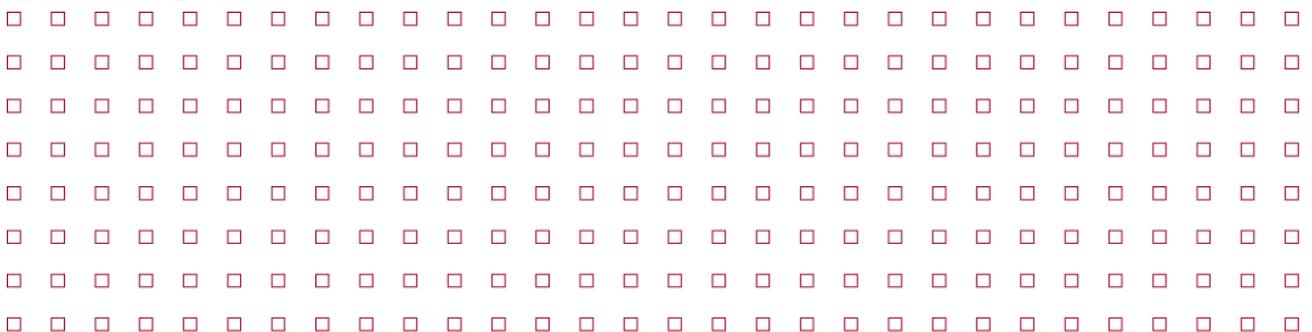




Ministry  
of Justice

# Review of Legal Help for those with Trafficking and Modern Slavery Compensation Claims (TMSCCs)

December 2016





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## **Review of Legal Help for those with Trafficking and Modern Slavery Compensation Claims (TMSCCs)**

## **Introduction**

1. The Ministry of Justice (MoJ) and the Legal Aid Agency (LAA) have carried out a focussed review of existing arrangements for providing legal aid for advice and assistance (known as Legal Help) in respect of trafficking and modern slavery compensation claims ('TMSCCs').
2. Subject to statutory means and merits tests, victims of trafficking and modern slavery are entitled under the relevant provisions of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ('LASPO') to access legal advice and assistance (Legal Help) in relation to TMSCCs including consideration of whether to bring a claim. MoJ acknowledge that access must be effective and must be capable of equipping the individual with the ability to make an informed decision about whether to bring a TMSCC.
3. Specifically, the purpose of the review is to:
  - (i) identify whether there are current barriers to effective access to Legal Help in the context of TMSCCs where the provisions of LASPO mean it should be provided;
  - (ii) if so, identify the causes of these; and
  - (iii) as a result, to consider what, if any, steps should be taken by the Lord Chancellor and/or the LAA to ensure adequate and effective access to Legal Help regarding TMSCCs. The focus is therefore on access to Legal Help and the opportunity to make an informed decision around pursuing a TMSCC, rather than whether that Legal Help results in a claim being pursued.

## **Background**

4. Trafficking and modern day slavery, along with victims and perpetrators, are defined with reference to the Council of Europe Convention on Action against Trafficking in Human Beings and s1-2 of the Modern Slavery Act 2015.
  - Modern slavery encompasses slavery, servitude, forced and compulsory labour and human trafficking. Traffickers and slave drivers coerce, deceive and force individuals against their will into a life of abuse, servitude and inhumane treatment.
  - The Modern Slavery Act 2015 defines the terms "slavery", "servitude" and "forced or compulsory labour" by reference to their definition in Article 4 of the Human Rights Convention.
  - Section 2 of the Modern Slavery Act 2015 provides for a single offence of human trafficking, defining the offence as arranging or facilitating the travel of another person with a view to that person being exploited. "Exploitation" is defined by section 3 of the Act and includes slavery, sexual exploitation and the removal or organs.
5. Criminal proceedings may be brought in respect of slavery and human trafficking offences. In addition, a victim of slavery or human trafficking may, irrespective of whether there has been a conviction, bring a civil claim. TMSCCs are claims under employment law or claims for damages, in either case arising in connection with the trafficking or exploitation of an individual who is a victim of trafficking in human beings or in connection with the conduct by which the individual is a victim of slavery, servitude or forced or compulsory labour.

## LASPO

6. LASPO sets out the matters for which civil legal services may be provided. From the date on which LASPO came into force, these included provision for victims of human trafficking to bring compensation claims against their traffickers. The Modern Slavery Act 2015 amended Part 1 Schedule 1 of LASPO to extend provision so that civil legal services would also be available for victims of slavery to bring compensation claims. These types of claim together are referred to as TMSCCs in this report.

7. For an individual to qualify for these and other civil legal aid services, they must satisfy statutory means and merits tests. The specific tests applicable depend on the nature of the application for legal aid.

8. The tests are fundamental principles of the legal aid system. The means test focusses limited resource on the most financially vulnerable and ensures that those who are most able to afford to pay for or contribute towards their legal costs do so.

9. There are 3 main levels of service under civil legal aid:

- Legal Help – the initial advice and assistance stage prior to issue of proceedings
- Investigative representation – to investigate the strength of contemplated proceedings
- Full representation – legal representation other than investigative representation and includes the issue and conduct of proceedings.

This review focused on the current legal help provision for matters involving TMSSCs.

