



# EVALUATION REPORT

## UNITED KINGDOM

### Third evaluation round

#### **GRETA**

Group of Experts  
on Action against  
Trafficking  
in Human Beings

Access to justice  
and effective remedies  
for victims of trafficking  
in human beings

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Secretariat of the Council of Europe Convention  
on Action against Trafficking in Human Beings  
(GRETA and Committee of the Parties)  
Council of Europe  
F-67075 Strasbourg Cedex  
France

[trafficking@coe.int](mailto:trafficking@coe.int)

[www.coe.int/en/web/anti-human-trafficking](http://www.coe.int/en/web/anti-human-trafficking)

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## Executive summary

Since the second round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, the legislative, institutional and policy framework for action against trafficking in human beings in the UK and its constituent jurisdictions has undergone a number of changes. As a result of an independent review of the Modern Slavery Act 2015, the UK Government committed to strengthen transparency in supply chains laws, appoint an international Modern Slavery and Migration Envoy, and continue to roll out the Independent Child Trafficking Guardians (ICTG). In October 2017, the UK Government announced a range of reforms to the National Referral Mechanism (NRM) and in 2020, the Home Office embarked on an NRM Transformation Programme which aims to increase the effectiveness of the decision making and identification process. In April 2020, a new Statutory Guidance was published, setting out the roles and responsibilities of actors involved in the NRM. Further, in March 2021, the UK Government announced a review of the 2014 Modern Slavery Strategy. In Northern Ireland, the Department of Justice published the Multi-agency Modern Slavery Strategy 2019-2020, and in Scotland, a Trafficking and Exploitation Strategy was published in May 2017.

The number of potential victims has considerably increased over the years (from 1,182 in 2012 to 10,627 in 2019), as well as the proportion of male victims referred to the NRM (68% of the possible victims). There has been also a significant increase of the number of child victims, mostly due to the growth in trafficking for the purpose of forced criminality in particular in "County lines" cases.

The focus of the third evaluation round of the Convention being on trafficking victims' access to justice and effective remedies, the report analyses in detail the implementation of provisions of the Convention establishing substantive and procedural obligations relevant to this topic.

The provision of information on rights to victims of trafficking takes place at different stages and is provided by different bodies. Stressing that victims should be provided with information on rights in a manner which takes into account their cognitive skills and psychological state, GRETA considers that the UK authorities should strengthen the systematic provision of information to potential victims of trafficking regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking.

GRETA also urges the UK authorities to take further steps to ensure that victims, and in particular children, receive legal assistance during the identification process and are properly informed of their rights and options before entering the NRM, and that access to free legal aid is ensured across the UK and granted in a timely manner.

GRETA considers that the UK authorities should guarantee timely access of victims of trafficking to psychological assistance and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion. Further, the UK authorities should strengthen effective access to the labour market for victims of trafficking, including those who are also asylum seekers, and their economic and social inclusion through the provision of vocational training and job placement.

While welcoming the availability of a range of legal avenues to claim compensation, GRETA is concerned by the low number of victims of human trafficking who have received compensation from either the perpetrators or the state. GRETA urges the UK authorities to make additional efforts to guarantee effective access to compensation for all victims of trafficking, including those who are undocumented migrants. In this context, GRETA also urges the authorities to enable all victims of trafficking, including undocumented migrants, to exercise their right to compensation, including by reviewing the "illegality defence", the Family Worker Exemption and the "live in domestic workers exemption".

GRETA welcomes the increase in investigations and prosecutions following the entry into force of the MSA but is concerned by the fact that their number remains low compared to the number of identified victims. Cuts to the criminal justice system and lack of resources contribute to low prosecution and conviction rates of perpetrators. GRETA considers that the UK authorities should strengthen the conduct of financial investigations with a view to securing confiscations and compensation of victims, and ensure that the length of court proceedings in cases of trafficking of human beings is reasonable.

GRETA notes that there is still insufficient understanding of the statutory defence among investigators, prosecutors and judges, and insufficient attention is being given to the issue of trafficking among the prison population. GRETA urges the UK authorities to ensure that the non-punishment provision is capable of being applied to all offences that victims of trafficking were compelled to commit, and that the allocation of the burden of proof does not substantially hinder the application of that provision.

GRETA welcomes the UK authorities' commitment in preventing and eradicating human trafficking from businesses and supply chains, including in the public sector, and considers that the authorities should make full use of the existing legislation and further develop it by introducing mandatory sanctions for companies which fail to comply with their due diligence obligations under the MSA.

The report examines progress made on the implementation of previous GRETA recommendations on selected topics. While welcoming the steps taken to prevent and combat trafficking for the purpose of labour exploitation, GRETA considers that the UK authorities should further strengthen the remit and capacity of labour market inspectorates and take measures to reduce labour exploitation among overseas domestic workers. GRETA also asks the authorities should continue to monitor the impact of Brexit and the COVID-19 pandemic on labour exploitation.

While welcoming the setting-up of the Single Competent Authority and the improvements in the identification of victims of THB, GRETA is concerned by the excessive length of the procedure for granting victim status and the obstacles in the identification of victims of trafficking who are irregular migrants. GRETA urges the UK authorities to take further steps to improve the identification of victims of trafficking, including by ensuring that the identification process has a reasonable duration, providing appropriate funding for the recruitment of new staff, and making the process more efficient.

