legal advice provision was also reflected in the survey responses, several of which highlighted the need for legal advisers to work closely with support workers to ensure that the full range of the client's needs are met:

[Quality legal advice] [m]ust be [...] holistic – considering the entire circumstances of the individual, not just the specific legal matter. (SR33, NGO (Legal))

⁸⁴ RP7, NGO (Legal).

⁸⁵ Thomson (n 77) 21.

Holistic service provision – where the solicitor engages with support agencies to ensure the client’s needs and rights are met. (SR46, NGO (Legal))

Legal services need to work together with trusted frontline community agencies, e.g. health professionals. (SR15, NGO (Legal))

Multi-agency collaboration was also mentioned when survey respondents were asked to identify examples of promising practices in the provision of legal advice to adults with lived experience of modern slavery:

[I]n 2019, The Passage [a homelessness charity] established a Multi-Agency Case Conference (MACC) approach in partnership with Westminster City Council to provide immediate support to victims of modern slavery who are homeless, including people with no recourse to public funds. MACCs are multi-agency meetings where Westminster City Council, The Passage and other agencies involved in a case share information about a victim of modern slavery in order to produce a coordinated action plan to safeguard and increase victim safety. It also facilitates timely access to emergency accommodation, immigration advice if needed, health and mental health care, and adult safeguarding. The MACC approach is being replicated by other local authorities and is used in the Local Government Association Guidance on Housing Survivors of Modern Slavery. (SR52, NGO (Non-Legal))

[T]he collaboration with Hestia, Ashiana, etc. works well – clients really benefit from having support workers who can assist with issues which are beyond my remit as an immigration lawyer. (SR37, Law Firm)

Separately, respondents drew attention to various skills required for dealing with complex cases where the client may have experienced trauma, may be unable or unwilling to disclose their full range of experiences, or may find it difficult to articulate their claims due to linguistic or cultural barriers. This was considered another important component of ‘holistic’ legal advice:

[M]ost people we come across have had some form of legal advice but the issue is frequently that it is not of a good quality which can be more damaging than having no legal representative. They frequently have limited experience in the area and do not work in a trauma-informed manner which means that disclosure for the client is often difficult and this may lead to issues with credibility further down the line. (SR12, NGO (Non-Legal))

[Quality legal advice] [m]ust be trauma-informed, client centred, culturally informed. (SR33, NGO (Legal))

Lack of cultural understanding when clients have come to explain their case. I have known clients to be made out as if they are lying or withholding information when I knew it was just a result of trauma or their cultural communication style. I felt that the legal professional often didn't try to understand or make the extra effort to communicate in a way that the client could understand. (SR26, NGO (Non-Legal))

In line with this, participants at our roundtable event highlighted the importance of culturally informed understandings of modern slavery on behalf of lawyers. This is often lacking – even where the legal professional shows considerable empathy for the client's situation – and can affect their understanding of the client's legal needs and the quality of the service they provide.⁸⁶

3. Communication

Support workers and people with lived experience of modern slavery participating in this research project reflected extensively on the related issue of poor communication by solicitors. Support workers noted that, in some situations, communication is channelled through them even when the client has expressed their preference to be informed directly. Moreover, the use of legal jargon by solicitors can result in disengagement, frustration, and a lack of trust. When asked to identify indicators of a quality legal service, survey respondents highlighted the importance of involving the client in the process and ensuring their full understanding of their rights and options so as to enable informed decision-making (including with the help of an interpreter, if necessary). Responses acknowledged that this will often require a considerable investment of time and the implementation of a trauma-informed approach:

Sufficient time: so the legal representative can fully explain law, procedures, policy etc. in a clear way so the survivor is able to make informed decisions. (SR3, NGO (Non-Legal))

In addition to this, one of the most frequently mentioned indicators of quality legal advice in our survey was regular communication with the client to keep them informed on their case. Responses highlighted how failure to maintain regular contact can have a major impact on the mental health of people with lived experience of modern slavery, creating the impression that their case is not being prioritised. This was also one of the main concerns mentioned by people with lived experience of modern slavery who participated as consultants in our focus group.