10. Legal Help in respect of these claims can be undertaken by any provider who holds a civil legal aid contract as “miscellaneous” work.

## Miscellaneous Work

11. Civil legal services fall into categories of law as set out in the standard civil contracts. The categories are drafted to make sure that the majority of cases fall within one category or another and include Actions Against the Police; Clinical Negligence; Community Care; Family; Housing; Immigration and Asylum; Mental Health; Public Law; and Welfare Benefits. Providers are awarded an authorisation to work in one or more categories following an open tender process for different contracts.

12. Civil legal aid is also currently provided for Legal Help and Representation in a range of other areas of civil law not included in the specific categories listed above. These areas of law are classified under the civil contracts as ‘Miscellaneous Work’ for funding purposes and include, for example, civil legal aid for varying or discharging of a restraining order where the individual is at risk of danger or harassment and civil legal aid for proceedings concerning gang-related violence as well as TMSCC claims. Work in this category may be undertaken by any provider with a civil legal aid contract.

13. The number of Legal Help cases that a provider can undertake in a given period is managed through matter start limits. Thus civil legal aid providers are issued with a contract schedule which, among other matters, gives details of the number of Legal Help cases that the provider may undertake in each category of law which its contract allows it

to provide. Miscellaneous Work is not exclusive. Instead, each civil legal aid provider is permitted to allocate five of its matter starts to Miscellaneous Work cases per contract schedule per schedule period (usually the financial year). These matter starts are to be taken from a provider's allocation in other categories of law. There is not currently provision under the civil legal aid contract to increase the number of Miscellaneous Work case starts beyond 5 per schedule period.

14. Legal aid for legal representation in these matters is governed under separate arrangements. There is no contractual limit on the number of legal aid certificates that can be applied for to provide legal representation to individuals in respect of TMSCC claims and they can be applied for by providers who hold a civil contract in any category of law.

#### Research

15. Towards the end of 2013, the Anti-Trafficking and Labour Exploitation Unit (ATLEU) conducted research to ascertain the nature and extent of demand for public funding to undertake TMSCC work in England and Wales. Of the 717 providers they identified in their sample who possessed the relevant legal contracts, 174 providers responded to the survey. Of these 174, only 5 firms stated that they had experience with trafficking compensation claims. Taking into account witness statements submitted by ATLEU, estimated figures of victims wanting to pursue a TMSCC vary in number, ranging from 32 to 250 annually. Whilst this research has been considered as part of this review, neither the MoJ nor the LAA have independently verified or quality assured it.

16. On this basis, ATLEU has argued that the existing arrangements for providing legal aid in TMSCCs are insufficient. ATLEU assert that TMSCCs require specialist knowledge and the current arrangements whereby any provider can do such work only as one of their five miscellaneous matter starts mean that providers cannot be expected to employ a legal adviser with the required expertise.

17. In light of the concerns raised it was agreed that the MoJ and LAA would take forward their own analytical work in this area with a view to establishing whether the current contractual provision is adequate.

#### **Terms of the Review**

18. The purpose of this focused review was to:

- What is the demand for legal help for TMSCCs?
- Is there effective access to legal help for TMSCCs?
- What, if any, are the barriers to effective access to legal help for TMSCCs?
- What are the causes of these barriers, if they exist?
- What are the possible solutions to effective access to legal help for TMSCCs that fall within the remit of the Lord Chancellor?

19. Amongst other things, the review considered the extent to which factors outside of the legal aid scheme may limit the numbers of individuals seeking Legal Help in relation to a TMSCC.

### **MoJ Survey - Methodology**

20. The survey conducted was based in part on advice from ATLEU who, along with the Human Trafficking Foundation, were able to provide MoJ with a contact base of charities to invite to participate in the survey who are involved in supporting victims of trafficking and modern slavery.

21. Key stakeholders identified included:

- Salvation Army and support providers working under their contract;
- NGOs such as Kalayaan, Barnardos, Migrant Help, Poppy and Unseen UK;
- Croydon, Kent and Hillingdon Local Authorities as initial examples of transport hubs that the Home Office advise tend to have high experience of trafficking;
- organisations that offer services for victims outside of the victim care contract, such as Eaves and FLEX.

22. Two surveys were developed, one for legal aid providers and one for trafficking/modern slavery support organisations who assist victims at varying stages of their recovery process. The surveys aimed to address the extent of demand for Legal Help in TMSCCs, whether there is effective access to this advice, if there are barriers to access, and to consider whether the Lord Chancellor and/or the LAA should take action to ensure effective access to the service.

23. There were 110 respondents to the provider survey and 84 to the support organisation survey, not all of whom fully completed the survey. In interpreting the results it is important to note that the response rate was low and not obtained by random sample. This means it is difficult to be sure that responses are representative of the situation across England and Wales and results are relative to the survey population rather than of providers/stakeholders in general.

### **Findings**

24. Greater detail on the results of the MoJ survey and an analysis of some of the published literature is set out in Annex A. In summary, the key findings fall into 3 areas:

- an assessment of the demand for legal help for TMSCCs;
- an assessment as to effective access to legal help for TMSCCs; and
- barriers to effective access.

