



# **Legal Advice: Victims of Modern Slavery and Human Trafficking**

Recognising the importance of access to specialist legal advice to ensure effective support to victims of modern slavery and human trafficking, this document provides a summary of the entitlement and legal needs that victims are likely to present with, as well as a list of law firms in/around London and Hertfordshire that have experience in trafficking work and/or operate immigration legal aid contracts. This document is intended to support local lawyers and practitioners working with victims to ensure their rights are upheld in the UK. (Created July 2020)

The information used for this document has been mainly extracted from the <u>Slavery and Trafficking Survivor Care</u> <u>Standards</u>, which was produced by the <u>Human Trafficking Foundation</u> using expert contributions from across the anti-trafficking sector.

# 1. Introduction

The European Convention on Action against Trafficking in Human Beings ('the Convention') sets out minimum standard requirements for victims' identification, protection and assistance. The EU Directive on Preventing and Combating Trafficking ('the Directive') creates a legal obligation for EU Member States to provide victim-centred support that is tailored to survivors' needs and delivered for an adequate length of time. The Directive requires that victims are granted assistance which includes 'at least standards of living capable of ensuring victims' subsistence'. This includes:<sup>3</sup>

- 1) Access to a recovery and reflection period of at least 30 days to recover.
- 2) Access to safe accommodation and material assistance.
- 3) Access to translation and interpretation services.
- 4) Access to legal advice.
- 5) Access to medical services and psychological services.
- 6) Access to compensation.
- 7) Access to vocational training and employment opportunities (when a resident permit is granted).
- 8) Assistance for a safe repatriation and return.

## 2. Communication with the Victim: Importance of Confidentiality

All professionals must ensure that they **explain their professional duty of confidentiality to survivors** at their initial meeting and that this is re-emphasised and explained throughout the course of the professional relationship. The personal information and history of each survivor is extremely sensitive to them and it carries implications for their legal status in all respects and therefore for their ongoing and future safety.

Exceptional circumstances in which the duty of confidentiality may be overridden should be set out clearly in each service's policies and procedures and explained clearly to each person. They include cases in which provision of information to others is necessary to safeguard an individual(s), or for prevention and detection of crime, or is in the public interest, or where there is a legal duty to do so, for example a court order. The question of whether a disclosure is in the public interest is not a decision to be taken lightly. Solid justification is required before individual rights are set aside, and specialist or legal advice should be sought before the information is disclosed. Any decision to disclose should be fully documented.<sup>4</sup>

<u>Please Note: It is illegal for immigration advice and services to be given by anyone that is not OISC accredited. For further information, refer to the OISC website.</u>

<sup>&</sup>lt;sup>1</sup> (Cited from Arts. 10-16): The Convention was adopted by the Council of Europe in 2005.

<sup>&</sup>lt;sup>2</sup> (2011/36/EU, cited from para.18, Arts. 11-12)

<sup>&</sup>lt;sup>3</sup> For more information, refer to 'The EU Rights of Victims of Trafficking in Human Beings on the Rights and Entitlements of Trafficking Survivors' (EU Commission, 2013).

<sup>&</sup>lt;sup>4</sup> For further information see The Slavery and Trafficking Survivor Care Standards 2018 (p.28).





# 3. Victim Support: Essential Legal Advice

Early legal advice is essential to effective support of modern slavery victims. Issues are more likely to be resolved early on, potentially preventing cases ending up in costly litigation and unnecessary trauma.

Early access to specialist legal advice ensures that victims are informed and able to meaningfully consent to any decisions they take, as well as being given the opportunity to learn about their options and any time restrictions and deadlines. People who have been trafficked, or who may have been trafficked, are likely to need advice in several areas of law. It is important that support workers are able to identify these areas, and with consent, to make appropriate referrals.<sup>5</sup>

If the person would like to <u>access support via their Local Authority</u> they should be referred to a legal representative or support organisations outside of the NRM with a good understanding of benefits, housing and community care, in order for them to advocate for the individual to access support in line with their entitlements.