It is always a struggle speaking to victims who keep chasing their lawyers for legal advice or even updates in their cases. (SR21, Survivor-Led Organisation (Non-Legal))

Being competent is clearly key, but communication is a major issue. Many service users do not know what their solicitors are doing and have trouble getting hold of them [...]. (SR28, NGO (Non-Legal))

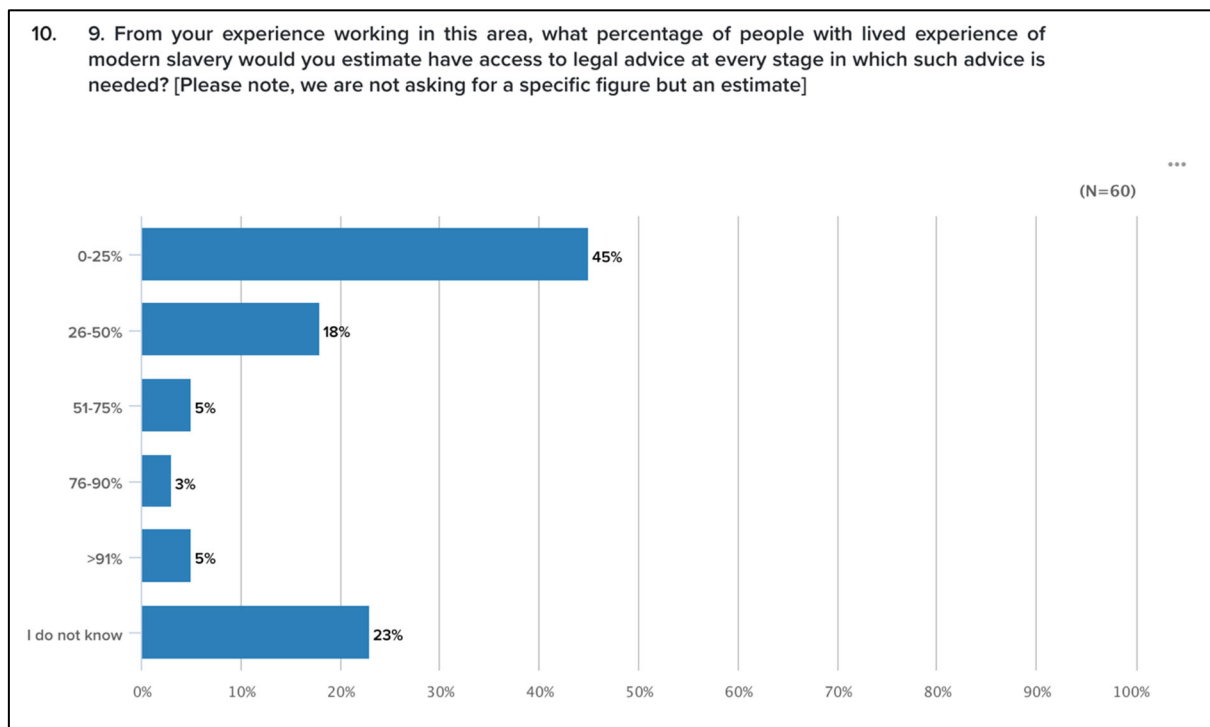
⁸⁶ RP11, NGO (Non-Legal).

As one of our roundtable participants added, issues in communication can exacerbate mistrust rooted in the client’s experiences of exploitation, while communication is also important for managing clients’ expectations.⁸⁷ This was also noted by one survey respondent, who identified as an indicator of quality legal advice:

Regular contact with the survivor - once a month even if there has been no update (this reassures the survivor they have not been forgotten), being available to talk with the survivor, open communication, realistic expectations. (SR31, NGO (Non-Legal))

4. Timeliness

Almost half of the 60 survey respondents estimated that, in their experience, less than 25% of people with lived experience of modern slavery have had access to a legal representative at every stage that it was needed, with 18% estimating that that figure sits between 26 and 50%. Only 13% estimated that figure to be higher than 50%.



The importance of timeliness in the provision of legal advice has been recognised widely in the literature on challenges in accessing justice.⁸⁸ In the context of modern slavery specifically, the literature has highlighted several advantages of ‘frontloading’ legal advice, such as ensuring informed decision-making among people with lived experience of modern slavery (including on whether to enter the NRM process),⁸⁹ as well as facilitating early

⁸⁷ RP13, NGO (Non-Legal).

⁸⁸ For early legal advice in the context of the UK asylum procedure, see Bridget Anderson and Sue Conlan (n 5).

⁸⁹ See ATMG et al. (2020) (n 4) 26: ‘the lack of pre-NRM legal aid means that survivors are required to make the critical decision to enter the NRM without sufficient information, within a very short period of time, and under very stressful circumstances.’

identification and the swifter resolution of legal uncertainty regarding an individual's immigration status.⁹⁰ The issue of timing was also recognised generally by respondents to our survey, and particularly in relation to the lack of legal aid available prior to an NRM referral:

Virtually all of my clients should have had access to effective legal advice at an earlier stage than they actually received it. (SR44, Barrister)

Often survivors get legal advice once they have entered into the NRM and into a support provider's service as it is an ECAT entitlement (this could be before they have placed an asylum claim or after), however often they do not have legal advice prior to this. (SR31, NGO (Non-Legal))

⁹⁰ Immigrant Council of Ireland (2015) (n 2).