#### *Demand for Legal Help*

25. It is not possible to definitively analyse the potential volume of demand for legal help for TMSCCs. However, material from the MoJ survey indicates that the demand for legal help for TMSCCs outstrips the ability of some providers to provide this service. It should be stressed that the picture is not consistent, for example, of the providers who had experience of advising TMSCCs who responded to the survey only around 35% had been referred cases for Legal Help in the last 12 months.

26. Many respondents to the stakeholder survey reported an increase in the number of victims who have come into contact with their organisation in recent years, and they expect this to continue rising.

### *Effective Legal Access*

27. The survey provided evidence that there are a number of legal services providers with experience of providing advice and assistance (not necessarily funded by legal aid) regarding TMSCCs (47% [28 out of 60 respondents]), and a number of support organisations (49% [28 out of 57 respondents]) that provide information and signpost victims regarding TMSCCs. However, given the targeted nature of the survey it may be that those figures over-represent the true picture to a degree.

28. In some areas of the country, particularly London and the South, there is a greater number of experienced providers than in other areas, such as in the Midlands, the North and Wales. It may be that that in part reflects the market responding rationally to the demand for such services; alternatively, it may in part mean that in some areas there is an issue with provision.

29. Referral to relevant providers appears to often be through third sector or non-governmental support organisations.

### *Barriers to Effective Access*

The survey showed that amongst providers there is not a universal understanding that legal aid may be available for TMSCCs and there may also be a lack of experience of such claims amongst providers. In addition to the limit of miscellaneous matter starts to 5 which limits the volume of work any provider may take on, there may also be language and other cultural issues hindering some potential victims from bringing claims or from engaging with appropriate 3<sup>rd</sup> sector organisations.

30. The reasons given for the reported barriers can be summarised as follows:
- Financial viability was mentioned as an issue by a small number of providers, although it was not clear that this linked specifically to the legal aid scheme.
  - Fear, mistrust and worry on the part of the victims regarding the legal process and engaging with the authorities
  - Language barriers and lack of knowledge about the process between the victims and legal aid providers/TMSCC support services
  - According to the survey responses garnered, a small number reported an under-provision in some areas of the country of providers of Legal Help

### **Conclusion and Next Steps**

31. The available evidence suggests that the likely demand for Legal Help for TMSCCs is currently not being met. This review highlighted a number of potential problems, and solutions, to access Legal Help for TMSCCs. In addition to the inadequate number of matter starts available, It appears to be that the general lack of knowledge about the TMSCC process by both legal aid providers and trafficking and modern slavery support networks and agencies together with a possible lack of experience in these claims and a potential concern over geographic coverage are all contributing to the scarce access of Legal Help for TMSCCs for victims.

32. In summary, the evidence suggests that the likely demand for Legal Help in TMSCCs is currently not being met. This may well be as a result of not only a lack of available matter starts but also other factors identified by the results of the survey.

33. The LAA have therefore proposed introducing flexibility to increase the number of cases that legal aid providers are able to undertake each year beyond the current limit of 5 NMS per schedule for these cases. This would address ATLEU's concerns regarding the number of matter starts available to legal aid providers for TMSCC cases as well as the concern about the limit on matter starts raised in the MoJ research. It could also result in these matters becoming more attractive to legal aid providers who possess the relevant expertise.

34. There appears to be a need for wider information dissemination at all levels. This includes increasing awareness and making the process easier to understand for everybody involved.

35. An effective communication strategy would help to increase public awareness of the Legal Aid Scheme amongst victims of trafficking, whilst at the same time providing information on and how to access the scheme. This will assist in enhancing understanding of the legal process among vulnerable groups in order to encourage them to access legally aided advice and assistance for human trafficking matters.

The survey results suggest that measures such as making referral forms available in a variety of languages and providing clear and informed support/advice networks and services for victims of trafficking and modern slavery could assist in simplifying the application process and expand on the current availability of advice and assistance for these matters. These were popular potential solutions to the issue that are within the remit of the Lord Chancellor.

Further options include working with front line non-Governmental organisations such as the Salvation Army to encourage referrals to providers able to provide legally aided advice and assistance in human trafficking and modern slavery matters.

## Annex A Results of the Analysis of Published Material and MoJ Survey

### What is the demand for Legal Help for TMSCCs?

#### Background

1. The National Crime Agency and Home Office statistics indicate that the number of potential victims of trafficking (PVoTs), including the dark figure (the number of victims that do not come to the attention of the authorities), falls between 10,000 and 13,000. Not all of these victims will necessarily pursue a TMSCC.
2. According to the Council of Europe's Convention on Action against Trafficking in Human Beings, every country has a duty to identify and locate potential victims of trafficking<sup>1</sup>. The crime figures reported in the Crime Survey for England and Wales (CSEW), as well as the statistical reports released by the UK Human Trafficking Centre (UKHTC) within the National Crime Agency (NCA), provide an indicative figure of the number of victims of modern slavery, and victims of modern slavery or human trafficking (PVoTs), respectively.
3. Police recorded modern slavery crimes for the period January to December 2015 stated a figure of 501 recorded offences<sup>2</sup> of this nature<sup>3</sup>. In regards to potential victims of trafficking, the NCA conducts a 'Strategic Assessment' of the Nature and Scale of Human Trafficking, with the latest publication in 2015 recording 3,266 potential victims that year<sup>4</sup> referred to the National Referral Mechanism (NRM). This is a 40% increase on 2014 which outlined a total figure of 2,340 potential victims of trafficking identified that year that were referred through the NRM.
4. Since November 2015, specified public authorities have a duty to notify the Home Office of any individual encountered in England and Wales who they believe is a suspected victim of slavery or human trafficking<sup>5</sup>. A reported 190 cases (approximately 38 a month to date)<sup>6</sup> were recorded since its introduction; however as this initiative is quite new and awareness quite low, these numbers are expected to go up as time passes.