# 4. Referral to Legal Firms

Practitioners working with survivors that require legal advice should:6

- 1) Maintain an understanding of their client's legal matters and the processes involved to make sure that referrals are made, meetings are attended, and deadlines met.
- 2) Ensure that legal agencies being considered for referrals have legal aid contracts.
- 3) Give service users a choice of legal providers, if possible.
- 4) Explain to service users what a lawyer does and give an overview of different types of law.<sup>7</sup>
- 5) Establish if legal providers have experience of working with trafficked people and if necessary, refer them to sources of professional training such as that provided by ATLEU.<sup>8</sup>
- 6) Provide solicitors with training in trauma informed interviewing, as appropriate.
- 7) Establish and assist the victim to gather the information that legal representatives will require to accept a referral and open a case, such as evidence of means (including details of any income, expenditure and any savings).
- 8) Provide background information in respect of convention rights, including entitlements to legal aid.9
- 9) Develop and maintain good working relationships with legal representatives with expertise in trafficking and modern slavery
- 10) Be mindful of the solicitor's duty of confidentiality to their client.
- 11) Determine the status (qualification, registration and regulation) of any private lawyer that may already be instructing a victim, including fees being charged and how these are being paid.\*

\*Ensure the victim understands that they are entitled to legal aid and offer to help them to switch representative, should they wish to do so. Victims should be assisted to make complaints about their legal representative where they have failed to inform them that they are eligible for Legal Aid or where there are concerns about the advice and representation that is being provided.

## **Useful Links:**

To search for a legal aid lawyer: https://find-legal-advice.justice.gov.uk/

<sup>&</sup>lt;sup>5</sup> For further information on how support workers should engage with legal issues to facilitate meeting the legal needs of victims, see <u>The Slavery and Trafficking Survivor Care Standards 2018</u> (pp.101-102)

<sup>&</sup>lt;sup>6</sup> For further information, see The Slavery and Trafficking Survivor Care Standards 2018 (pp.101-102).

<sup>&</sup>lt;sup>7</sup> Practitioners must not give immigration advice, as this is illegal for anyone who is not a qualified immigration adviser.

<sup>&</sup>lt;sup>8</sup> ATLEU is a charity providing legal representation to victims of trafficking and labour exploitation, helping victims to obtain safety, recovery and redress.

<sup>&</sup>lt;sup>9</sup> For further information, see the Council of Europe Convention on Action Against Trafficking in Human Beings.





- To check if a victim is eligible for legal aid: 1) <a href="https://civil-eligibility-calculator.justice.gov.uk/">https://civil-eligibility-calculator.justice.gov.uk/</a> and
   2) <a href="https://www.gov.uk/check-legal-aid">https://www.lawsociety.org.uk/for-the-public/help-with-paying-legal-costs/#find</a>
- To check client feedback of a legal firm or lawyer: <a href="https://chambers.com/">https://chambers.com/</a> (Chamber and Partners Directory of Lawyers)

# 5. Areas of Legal Advice

Each victim of trafficking may need legal advice in several different areas, including the following:

- 1. Immigration
- 2. Compensation
- 3. Welfare
- 4. Housing
- 5. Community Care
- 6. Family
- 7. Public Law
- 8. Criminal Law
- 9. Entering the National Referral Mechanism
- 10. Repatriation and Voluntary Returns

## 1. Immigration

Immigration advice is regulated by the Office of the Immigration Services Commissioner (OISC) and the Law Society and must not be given by someone who is not qualified to do so. Referral to a specialist adviser <u>should be made</u> for every victim with <u>any immigration issues</u> as early as possible. This applies even if the victim appears to have decided about their immigration options because the decision may not have been informed by specialist advice.

Possible application options available to a survivor in respect of their immigration status:

- 1) Discretionary leave to remain as a victim of modern slavery.
- 2) Maintaining the status of a domestic worker who has been recognised as a victim of modern slavery.
- 3) Asylum claim.
- 4) Leave to remain in the UK based on their personal or family life.
- 5) European rights linked to family, employment and/or the <u>EU Settled Status Scheme (EUSS)</u>.