Part 3: Impacts of a Lack of Quality Legal Advice

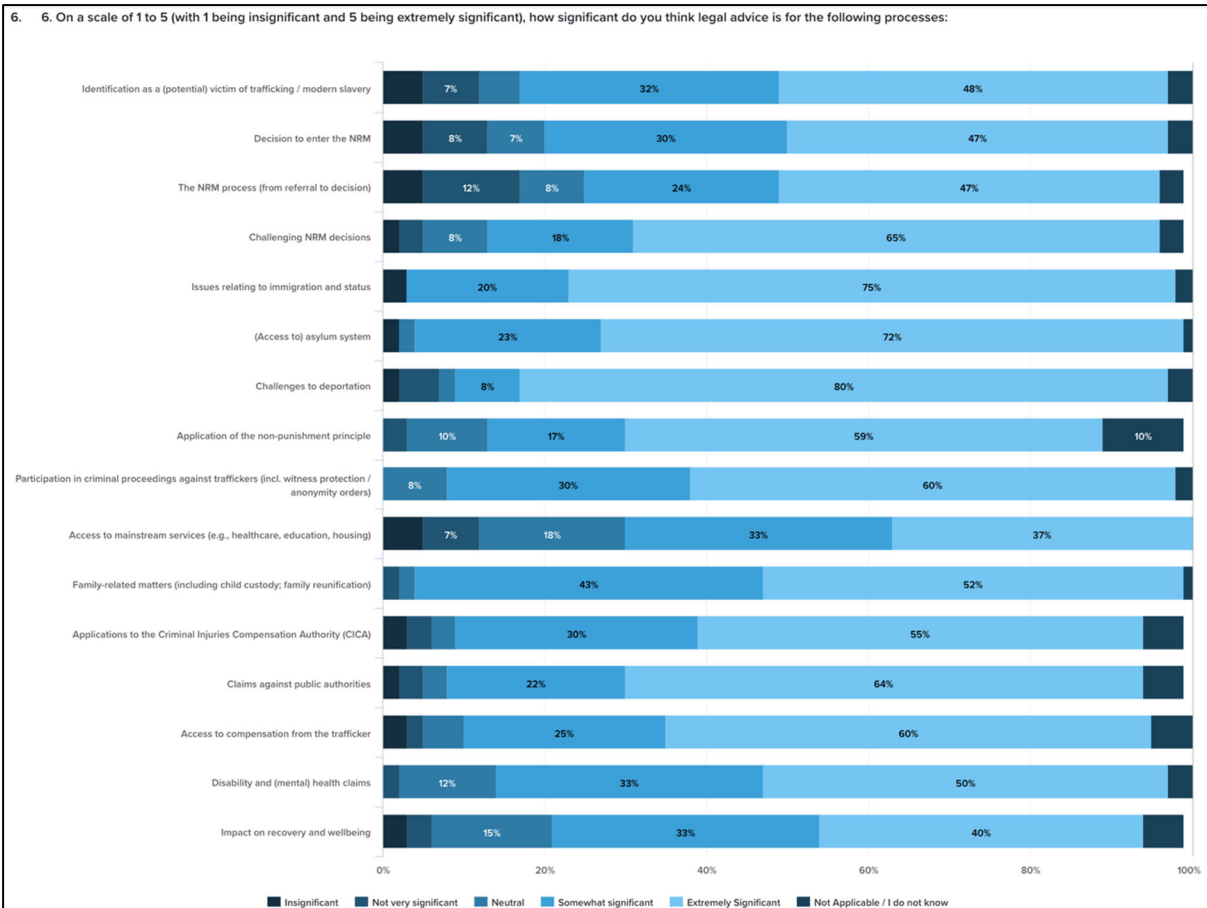
The impacts identified by participants in our survey, stakeholder roundtable and focus groups can be divided into three principal categories. Impacts can be understood in terms of the outcome of a specific legal case or process, which can in turn affect the wellbeing, recovery, and protection of the individual in question in different ways (section A). At the same time, high quality legal advice can also have *direct* impacts on the wellbeing of the client, even if it does not (immediately) contribute to the resolution of a specific legal issue (section B). Finally, access to legal advice can have broader impacts that extend beyond the situation of the individual in question (section C).

A) Impacts on Legal Outcomes

A lack of access to quality legal advice can impact every area where people with lived experience of modern slavery are in touch with the legal system. This, in turn, can have significant effects on recovery, wellbeing, and protection outcomes. As one respondent to our survey explained:

[Legal advice] can be life-changing – people can access information about regularising their status, challenging negative decisions, obtaining compensation, etc. which can really turn someone's life around. (SR37, Law Firm)

Survey respondents identified varying degrees of impact for different legal issues. While a matter of some subjectivity, more than 70% of respondents identified that legal advice was of either extreme or some significance across each of the areas listed in the survey. A mapping of the various (and intersecting) issue areas impacted by a lack of legal advice is available in the Annex. These areas include, among others: identification; regularisation of immigration status; access to compensation; protection against prosecution; family and parental rights; and access to mainstream services. These are addressed in greater detail below.