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<sup>1</sup> The Stationery Office. (2005). *Council of Europe Convention on Action against Trafficking in Human Beings*. Retrieved June 01, 2016, from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236093/8414.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236093/8414.pdf)

<sup>2</sup> Generally, an offence that could result in imprisonment is classed as a recordable offence.

<sup>3</sup> Crime in England and Wales Appendix Tables. (2015). *Table A4: Police recorded crime by offence, year ending March 2003 to year ending December 2015 and percentage change between year ending December 2014 and year ending December 2015*. Retrieved May 18, 2016, from <http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandanddwalesappendixtables>

<sup>4</sup> National Crime Agency. (2016). *National Referral Mechanism Statistics – End of Year Summary 2015*. Retrieved June 01, 2016, from <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>

<sup>5</sup> Home Office. (2016). *Duty to Notify the Home Office of Potential Victims of Modern Slavery*. Retrieved June 01, 2016, from: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508817/Duty\\_to\\_Notify\\_Guidance\\_\\_Version\\_2.0\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508817/Duty_to_Notify_Guidance__Version_2.0_.pdf)

<sup>6</sup> Home Office, personal communication, March 30, 2016.

5. Importantly, however, not all PVoTs will be firmly identified as human trafficking victims; for example, of the 2,340 referrals made to the NRM in 2014, only 24% (569) received a positive reasonable grounds decision<sup>7</sup> and were awaiting a conclusive grounds decision<sup>8</sup>.

6. Furthermore, the reports published by the NCA simply provide an illustrative figure of PVoTs at a snapshot in time<sup>6</sup>. Prosecution and conviction statistics further suggest that a small number of traffickers are being prosecuted for their crimes. The following table from the Justice Statistics Analytical Services department within the Ministry of Justice (cited in House of Commons Library, 2014)<sup>9</sup> illustrates the number of convictions for trafficking offences recorded between 2005 and 2011:

**Defendants found guilty at all courts for human trafficking offences, England and Wales, 2005-2011<sup>(1)(2)</sup>**

<b>Offence</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Trafficking for sexual exploitation <sup>(3)</sup>	12	15	15	24	23	10	8
Trafficking for exploitation <sup>(4)</sup>	-	6	8	-	2	6	-
<b>Total</b>	<b>12</b>	<b>21</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>16</b>	<b>8</b>

The ‘dark figure’ of victims of human trafficking

7. In 2014, Bernard Silverman, Chief Scientific Adviser to the Home Office, utilised an approach named Multiple Systems Estimation<sup>10</sup> (MSE) to estimate the ‘dark figure’ (the number of victims that do not come to the attention of the authorities) of PVoTs that are

<sup>7</sup> A reasonable grounds decision is made to establish whether someone is a potential victim of trafficking, and if positive, grants the potential victim a recovery and reflection period of at least 45 days during which they may receive accommodation and/or support under an Adult Human Trafficking Victim Care and Coordination Contract. This time allows the victim to begin recovery from their ordeal and to reflect on the next steps, including deciding if they wish to assist the police with their investigation.

<sup>8</sup> A conclusive grounds decision is made to determine whether or not the person is in fact a victim. During the minimum 45-day recovery and reflection period, the Competent Authority (CA) gathers information relating to the referral from the first responder and other sources. Close collaboration between the police and the CA is required. This additional information is used to make a conclusive grounds decision on whether or not the referred person is a victim of modern slavery. The CA’s target for a conclusive grounds decision is day 45 of the recovery and reflection period. Extensions to the 45 days can be granted where necessary.

<sup>9</sup> House of Commons Library. (2014). *Human trafficking: UK responses*. Retrieved June 01, 2016, from: file:///H:/Downloads/SN04324.pdf

<sup>10</sup> “The basic idea of MSE is as follows: Suppose you want to estimate the number of fish in a pond. You catch a number of fish (say 100), mark them in some way, and then release them. Sometime later you take a new catch (say another 100) and see how many of the second catch were part of the original first catch. If the overlap between the two catches is 20, for instance, the natural estimate of the whole population size is 500”.

unknown to the NCA's Strategic Assessment<sup>11</sup>. Silverman's use of this approach suggested that the dark figure of PVoTs actually fell between 7,000 and 10,000 victims, not including those already known to the NCA (if included this gives us the total estimated figure of 10,000 to 13,000 PVoTs). This suggests that a large number of PVoTs are going undetected, and as such are likely unable to access the help needed to exit their exploitative positions and receive justice against their abusers.