### 2. Compensation

A victim may be able to **claim compensation from their trafficker or from the state** e.g. through the Criminal Injuries Compensation Scheme (CICS). This could take place in the employment tribunal, county court or high court depending on the claim. All these claims have time limits laid down by the law, so it is best that legal advice is sought <u>promptly</u>. Refer to <u>The Slavery and Trafficking Survivor Care Standards 2018</u> for more information on supporting a victim to make an application to the CICS (p.103).

## 3. Welfare

Victims will often require **independent legal advice on their welfare entitlements**, including eligibility. In addition, due to the complexity of the system and law involved, victims will often require legal advice and representation in respect of such things as reconsideration of a negative welfare benefits decision and a welfare benefits tribunal appeal. Again, early legal advice can result in issues being resolved at an early stage which benefits both parties.

# 4. Housing

A victim with recourse to public funds may struggle to secure accommodation upon leaving safe house accommodation. They should **seek housing advice** as to their options, well in advance of their safe-house accommodation being terminated. For some survivors, moving into asylum support accommodation early on is not





the most appropriate route, due to their level of care needs. In these cases, they should be referred to a housing or community care solicitor for legal advice.

#### 5. Community Care

Adult survivors with a need for care and support may seek an assessment of their needs from local authority adult social care services. The assessment should be carried out by someone working in the local authority with suitable training and should involve consulting those with expertise in human and slavery. <sup>10</sup>

The purpose of the assessment will be to determine whether an individual is eligible for care and support and if so, what services will be provided to meet those needs. If adult survivors have complex health related needs, they may instead seek support through NHS-funded continuing care. This will also be determined by assessment. Where a survivor is assessed to be ineligible or has had negative decisions on care and/or support from health services, they may need to be referred to *a community care lawyer for legal advice and assistance* as to whether and what remedies they may have.

<u>Note:</u> The passing of the Coronavirus Act 2020 created new Care Act easements temporarily for local authorities. In a situation where these easements were utilised in the treatment of a modern slavery victim, victims would entitled to legal advice over this treatment. Further information on local authority easements can be found on the <u>UK</u> <u>Government website</u>.

### 6. Family

Family Law is not covered by legal aid <u>unless</u> there has been domestic violence. Victims may need a family lawyer, for instance in cases where the trafficker has fathered their children and is seeking custody. In such cases the support worker should establish, based on the survivor's account, if there has been domestic violence or if the trafficking equates to domestic violence. If there has been domestic violence and legal aid remains unavailable, this should be challenged, or they should seek pro bono advice.

## 7. Public Law

Public law is a general term for legal issues relating to decisions made by public bodies. This may cover many areas of law, including access to legal aid, refusal to provide housing, refusal to provide assistance, support and/or health services, unlawful detention and/or a negative decision around a person's status as a victim of modern slavery and/or human trafficking.

Challenges generally may be pursued by way of **judicial review**. For a case to result in judicial review, all other options need to have been exhausted. Early advice should help resolve these issues early. **Legal aid is available for public law cases and can be undertaken by public law lawyers or by lawyers specialising in specific areas of <b>housing, community care, mental health, and immigration law**. If UK authorities have breached a survivor's human rights through their actions, they may be entitled to pursue a claim for compensation. This requires specialist legal advice and can be funded via legal aid.

#### 8. Criminal Law

In some cases, victims may have a criminal case or prosecution against them. This could impact on other applications, such as immigration, if not resolved early on. If the criminal offence is directly linked to their trafficking/exploitative situation, victims must be advised that this may provide a statutory defence to their prosecution. The victim's legal representative should also be advised.

Victims may also be cooperating with the police in a criminal investigation or prosecution against their traffickers. Victims would normally get a victim liaison officer who ought to keep them informed of the investigation. Should a

<sup>&</sup>lt;sup>10</sup> For further information, see <u>Adult Modern Slavery Protocol for Local Authorities: Statutory Duties and Powers, Human Trafficking Foundation (2018)</u>.





decision be made not to bring a prosecution, victims have a right to request a review through the 'Victims' Right to Review' scheme (VRR). Victims may require legal advice and assistance throughout that process.