1. Identification

Survey respondents agreed on the importance of legal advice in ensuring the correct identification of people with lived experience of modern slavery within the NRM, with 80% recognising legal advice to be either ‘somewhat’ or ‘extremely’ significant in this respect. Legal advice was considered by survey respondents to be important in supporting clients through the full NRM process, from initial referral to the conclusive grounds (CG) decision.⁹¹ This includes gathering and presenting pertinent evidence to help ensure an informed decision at first instance. However, legal advice was considered particularly impactful in terms of challenging decisions made by the competent authorities through judicial review, with 65% of respondents noting that access to legal advice was ‘extremely significant’ for this purpose.

In terms of wider impacts, respondents highlighted how formal identification as a person with lived experience of modern slavery within the NRM is ‘transformative’ in achieving other legal outcomes, such as qualifying for asylum or mounting a successful defence against criminal charges. In addition, responses underlined the importance of formal recognition as a

⁹¹ 47% of respondents deemed legal advice to be ‘extremely significant’ in this respect, with 30% identifying legal advice to be ‘somewhat significant’ with respect to this process.

gateway for accessing other entitlements, such as specialised support (which will, in turn, protect against homelessness and destitution).⁹² As one research participant put it:

Victims of modern slavery unable to obtain specialist legal advice are in danger of (i) not being properly identified and recognised as victims and (ii) not being provided with the specialist support they are entitled to. This impacts not only on their risk of continued exploitation or re-trafficking, but also on whether they are wrongly prosecuted and convicted/sentenced to imprisonment, and in the case of non-British nationals, impacts on the lawful resolution of their immigration status.
(SR9, Barrister)

Given the potentially wide-reaching effects of identification, respondents to our survey underlined that legal advice is necessary from the earliest possible stage to ensure that individuals with possible lived experience of modern slavery are aware of the implications of referral into the NRM. This is reflected in the fact that 77% of respondents noted that legal advice is either ‘somewhat’ or ‘extremely’ significant in relation to the decision to enter the NRM. This aligns with wider recognition within the anti-trafficking charity sector that legal aid should be made available to ensure informed consent for referral into the NRM, as detailed in Part 1 of this report.

2. Immigration status (and deportation)

Out of all of the categories listed in the survey, immigration-related outcomes – including access to the asylum system – were considered the most impacted by (a lack of) legal advice. An overwhelming 95% of respondents to the survey highlighted that legal advice has an impact of some degree of significance on issues relating to immigration status, with 75% identifying an ‘extremely significant’ impact. Similarly, 95% of respondents identified that the impact of legal advice was ‘somewhat’ or ‘extremely’ significant in the context of (access to) the asylum system, with 71% noting an ‘extremely significant’ impact. Finally, 79% of respondents noted that access to legal advice is ‘extremely significant’ in the context of challenges to deportation.

The effects of not being able to secure legal advice in this area in terms of recovery, wellbeing and protection outcomes were described in depth by one of our survey respondents:

The consequences of failing to regularise immigration status are far-reaching: lack of access to decent work, opportunities for education/development, secure and appropriate housing, healthcare and treatment, appropriate support/care, access to mainstream benefits and services - the list goes on [...]. (SR33, NGO (Legal))

Failure to regularise immigration status will thus not only result in protracted periods of insecurity with the prospect of detention and deportation but will also deprive non-British citizens of access to core benefits, such as social welfare and housing. In this respect, like

⁹² ATLEU (2022) (n 4) 23.

formal identification within the NRM, securing a right to remain in the UK can be understood as a 'gateway' to other entitlements. As Currie and Young explain in their recent report: '[s]ecure immigration status, which is only likely to be obtained with the support of a lawyer, is very much seen as the foundation upon which other entitlements can be scaffolded.'⁹³

Moreover, beyond the impacts of non-access, there are also impacts of not receiving *timely* legal advice. In the context of asylum appeals, for instance, respondents noted that a failure to receive timely legal advice may result in late disclosure of trafficking experiences, which will likely affect credibility and influence the outcome of the appeal. An additional concern raised by research participants related to poor-quality legal advice, with reports that solicitors have advised clients not to consent to an NRM referral as this may delay asylum decisions. This has meant that individuals with lived experience of modern slavery have been unable to access specialised support within that mechanism, thereby heightening the risk of destitution, as well as re-trafficking and further abuse.⁹⁴

3. Access to compensation and other remedies

Research participants noted that legal advice for the purpose of receiving compensation can have an important impact on an individual's financial situation and broader recovery outcomes:

Lack of access to financial compensation for unpaid wages, breaches of fundamental rights, acts of abuse and discrimination, breaches of contractual entitlements, torts – all leave a sense of injustice, lack of redress and undermine recovery. (SR33, NGO (Legal))

This supports the findings of other studies. As Focus on Labour Exploitation (FLEX) have highlighted:

Effective access to compensation can be a significant factor in the recovery process of survivors of human trafficking. Compensation awards can provide economic empowerment, facilitating reintegration into society and reducing individual victims' vulnerability to re-trafficking. Obtaining fair compensation can contribute to a sense of justice and closure, and can play an important role in a survivor's psychological recovery.⁹⁵

Despite its importance for achieving positive recovery, wellbeing and protection outcomes, research participants noted that very few individuals with lived experience of modern slavery have received compensation in practice. However, survey respondents agreed that the provision of legal advice is critical in improving those opportunities, with 60% noting that access to compensation from the trafficker is 'extremely significantly' impacted by a lack of legal advice. Similarly, 55% recognised an 'extremely significant' impact of legal advice on applications to the Criminal Injuries Compensation Scheme, with 30% noting a 'somewhat

⁹³ Currie and Young (n 1) 18.

⁹⁴ This point was highlighted by our project partner at Unseen UK.

⁹⁵ [Focus on Labour Exploitation \(FLEX\)](#), 'Working Paper: Access to Compensation for Victims of Human Trafficking' (2016) 3.

significant' impact. Despite this, ATLEU have highlighted how the Legal Aid Agency has routinely rejected requests for Exceptional Case Funding on the basis that legal advice is not necessary for potential claimants to submit applications for criminal injuries compensation.⁹⁶ Finally, 86% of respondents noted a significant impact of legal advice on claims against public authorities, with 64% specifying that this impact is 'extremely significant'. Generally, legal support was therefore considered to be necessary to navigate this complex area.

4. Criminal proceedings

Legal advice is critical in all areas where people with lived experience of modern slavery engage with the criminal justice system – whether as 'victims', witnesses, or as defendants. With respect to participation in criminal proceedings against traffickers, 90% of respondents noted the impact of a lack of advice to be significant ('somewhat' or 'extremely'), with 59% noting it to be 'extremely significant'. As one of the participants in our roundtable highlighted, legal advice and representation may be required (among other things) to review the decisions of public authorities in relation to the investigation and prosecution of cases, as well as to challenge lenient sentencing decisions. Despite its importance, the participant highlighted that they had not seen legal aid provided in this area to any person with lived experience of modern slavery in England and Wales.⁹⁷

Separately, survey respondents recognised the impact of legal advice in cases where individuals have been charged with criminal offences directly related to their experience of modern slavery.⁹⁸ Specifically, they recognised that a lack of quality legal advice can lead to the non-application of the so-called 'non-punishment' principle, effectively resulting in individuals being penalised for their experiences of modern slavery. Criminal convictions – even if not resulting in custodial sentences – will be debilitating both in their legal consequences (for instance, in the areas of immigration and housing) and in their psychological impact (including due to feelings of injustice). As one survey respondent explained:

[T]he lack of legal advice, and in particular the lack of a high standard of legal advice, has led to many pleading guilty to offences committed whilst under compulsion and in ignorance of the defences available to them in those circumstances. Whilst not always leading to a prison sentence, convictions have had significant impact on their immigration, housing and other issues as well as a significant psychological impact. (SR8, Barrister)

5. Family and parental rights

95% of survey respondents noted that a lack of legal advice is significant ('somewhat' or 'extremely') in the context of family-related matters – including parental rights and family

⁹⁶ ATLEU (2018) (n 40).

⁹⁷ RP13, NGO (Non-Legal).

⁹⁸ 76% of respondents noted as significant ('somewhat' or 'extremely') the impact of legal advice on the application of the non-punishment principle, with 59% noting it as 'extremely significant'.

reunification – with 43% identifying it as ‘extremely significant’. The issue of parental rights for adults with lived experience of modern slavery has been increasingly recognised. As one survey respondent explained, social services may deem people with lived experience of modern slavery to be unable to care for their children owing to mental health issues or ongoing trauma, while there may also be active child custody disputes (sometimes involving the perpetrator of the trafficking offence).⁹⁹ Being able to retain (or gain back) parental rights will in most cases have a strong positive impact on recovery and wellbeing outcomes.