8. Despite this, it must be noted that figures obtained from the NCA's Strategic Assessment are widely understood as failing to represent the true number of victims. Although the figures obtained from the NRM are increasing year on year, it is unclear whether or not this is due to an actual increase in victims, or simply an increase in reporting due to the widening public profile of trafficking and modern slavery<sup>12</sup>. Importantly, the data available does not inform us of the following: how many victims wish to pursue a TMSCC; and how many of these victims would be eligible for Legal Help funded through legal aid, and able to find a legal aid solicitor able to do the work? It also does not provide an indication of how many victims would know their trafficker, thus enabling them to bring a claim in the first place. It does, however, provide a decent upper end estimate for the potential volumes in this area.

### **Legal Aid Provider Survey**

9. The survey aimed to establish demand by ascertaining the levels of contact legal aid providers had with victims of trafficking and modern slavery. Respondents were initially asked whether or not they had experience providing advice or representation on trafficking matters, regardless of the circumstance. Of the 110 respondents to this first question, a sizeable 59% (65 respondents) indicated that they had provided advice or representation. This was without a timeframe; the next step was to determine demand in the last 12 months.

10. Of respondents that had indicated they had experience of providing assistance to victims of trafficking and modern slavery, 35% (19 respondents) had been referred cases regarding advice and assistance for TMSCCs in the last 12 months. Around half (52% - 28 respondents) had not been referred any cases in the last 12 months. A further 7 respondents did not know whether they had been referred any cases.

11. With respect to the number of cases that had been referred, of the 19 respondents who answered that they had been referred cases in the last 12 months, 15 provided figures<sup>13</sup> on how many cases had been referred to them. The mean<sup>14</sup> number of cases referred per respondent in the last 12 months was 19. The median number cases referred

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<sup>11</sup> Silverman, B. (2014). *Modern Slavery: an application of Multiple Systems Estimation*. Retrieved May 18, 2016, from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/386841/Modern\\_Slavery\\_an\\_application\\_of\\_MSE\\_revised.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386841/Modern_Slavery_an_application_of_MSE_revised.pdf)

<sup>12</sup> UK's Inter-Departmental Ministerial Group (IDMG) on Modern Slavery. (2015). *2015 Report of the Inter-Departmental Ministerial Group on Modern Slavery*. Retrieved May 18, 2016, from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/469968/IDMG\\_Report\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469968/IDMG_Report_Final.pdf)

<sup>13</sup> 17 inputted figures, however only 15 inputted valid figures.

<sup>14</sup> The mean is the average of a set of numbers, e.g. say a set of results was 4, 6, 8, 10, the mean would be calculated by adding 4+6+8+10 and then dividing this sum by the number of results, (4), equalling 7.

per respondent in the last 12 months was 10.<sup>15</sup> The total number of cases that the 15 respondents provided figures from the last 12 months on was 292.

12. The evidence from legal aid providers appears to be that some providers have worked on trafficking matters, indicating a demand. In the last 12 months, there has been – for some providers – a demand for work on TMSCCs. Further to this, the mean and median number of cases referred to providers for TMSCCs was greater than the maximum 5 matter starts.

13. The data from the survey for these questions has some limitations. Firstly, the number of respondents was relatively small. It is likely that those that responded were those with a specific interest in trafficking matters and this may not represent demand as a whole in the market. However, from the responses we have there is enough evidence to establish that there is demand from some providers for more matter starts.

### **Stakeholder Survey**

14. The survey also had the aim of establishing demand by asking organisations about their experience of aiding victims. The data received from the survey are not reliably generalised due to the small number of respondents relative to the overall population.

**Table 1.1: ‘Q1: In what capacity do you assist victims of trafficking and modern slavery?’**

<b>Capacity in which organisations assist victims</b>	<b>Number of organisations</b>
First Responders	27
Advice Providers	35
Other	35
<b>Total</b>	<b>84</b>

15. There was a mix of responses from different types of organisations. A total of 84 organisations responded to indicate in what capacity they assist victims of trafficking and modern slavery; 27 carried out a role of first responder, 35 as advice providers<sup>16</sup>, a further 35 listed themselves as others – this may have included more research-oriented organisations. The geographical spread of respondents showed that the majority of respondents worked in London and the South.

<sup>15</sup> The median is included as a small number of large outlier figures might skew the mean. For example, in a population of 100, 99 earn £10 a day, and one earns £1,000,000 a day, the mean would be £10,010, however the median would be £10 – the middle figure. The difference between mean and median for our work is not as extreme as this example, however it is helpful to consider, and be presented with, both figures.

<sup>16</sup> Some organisations carried out the role of both an advice provider and first responder, as a result some have been counted twice in these figures.

16. There were 55 responses to the survey question asking whether they had ever referred victims to legal aid providers with a view to receiving advice and assistance for TMSCCs. A majority of 60% (33 respondents) indicated that they had. Of these respondents, in the last 12 months these organisations had a mean of 83 victims of trafficking and modern slavery – the median is significantly different at 25. What is clear from these providers is that there is some demand for their services. In total, the stakeholders that responded claimed that they had been in contact with 2740 victims.

17. These respondents were asked further about how many, in the last 12 months, of the victims that had been in contact with them would have been willing to engage with a legal provider. There were 26 responses. The mean number willing to engage was 64, representing approximately 77% of victims that had been in contact with providers. The median was 21, representing approximately 84% of those victims that had been in contact.