# **Registered Intermediaries**

Police officers and prosecutors are expected to consider use of a registered intermediary whenever they encounter a potentially vulnerable witness. Registered intermediaries are independent communication specialists whose purpose is to facilitate the questioning of young and vulnerable adult witnesses at police interviews and trial. Intermediaries can be used to facilitate communication in pre-trial assessments, interviews, court appearances and trials. Police and prosecution requests for intermediaries are managed by the National Crime Agency Witness Intermediary Scheme.

All intermediary appointments begin with assessment of the witness's communication needs (including emotional factors affecting communication). They then advise how best to communicate with the witness, which may include non-verbal methods. They contribute to planning how to achieve obtaining the best evidence from that witness. All children under 18 are eligible, as are adults with a mental disorder, learning disability or physical disability or disorder.

To find an intermediary in your area and make a referral request online, visit the Intermediaries for Justice (IfJ) website: 11 https://www.intermediaries-for-justice.org/find-intermediary. When a referral request is received, the request is automatically sent to all intermediaries who work in the selected area and have the appropriate skill set. Please be aware, however, that intermediaries have very full diaries and as much notice as possible will give the best chance of positive responses.

Please Note: Intermediaries owe their duty to the court i.e. they play a key role in providing access to justice - they are not advocates or supporters.

#### **Additional Support**

Victims do often require support additional support and independent advocacy in navigating the criminal justice process. If the victim is thinking about or involved in criminal justice proceedings, refer to Chapter 7: Working with the Police and Criminal Justice System (pp.108-124) of The Slavery and Trafficking Survivor Care Standards 2018, which provides further information on the *Victim Code in England and Wales* and other useful victim services.

# 9. National Referral Mechanism (NRM)

If there are no immediate safeguarding risks, people should obtain independent legal advice prior to a decision to enter the NRM in order to inform consent and for them to understand the possible legal implications of this decision. If required, it may be possible to arrange for them to be housed in a 'safe space' or other safe house accommodation during this time.

If a referral to the NRM is made, the survivor should be read the content of the NRM form in a language they understand before they sign the form. Consent can only be obtained after they have understood and agreed to the content. All survivors should be provided with a copy of the NRM form 12 at the point it is submitted and know that they can request copies in the future.

Where an adult client is having issues linked to their NRM support from The Salvation Army, there is now a designated email address/phone number that should be used for this purpose ONLY:

Email: MSTClientLegal@salvationarmy.org.uk

Phone: 0300 303 0549

## Legal Aid (Pre-NRM)

<sup>&</sup>lt;sup>11</sup> IfJ is a charity which provides an automatic referrals service between solicitors and intermediaries who have registered their details on our system.

<sup>&</sup>lt;sup>12</sup> An offline version of the NRM form can be accessed here: https://www.modernslavery.gov.uk/prompt-sheet-for-workingoffline.





Legal Aid is not automatically available at this stage but may be available on some cases. If not, it may be possible to apply for Exceptional Case Funding (ECF) for Legal Aid. Some organisations are also providing pro-bono pre-NRM advice. It is recommended that an application for ECF is made for survivors, particularly where the immigration history is more complex. An application for ECF can be made by a support worker. The application must be made in writing and signed by the survivor. For further information on what the Legal Aid Agency requires as a minimum to be included on the application, see Survivor Care Standards (p.38).

It may be possible to secure pro bono legal assistance or support to make the application. Where legal advice is available locally, or where the person has an immigration solicitor, the ECF application should be made in consultation with the legal adviser, if they have capacity to discuss this for free.

**Note**: If the lawyer is able to meet with the client and help prepare the ECF application, they are unlikely to be able to cover the cost of any interpreter that is needed, as this would not be guaranteed by Legal Aid before an ECF grant is made.

Applications can be made by email or post to:

- Post: Exceptional Case Funding Team (ECF) Legal Aid Agency (7.38) 102 Petty France London SW1H 9AJ.
- Email: contactECF@legalaid.gsi.gov.uk

### 10. Repatriation and Voluntary Returns

Where a survivor expresses a wish to be repatriated to their home country, their options and any risks should be explored with them. This may require specialist legal advice. Relevant support services and entitlements in the UK should be identified before repatriation takes place, as well as in their home country.