B) Impacts on Recovery and Wellbeing

1. Mental health

The impact of a lack of quality legal advice on recovery and wellbeing was considered to be ‘extremely significant’ by 40% and ‘somewhat significant’ by 33% of survey respondents. As we have seen above, this impact may come about as a result of a failure to secure a positive legal outcome on a specific issue. This can include claims relating to access to mainstream services, such as disability and mental health support – an area where 83% of respondents considered legal advice to be either ‘somewhat’ (33%) or ‘extremely’ (50%) significant. At the same time, respondents highlighted how a lack of access to quality legal advice for people with lived experience of modern slavery can also result *directly* in feelings of anguish, anxiety and stress due to ongoing uncertainty around an individual’s situation. This was highlighted particularly strongly by support workers. As one respondent explained:

A lot of our clients' mental health issues derive from the uncertainty and fear that lack of legal assistance brings. (SR30, Survivor-Led NGO (Non-Legal))

Other respondents elaborated that a lack of awareness of legal rights and possibilities leaves people in a state of limbo, frustrating recovery and negatively impacting wellbeing. Specifically, this can lead to:

Delays in recovery and being able to deal with their trauma – without legal advice and help, people with lived experience are stuck in limbo, they cannot move forward or make informed decisions. (SR50, NGO (Non-Legal))

[...] the more the client knows about their legal rights and laws, the bigger chances of the client feeling justice and recovering from their experiences, as well as making the best educated decision on their case. This is important because clients need to feel that they are back in control of their situation and independent from their horrific experiences. (SR14, Survivor-Led NGO (Non-Legal))

Those feelings extend to situations where partial legal advice is provided. As one participant in our focus group mentioned, the presence of open legal questions that continued to go

⁹⁹ SR5, Local Authority.

unaddressed (in this case, regarding divorce proceedings) made moving forward with recovery difficult as they felt like they were still somehow connected to the previous situation of exploitation, even though other aspects of their case had been successfully resolved. The negative mental health impacts triggered by this uncertainty can also strain relationships between clients and support workers, raising additional protection challenges:

Victims have lots of questions and most of the time don't have a clear understanding of their rights or current situation [...] Staff could only provide living experiences and are not professionals to support claims. Therefore the rapport with staff gets difficult at times as it seems we are not supporting them to access their rights. (SR24, NGO (Non-Legal))

A significant impact is that individuals have no knowledge or understanding of where they stand legally. This can cause stress / anxiety which leads to mistrust of any organisation within the UK. It feeds directly into the hands of the exploiters and leaves the victim isolated and dependent on the exploiter(s). (SR24, NGO (Non-Legal))

2. Financial implications

Beyond impacts on mental health, a lack of access to free legal advice can have important financial implications for people with lived experience of modern slavery. In particular, individuals can feel compelled to seek private legal advice, which can result in indebtedness and a heightened vulnerability to (re-)exploitation.¹⁰⁰ As one respondent to our survey noted:

Most survivors are impecunious so private legal services are part of the problem not the solution – they will often charge for services rather than advising on eligibility for legal aid and we see individuals forced into positions of further vulnerability as a result of debts to private firms. (SR33, NGO (Legal))

C) Wider Impacts

1. Engagement

Difficulties in securing legal advice can negatively impact an individual's trust in the legal system they are trying to navigate, and can also affect their willingness to engage with public authorities. This may, in turn, hinder the criminal process, leading to fewer prosecutions of traffickers and undermining the effects of the criminal laws in place. In this respect, respondents noted as impacts of a lack of access to legal advice:

¹⁰⁰ See YLAL (2020) (n 4) 12-13.

A lack of trust in the British legal system and trust and confidence in authorities. (SR48, Police)

Cases will not progress to court – perpetrators cannot be brought to account. Criminals Gangs will work with impunity – no deterrent. (SR47, Local Authority)

Lack of convictions – convictions would act as a deterrent to would be or current criminals exploiting vulnerable people. (SR35, Local Authority)

2. Implications for public institutions

Moreover, research participants highlighted how a lack of access to quality legal advice at an early stage leads to a greater number of appeals and a requirement for additional legal aid funding to overturn wrongful decisions further down the line. Moreover, it can contribute to delays in decision-making, which can affect the cases of other individuals with possible lived experience of modern slavery:

[Lack of legal advice at an early stage] has a detrimental impact on victims, as well as requiring a significant input of public funds (legal aid, court resources) at a later point in time. (SR9, Barrister)

Lack of legal advice [...] causes delays in decision-making. (SR20, NGO (Non-Legal))

Part 4: Conclusions and Recommendations

Despite the existence of a range of international, regional and domestic standards in this area, the availability and accessibility of good quality and timely legal advice remains a critical concern for many people with lived experience of modern slavery in the United Kingdom. Deficiencies in the legal aid system, and particularly the limited resources available for legal representatives to engage with lengthy and complex cases, have resulted in limited numbers of practitioners specialised in modern slavery issues, with most usually working at full capacity. These challenges are exacerbated by shortcomings within the NRM support system, which provides a narrow window of opportunity for support workers to identify clients' legal needs and make supported referrals to suitable advisers. Related to these challenges of access, the quality of advice provided can vary significantly, with some legal practitioners lacking the required expertise on modern slavery issues to positively impact a client's case, while others have provided services which do not comprehensively consider the full range of the client's legal and non-legal needs. This lack of access to quality legal advice frequently results in significantly detrimental impacts on the wellbeing of people with lived experience of modern slavery. Those impacts can broadly be categorised into those affecting the outcomes of legal processes and those directly impacting recovery and wellbeing. Addressing the shortcomings in the provision of legal services to people with experiences of modern slavery requires meaningful consideration of these impacts, the legislative and policy issues involved, and the practical realities and limitations faced by all involved.