18. Respondents indicated that victims of trafficking and modern slavery come into contact with them by a number of routes. Respondents stated that just over a third of victims they come into contact with are referred to them via non-governmental organisations. These include referrals from the Salvation Army, the Police, social services, the NHS, safe houses, GPs, women's refuges, members of the community, advice hotlines and solicitors. 3 of the 78 responses stated that victims are referred using the National Referral Mechanism (NRM). Given that many of the respondents who completed the survey are trafficking and modern slavery support organisations themselves, it may be that a self-sustaining network of provision is being created amongst these organisations.

19. Of the 53 respondents that gave their views on whether the number of victims who have come into contact with their organisation has changed in recent years, and if they expect it to change in future, the majority of respondents stated that the number has increased, and they expect it to continue increasing in the future. The cited reasons for this increase included the increasing knowledge of trafficking and modern slavery by the local community and professionals; the increased outreach of certain organisations; and the expansion in staffing and resources for certain organisations.

### **Is there effective access to legal help for TMSCCs?**

Effective access to Legal Help for TMSCCs requires an ability, preparedness, and willingness by providers to offer these services. It also requires that the system functions in a way that works in the best interests of victims, this can be aided by a support network of organisations helping to point victims in the right direction for Legal Help. The survey gives insight into establishing these requirements.

### ***Legal Aid Provider Survey***

20. An indication of the ability and preparedness of providers to offer Legal Help is if they have a background in this line of work. Of all respondents to the survey, 59% (65 respondents) indicated that they had experience in providing legal advice or representation to victims of trafficking in any matter. Of these respondents who had experience, 47% (28 out of 60 respondents) indicated that they currently had legal expertise to provide assistance and advice under Legal Help for TMSCCs – 42% (25 respondents) indicated that they did not have the necessary expertise. 11% did not know whether they had the expertise or not. There were 27 responses to the question of how many staff they had with the relevant expertise. The mean number of staff was approximately 10, the median was 5.

21. If providers are not aware that Legal Help is available for TMSCCs, then this could hinder the preparedness and ability of providers to offer help. Of all those that responded, 46% (50 respondents) were aware that Legal Help was specifically available for TMSCCs, whilst 54% (58 respondents) were unaware. Of the 63 respondents that claimed they had experience in trafficking work and gave an indication of their awareness of the availability of Legal Help for TMSCCs, 37% (23 respondents) did not know that Legal Help was available for TMSCCs. Victims might struggle with access to launching a TMSCC if the providers themselves are unaware of the funding available.

22. A further consideration to make is how victims got in contact with the providers. The vast majority of respondents stated that victims are normally referred to them by both governmental and third sector organisations. These include referrals from the police, social services, healthcare professionals, immigration departments and local authorities. Additionally, 3 of the 16 responses stated that they received referrals from trafficking and modern slavery support organisations. Stakeholders that respondents named as receiving referrals from included The Salvation Army, Kalayaan, Refuge and Hope for Justice.

23. Those taking the survey were asked whether in any circumstance they were unable or unwilling to provide advice and assistance in the last 12 months. There were 7 responses indicating they were unable to provide advice and assistance funded by legal aid; there were 2 that indicated that they were unwilling. The one respondent who provided a reason stated that the victim was ineligible for funding having failed the means test.

24. If a provider was unable or unwilling to provide advice and assistance to victims, but it was able to point victims in the direction of another legal aid provider that was able and willing to, then this could be evidence of effective access. There were 14 responses to a question asking this. Of these, 3 respondents said they had considered referring on, and were able to. There were 5 respondents that said that whilst they had considered referring cases on, they were unable to. A further 5 indicated that they had not considered doing so, with 1 saying that they did not know. There were very limited responses as to the reasons why. There were only two responses, with the only clear response citing that they used their miscellaneous matter starts on other things.

### ***Stakeholder Survey***

25. Organisations working as first responders or advice providers, as well as in other roles, can help victims to access Legal Help effectively. The stakeholder survey provided insight into how effective the system is.

26. As with providers, awareness that TMSCCs can be funded through legal aid is important to determine whether there is effective access. There were 82 responses from stakeholders as to whether they were aware of TMSCCs. The majority, 71% (58 respondents), were aware that TMSCCs were available. The other 29% were unaware. Of those that were unaware and provided a response regarding whether or not they would refer cases on, the vast majority, 96% (23 respondents), would consider referring victims to legal aid providers.

27. It can be argued that if there are more organisations that have a background in referring victims to legal aid providers that there is likely more effective access to Legal

Help<sup>17</sup>. There were 57 responses to the question of whether the stakeholder currently provided advice of any kind to victims of trafficking or modern slavery on how to make compensation claims. The results were split, with 49% (28 respondents) saying that they did, and 49% saying they did not. A further respondent indicated that they did not know. Respondents were asked what type of advice their organisation offers victims of trafficking and modern slavery.

28. Of those that responded, the majority of respondents stated that they provide information on the overall process of pursuing a TMSCC, and their rights to access compensation and legal aid. Respondents also stated that they signpost victims to solicitors who could help them pursue a TMSCC and some fill in any relevant forms that victims may need to begin their application.