# 6. Legal Advice Services Available

ATLEU is a charity, which provides legal representation to victims of trafficking and labour exploitation, helping victims to obtain safety, recovery and redress. They offer numerous services to help practitioners support victims:

- Advice Line: Any practitioner can request for free support via phone (0207 700 7311) or email: <u>advice@atleu.org.uk</u>. (See <u>https://atleu.org.uk/adviceline</u> for further information on what to include in the email).
- Refer victims for legal support: https://atleu.org.uk/referrals.
- Subscribe to gain free access to the ATHUB: 13 https://athub.org.uk/.

There are law firms in/around London and Hertfordshire that have experience in trafficking work and/or operate immigration legal aid contracts. See below for the full list:

Law Firm	Contact Details
Asylum Aid	Asylum Aid Migrants Resource Centre, Berol House, 25 Ashley Road, London N17 9LJ 020 7354 9264/ info@asylumaid.org.uk http://www.asylumaid.org.uk/
Barnes Harrild & Dyer	West Croydon Office: 76 London Road, Croydon, Surrey, CR0 2TB East Croydon Office: Fourth Floor, Park House, 22 Park Street, Croydon, CR0 1YE  020 8681 5128, 07921 399 838 or 07921 399 839 enquiries@bhdsolicitors.co.uk http://www.bhdsolicitors.co.uk/
Bindmans LLP	Bindmans LLP 236 Gray's Inn Road, London, WC1X 8HB 020 7833 4433/ info@bindmans.com http://www.bindmans.com/

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<sup>&</sup>lt;sup>13</sup> ATHUB is an online information resource for professionals working with victims of trafficking. It contains information for support providers and legal practitioners on advising and representing victims of trafficking across different areas of law.





Binders Drive & Bostons	Directions Delines () Deutstand
Birnberg Peirce & Partners	Birnberg Peirce & Partners
	14 Inverness Street, London, NW1 7HJ 020 7911 0166 or 24 hr line: 020 7911 0166
	http://www.birnbergpeirce.co.uk/
Camden Community Law Centre	Camden Community Law Centre
	2 Prince of Wales Road, Kentish Town, London, NW5 3LQ
	020 7284 6510/ Admin@cclc.org.uk
	http://www.cclc.org.uk/
Deighton Pierce Glynn	Deighton Pierce Glynn (London City)
	382 City Road, London, EC1V 2QA
	t: 020 7407 0007/e: mail@dpglaw.co.uk
	https://dpglaw.co.uk/expertise/failures-to-protect/victims-of-trafficking/
Duncan Lewis	Branches in and outside of London:
	e.g. <u>Harrow Office</u>
	e.g. <u>Barnet Office</u>
	e.g. <u>Hackney Office</u>
	<u>Luton Office</u> : 6-8 Stuart Street, Luton, Bedfordshire, LU1 2SJ
	01582 932052
	033 3772 0409
	http://www.duncanlewis.co.uk/
	https://www.duncanlewis.co.uk/Human-trafficking.html
Harrow Law Centre	Harrow Law Centre
	The Lodge, 64 Pinner Road, Harrow, HA1 4HZ
	Tel: 020 8863 4355/ F: 020 8861 0737
	Eileen Bye (Solicitor)
	Project: Funding to assist EU citizens living in the UK to register under the Home
	Office settlement scheme.
Islington Law Centre	Islington Law Centre
isington Law Centre	38 Devonia Road, London, N1 8JH
	0207 288 7630 & Evening line: 0207 288 7633
	info@islingtonlaw.org.uk
	http://www.islingtonlaw.org.uk/
Luqmani Thompson	Luqmani Thompson & Partners
	77/79 High Road, Wood Green, London, N22 6BB
	020 3393 7713
	http://www.luqmanithompson.com/
	Email enquiries via website
One Pump Court	One Pump Court Chambers
one rump court	Elm Court, Temple, London, EC4Y 7AH
	T 020 7842 7070 or 24-hour Emergency Number: 07774 238444
	E clerks@onepumpcourt.co.uk
	PAROSHA CHANDRAN (Specialist Barrister)
	T 020 7842 1997
	pch@onepumpcourt.co.uk
Pickup and Solicitors	Pickup and Solicitors
	6 Bourbon Street, Aylesbury, Bucks, HP20 2RR,
	Salma Khan (Free monthly drop in - Watford and Three Rivers Refugee
	Partnership)
	01296 397794
	salma@pickupandscott.co.uk
Sutovic and Hartigan	Sutovic and Hartigan
	271 High St, London, W3 9BT
	020 8993 5544
	I .