Based on the findings of this project, we recommend that:

For the Ministry of Justice

- 1. Free legal advice should be made available for people with lived experience of modern slavery as a standalone entitlement, encompassing the whole range of legal issues individuals might need advice on.** Currently, access to pre-NRM advice has been proposed as an 'add-on' service for individuals already receiving legal aid on an immigration or asylum issue. Instead, free legal advice prior to entering the NRM should be available to all individuals based on their experiences of modern slavery, while legal aid should also be extended to cover issues of identification within the NRM and applications for criminal injuries compensation. Such advice should be independent, timely, and equally accessible for all people with lived experience of modern slavery irrespective of nationality, immigration status, or other characteristics (such as exploitation type). We recommend that the Ministry of Justice reconsider the appropriateness of means testing where clients present with indicators of lived experience of modern slavery, in line with the views of practitioners consulted in this and other research.
- 2. The legal aid funding structure should be revised to ensure that lawyers are not disincentivised from taking on claims by people with lived experience of modern slavery.** Such revisions should include a reconsideration of standard fixed fees, which this and other research has shown are too low to allow legal representatives to adequately address the complex legal needs of people with lived experience of modern slavery. These fixed fees should be replaced by hourly rates.

Moreover, greater flexibility should be introduced into the legal aid contracting process to allow the market to respond to a critical need for qualified advisers in specialised areas (such as modern slavery) when the need arises, even if this is outside of the standard tendering cycle (which currently only allows for organisations to enter into legal aid contracts every few years).

3. **Adequate training and mentoring opportunities for providers of legal services should be ensured.** Such training should cover relevant substantive and procedural issues, as well as interpersonal skills, including trauma-informed responses and interviewing skills that are relevant for engaging with, and supporting disclosure from, people with lived experience of modern slavery. This training, together with a competency-based assessment, should be integrated within existing accreditation requirements for all areas of civil and criminal legal aid where a need for legal advice may arise for people with lived experience of modern slavery. Additional training opportunities should be made available on a voluntary basis and should be publicly funded.
4. **Data on the availability and uptake of modern slavery-related legal advice should be collected by the Ministry of Justice and regularly analysed and monitored by relevant decision-makers to better understand access to justice for people with experiences of modern slavery.** Such data should be both quantitative and qualitative in nature, indicating not only the number of people with lived experience of modern slavery that have received legal advice, but also, amongst other things, the areas in which such advice was received. Any such data should be publicly available for scrutiny by researchers, NGOs and other interested parties.
5. **Views of people with lived experience of modern slavery should be sought and actively taken into account when revisions to legal aid structures and processes are deliberated.**

For the Home Office

6. **Greater collaboration between legal advice providers and frontline organisations operating MSVCC services should be promoted, including through partnerships that incorporate feedback sessions and mutual training opportunities.** This will improve the identification of legal needs and timely, supported referrals to appropriate (independent) legal services, while also promoting a model of holistic legal advice provision that places the wellbeing of the client at its centre. Formal partnerships may also encourage specialisation by legal aid firms if they can expect steady referrals of modern slavery cases.
7. **Frontline organisations should receive additional support (including training and financial support as necessary) in order to implement these measures,** owing to the wide range of care responsibilities they already assume. Training for support workers should include how to prepare and support clients for meetings with solicitors and how to negotiate expectations on both sides.