29. To what extent stakeholders refer victims onto providers is another area to look at when determining how effective access to Legal Help is. There were 55 responses to whether their organisation had ever referred victims to legal aid providers to seek legal advice and assistance in TMSCCs, with 60% (33 respondents) indicating that they had. Those that had were asked to describe the process of referring a victim to a legal aid provider. 6 respondents outlined that they refer victims directly to legal aid providers. 5 respondents stated making an appointment for the victim with a legal aid provider, with 4 of the 26 responses received stated that they fill in the referral form for victims and make a referral on their behalf; referred to as a 'supported referral'. 2 respondents reported going so far as to accompany the victim to the appointment. One respondent mentioned that they refer victims directly to ATLEU, whilst another respondent stated that they refer victims with great difficulty due to the lack of solicitors with the expertise in this area outside of London.

30. The system needs to be sustainable to cope with future potential increases in TMSCC claims, as awareness of trafficking grows. Stakeholders were asked whether the number of victims in contact with their organisation had changed in recent years, and whether they expected it to change in the future. There was a general consensus amongst stakeholders that the number of victims coming into contact with their organisation had increased, and they expect this to increase in future.

### **What, if any, are the potential barriers to effective access to legal help for TMSCCs?**

#### ***Legal Aid Provider Survey***

31. Some providers lack expertise and experience in providing Legal Help for TMSCCs. Of the 110 respondents to the survey, 41% (45 respondents) did not have any experience in providing legal advice or representation to victims of trafficking. Further, of the 104 respondents that gave an indication of their trafficking expertise, 48% (50 respondents) did not currently have the legal expertise to provide advice and assistance under Legal Help for TMSCCs. If a victim were to approach a provider that did not have the expertise or experience, this may hinder their ability to access Legal Help for TMSCCs.

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<sup>17</sup> Only if they referred cases to providers with the ability to carry out this work or who could refer the case on to another provider in a decent geographical location that could do that work.

32. Some providers are unaware Legal Help for TMSCCs is available. Over half of the 108 respondents that indicated whether they were aware Legal Help was available for TMSCCs, 54% (58 respondents) were unaware that Legal Help was available. A victim who approaches a provider who is unaware that Legal Help is available may find that this is a barrier.

33. A small number of providers indicated that they have been unable to provide advice and assistance. Of the 22 providers that had been referred cases in the last 12 months, 7 said that they had been in the position where they were unable to provide advice and assistance. As solicitors are not compelled to take on work, this could prove another barrier to victims seeking help. Two respondents made comments about having pursuing a grant of funding through an alternative for of civil legal service, investigative representation and obtaining funding from the Trust for London.

34. An even smaller number providers indicated that they have been unwilling to provide advice and assistance. Of the 22 providers that had been referred cases in the last 12 months, a total of 2 respondents indicated that they have been in some circumstances unwilling to provide advice and assistance. As before, this may present a barrier to a victim.

35. A small number of providers were unable to refer cases they that were unable or unwilling to take onto another provider. 5 respondents indicated that they wanted to refer a case on but were unable to do so. One respondent stated that...

*“we were unable to find providers who had not already exhausted [their] allocation of 5 matter [starts] and none willing to undertake the vast amount of pro bono work required to obtain Investigative Representation”.*

Furthermore, 5 indicated that they did not consider doing this. If a victim hits a brick wall then that could mean that there is not effective access for Legal Help.

36. Some areas of the country might be lacking in providers that have experience in trafficking matters. Of the 37 respondents that indicated that they had experience in trafficking matters and gave an answer to the geographical area that they provide legal aid in, the majority, 51% (19 respondents) provide Legal Help in London only. There were only two respondents that indicated that they offered Legal Help in the Midlands, and 3 that offered Legal Help in Wales. If a victim is a location that has an undersupply of providers that can help, this could be a geographic barrier to advice and assistance.

### **Stakeholder Survey**

37. A significant number of stakeholders do not currently provide advice (both legal and non-legal) on how to make a TMSCC. Of the 57 respondents that answered whether they gave any advice to victims seeking TMSCCs, nearly half, 49% (28 respondents) indicated that they do not provide advice of any kind to victims on how to make a TMSCC. This could present a barrier, especially if this is the first contact that a victim has.

38. Some stakeholders are unaware that Legal Help was available for TMSCCs. Out of 82 respondents, 29% (24 respondents), indicated that they were unaware that Legal Help was available. This could present an obvious barrier to victims. However, this is a smaller portion than legal aid providers.

39. Some victims may be unwilling to engage with legal aid providers. 54 respondents gave reasons as to why victims might be unwilling to engage with legal aid providers. If an individual is unwilling to engage then this presents a barrier. An extensive description of the reasons are set out in Research Question 4.

40. Some victims have been unable to engage with legal aid providers. 53 respondents gave reasons as to why victims might be unable to engage with legal aid providers. If an individual is unable to engage then this presents a barrier.

41. Some areas of the country do not have a large number of legal aid providers able to take on TMSCC work. In a similar point to the geographic spread of legal aid providers, of the 27 respondents that provided their operating location, London with 27 respondents had the highest concentration of organisations. If a victim in an area with a lower number of organisations is unable to find a first responder or an advice provider, this might present a barrier to effective access to Legal Help.