Wells Burcombe LLP	Wells Burcombe LLP (Hertfordshire) 5 Holywell Hill, St Albans, Hertfordshire, AL1 1EU Tel: 01727 840900/ info@wellsburcombe.co.uk melissa.vangeen@wellsburcombe.co.uk https://www.wellsburcombe.co.uk/modern-slavery-human-trafficking-forced-labour/
Wilsons LLP	Wilson Solicitors LLP 697 High Road, Tottenham, London, N17 8AD 020 8808 7535 <a href="http://www.wilsonllp.co.uk/">http://www.wilsonllp.co.uk/</a> Email enquiries via website

# 7. General Advice and Support in Hertfordshire

# (i) Modern Slavery Helpline

The 24/7 national Modern Slavery Helpline is run by the charity, Unseen, and is independent, specialist and confidential, providing access to free and immediate help, support, and advice in over 200 languages. Victims can also self-refer.

Website: <u>www.modernslaveryhelpline.org</u>

• Email: www.modernslaveryhelpline.org/report

Phone: 08000 121 700

# (ii) Beacon

Independent from the National Referral Mechanism, UK Government and the police, Beacon is a free and impartial service that can provide emotional and practical support around the impact and effects of exploitation to clients in Hertfordshire. Run by the charity, Catch 22, Beacon supports their clients through allocation of a specially trained case manager. Victims can also self-refer.

Website: www.hertfordshirebeacon.org
 Email: info@hertfordshirebeacon.org
 Phone: 03000 11 55 55 (option 3)

## (iii) The Salvation Army

The Salvation Army provides a specialist support programme and 24/7 referral helpline under the NRM to protect and care for all adult victims. To access support from them, the victim must agree to enter the NRM at the point of referral. Victims can also self-refer.

Website: <u>www.salvationarmy.org.uk/modern-slavery</u>

Email: mst@salvationarmy.org.uk

Phone: 0300 303 8151

## (iv) Independent Child Trafficking Guardian (ICTG) Service

Run by Barnardo's, the ICTG Service provides direct, specialist practical and emotional support to trafficked children, facilitating their interactions with social care services, police and immigration in Wales/Cymru, East Midlands, West Midlands Combined Authorities, Croydon, Hampshire and the Isle of Wight and Greater Manchester. They also operate a 24/7 helpline, which is open for advice to all practitioners across the UK.

Website: www.barnardos.org.uk/what-we-do/protecting-children/trafficked-children

Phone: 0800 043 4303

This is a living document and will be updated when necessary. If you have guidance or information that you think should be added, please email the Partnership Coordinator: <a href="mailto:kat@shivafoundation.org.uk">kat@shivafoundation.org.uk</a>.

#### **Acknowledgements**

The information used for this document was mainly extracted from the <u>Slavery and Trafficking Survivor Care</u> <u>Standards</u>, which was produced by the Human Trafficking Foundation using expert contributions from across the anti-





trafficking sector. A full list of contributors can be found in the official <u>The Slavery and Trafficking Survivor Care Standards 2018</u>, available on the <u>Human Trafficking Foundation website</u>.

## Disclaimer

The content of this document is for general information purposes only. It does not constitute professional advice (legal or otherwise) nor should it be used as such. The <u>Hertfordshire Modern Slavery Partnership</u> stakeholders and <u>Shiva Foundation</u> cannot accept responsibility for any act and/or omission based on the material contained in it.

The list of law firms included should not be viewed as exhaustive or as recommendations. It should be viewed as a compiled list of law firms that may be able to support victims identified in Hertfordshire based on previous experience and/or known immigration work.