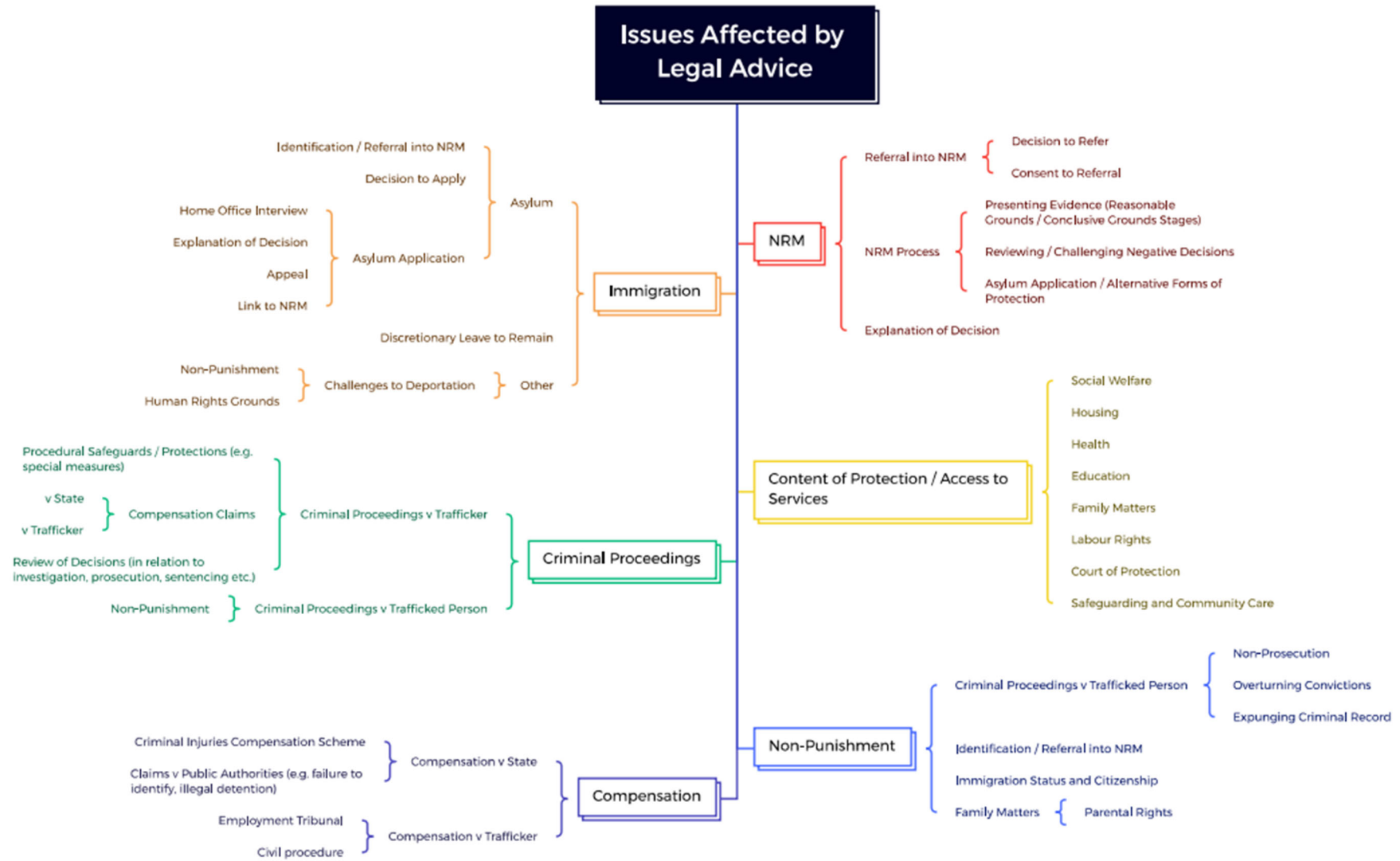
For Support Workers and the Legal Community

8. **The legal advice provided should consider the significant and complex needs experienced by some people with lived experience of modern slavery, particularly due to: cultural disorientation, lack of trust, trauma and wider mental health issues, language barriers, and other factors.** People with lived experience of modern slavery may need to be assisted by support workers to effectively access and benefit from the legal advice provided. Legal representatives should also be encouraged to manage the expectations of clients – clearly explaining the legal process, relevant timeframes, their own role, and the responsibilities of the client at the outset – and should be subject to clearer complaints processes to ensure ongoing communication and greater accountability in the quality of the service provided.

Areas for further research

1. This report sought to provide a broad perspective on the various issues where legal advice may be required for people with lived experience of modern slavery, as well as to document the impact of a lack of quality legal advice across these areas on recovery, wellbeing, and protection outcomes. Subsequent research may focus more narrowly on under-researched issue areas identified by this study, including: advice prior to entering the NRM, identification within the NRM, family-related matters, and compensation claims.
2. Further research is required to understand the different nature of the issues presented in the project report across UK jurisdictions, and especially in Northern Ireland. Comparative studies may, in particular, examine how different legal aid rules affect both the accessibility and quality of the advice available. Based on a comparative analysis, research might also look into other ways of funding legal advice for people with lived experience of modern slavery while continuing to ensure the independence of this advice.
3. A further area of research could address the longitudinal effects of legal advice in terms of recovery, wellbeing and protection outcomes, while also tracing how the legal needs of people with lived experience of modern slavery fluctuate over time.

Annex: Mapping of Issues Affected by Legal Advice



MODERN SLAVERY & HUMAN RIGHTS

POLICY &
EVIDENCE
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