### ***Legal Aid Provider Survey***

42. Of the 28 respondents that indicated that they would not consider providing advice under their 'miscellaneous' matter starts, 25 offered a reason as to why. These included

- A lack of expertise, trained staff or experience in the area was the main reason offered by 10 respondents;
- A lack of capacity under the contract was cited by 7 respondents as a reason as to why they would not provide advice and assistance. Taking on a TMSCC would mean reallocating some of their other matter starts under the Miscellaneous category;
- A number of respondents (3) claimed that the TMSCCs would not be financially viable for their organisation. Respondents did not make a distinction between whether or not this is due to the legal aid scheme, or more generally.

43. When respondents were specifically asked if they were **unwilling** to provide advice and assistance funded through legal aid in any circumstance, 9 of the 12 respondents stated that they were not unwilling in any circumstances. Only 2 respondents stated that they were unwilling.

44. When respondents were asked if they were **unable** to provide advice and assistance funded through legal aid in any circumstance, half of the respondents (6 out of 12) stated that they were unable. Particularly, 2 respondents stated that clients were unable to provide the means information and so were unable to complete the legal aid application, and one respondent stated that they ran out of matter starts and so were unable to take on the work.

45. When respondents were asked why they were unable to refer TMSCC cases on to other legal aid providers, responses included insufficient legal aid providers in their area with the expertise, or the time, to take the cases on, and insufficient providers with available matter starts to take the cases on. One respondent also mentioned that they were unaware of any providers who were willing to undertake the pro bono work required to obtain Investigative Representation.

### **Stakeholder Survey**

46. There were a large number of responses from stakeholders regarding why, in their experience, victims of trafficking and modern slavery might be unwilling or unable to engage with legal providers.

47. The main reason cited by stakeholders (37 respondents) was fear and distrust of the authorities (such as the police), as well as fear of reprisal by the traffickers. In addition, respondents cited that victims might be scared of the legal process and worry about the consequences of pursuing a TMSCC.

48. A lesser cited reason (4 respondents citing directly, others indirectly) was the length and complexity of the process. This is understandable if for many of those trafficked or forced into slavery English is not their first language. A number of stakeholders (14 respondents) cited language barriers as being one of the main reasons that victims are unable to access legal advice; though in respect of legal aid providers they would be able to claim a disbursement for the use of an interpreter.

49. A small number (5 respondents each) cited a lack of legal aid providers, particularly outside of London, and a lack of funds as preventing victims from accessing legal services. One respondent stated that victims looking to pay privately may... *“resort to exploitation to make money to pay for legal advice, usually quite poor legal advice”*.

50. The survey offers some insight into when, in the respondents' experience, in a victim's recovery process seeking compensation might arise as a potential option. There were 53 responses, (3 of which answered with a “don't know” response):

- Approximately a fifth of respondents suggested that once a victim is more settled, i.e. their immigration, housing, mental and/or physical health issues have been resolved is when they are more likely to seek Legal Help for a TMSCC;
- 4 respondents suggested that at the beginning of, during, or after the victim's trial against their trafficker is when some victims may feel ready to pursue a TMSCC;
- 3 respondents also stated that many victims feel ready at the end of the 45 day period when the relevant authorities are deciding whether or not the victim can be granted a reasonable grounds decision<sup>18</sup>, possibly due to the stability and security that this period offers the victim to help them with their recovery;
- 6 respondents stated that it can vary; there is no set time that victims may feel ready to pursue a TMSCC and this is individual and unique to each victim;
- A number of respondents stated that victims may feel ready to seek compensation *“several months later”* or *“some time after”* their exploitation has ended, *“depending on the hardship endured by the victim”*.

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<sup>18</sup> A reasonable grounds decision is made to establish whether someone is a potential victim of trafficking, and if positive, grants the potential victim a recovery and reflection period of at least 45 days during which they may receive accommodation and/or support under an Adult Human Trafficking Victim Care and Coordination Contract. This time allows the victim to begin recovery from their ordeal and to reflect on the next steps, including deciding if they wish to assist the police with their investigation

A number of respondents were keen to emphasise the impact that not being able to access Legal Help has on victims. Respondents stated that many victims become depressed, distrustful, disengaged, completely give up, go underground, seek 'unscrupulous' lawyers to take on their case, or even return to their exploitative situations.

### **MoJ suggestions for possible solutions**

- Introducing flexibility to increase the number of cases that legal aid providers are able to undertake each year beyond the current limit of 5 NMS per schedule to deal with these cases.
- A commitment to increasing awareness and raising the public profile of the legal aid scheme amongst victims of trafficking, civil legal aid providers and NGOs through an effective communication strategy. MoJ and LAA will work together in order to determine how best to achieve and deliver this communication strategy. Given the general lack of awareness identified as a result of the review, our expectation is that this will involve:
  - a) Communications to civil legal aid providers via the LAA Bulletin.
  - b) Consideration on how best to communicate availability to victims directly.
  - c) Working with the Home Office to assess how best to identify and communicate with non-governmental organisations and local authorities who are on the front line and often the first point of contact for victims.
  - d) The LAA incorporating additional content on their gov.uk pages.
- Making referral forms available in a variety of languages and provide clear and informed support/advice networks and services for victims of trafficking and modern slavery.
- Work with front line non-Governmental organisations such as the Salvation Army to encourage referrals to providers able to provide legally aided advice and assistance in human trafficking and modern slavery matters.





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