In the period following the second evaluation by GRETA, the Government has increased support for confirmed victims in England and Wales from 45 days to a minimum of 90 days through the Modern Slavery Victim Care Contract (MSVCC). GRETA makes recommendations to address the remaining gaps. In particular, GRETA considers that the UK authorities should take additional steps to ensure that victims of trafficking are provided with adequate support and assistance for as long as required and involving survivor organisations in the design and delivery of assistance to victims of trafficking.

GRETA welcomes the rolling out of the Independent Child Trafficking Guardians (ICTG) scheme, which as of May 2021 covers two third of local authorities across England and Wales. Nevertheless, GRETA considers that the UK authorities should make the ICTG scheme operational across the whole territory in England and Wales, ensure that the NRM process is in line with trafficked children specific needs, set up a system for tracking re-trafficked children, and ensure long-term support and adequate assistance in the transition to adulthood, in order to reduce the risk of re-victimisation.

Finally, GRETA is concerned that residence permits ('Discretionary Leave to remain') are granted only in a small number of cases and for a short period, which does not ensure the needed stability and does not provide victims of trafficking, especially children, with a durable solution. GRETA urges the UK authorities to ensure that all victims of human trafficking who have received a positive Conclusive Grounds decision and whose immigration status and personal situation require it are issued a renewable residence permit, in accordance with Article 14(1) of the Convention. GRETA also urges the UK authorities to review the victim return and repatriation policies in order to ensure compliance in law and practice with Article 16 of the Convention.

## Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) was established pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party.

In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions of the Convention on which the evaluation procedure is based.

The first round of monitoring of the Convention provided an overview of its implementation by State Parties. The second evaluation round of the Convention examined the impact of legislative, policy and practical measures on the prevention of trafficking in human beings, the protection of the rights of victims of trafficking, and the prosecution of traffickers, paying particular attention to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking.

GRETA has decided that the third evaluation round of the Convention will focus on trafficking victims' access to justice and effective remedies, which is essential for victims' rehabilitation and reinstatement of rights, and reflects a victim-centred and human-rights based approach to the fight against human trafficking. A number of provisions of the Convention establishing substantive and procedural obligations are relevant to this topic, in particular articles 12, 15, 23, 26, 27, 28, 29, 30 and 32.

Access to justice and effective remedies is contingent on the fulfilment of a number of preconditions, including prompt and accurate identification of victims of trafficking, the provision of a recovery and reflection period, the availability of material, psychological, medical and legal assistance, access to translation and interpretation, when appropriate, regularisation of the victim's stay, the right to seek and enjoy asylum, and full respect for the principle of *non-refoulement*. These preconditions, corresponding to various provisions of the Convention, have been examined at length during the first and second evaluation rounds of monitoring of the Convention. Consequently, GRETA has decided to ask each State Party for an update on the implementation of GRETA's previous recommendations on selected topics through a separate country-specific part of the questionnaire. GRETA's findings and analysis of these topics are presented in a separate chapter.

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## List of acronyms

ATMG	Anti-Trafficking Monitoring Group
AVRR	Assisted Voluntary Returns and Reintegration
CICA	Criminal Injuries Compensation Authority
CICS	Criminal Injuries Compensation Scheme
CJA	Criminal Justice Advisors
COPFS	Crown Office and Procurator Fiscal Service
CPS	Crown Prosecution Service
DL	Discretionary Leave
ECF	Exceptional Case Funding
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EEA	European Economic Area
EWCA	England and Wales Court of Appeal
EU	European Union
EUSS	EU Settlement Scheme
FLEX	Focus of Labour Exploitation
GLAA	Gangmasters Labour Abuse Authority
GRECO	Group of States against Corruption
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services
HMRC	Her Majesty's Revenue and Customs
HSE	Health and Safety Executive
HTF	Human Trafficking Foundation
IASC	Independent Anti-Slavery Commissioner
ICTG	Independent Child Trafficking Guardians
IE	Immigration Enforcement
ILR	Indefinite leave to remain
IOPC	Independent Office for Police Conduct

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JBTF	Joint Border Task Force
JIT	Joint Investigation Team
JMLIT	Joint Money Laundering Intelligence Taskforce
JRS	JustRight Scotland
JSTAC	Joint Slavery and Trafficking Analysis Centre
LAA	Legal Aid Agency
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
MSA	Modern Slavery Act
MSHTU	Modern Slavery Human Trafficking Unit
MSOIC	Modern Slavery and Organised Immigration Crime
MSVCC	Modern Slavery Victim Care Contract
NCA	National Crime Agency
NATMSN	National Anti-Trafficking and Modern Slavery Network
NCA	National Crime Agency
NHS	National Health Service
NPCC	National Police Chiefs' Council
NRM	National Referral Mechanism
ONS	Office for National Statistics
PCC	Police and Crime Commissioner
PHE	Public Health England
POCA	Proceeds of Crime Act
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
RNA	Recovery Needs Assessment
SCA	Single Competent Authority
STPO	Slavery and Trafficking Prevention Orders
STRO	Slavery and Trafficking Risk Orders
TARA	Trafficking Awareness Raising Alliance
TEPO	Trafficking and Exploitation Prevention Order



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TERO	Trafficking and Exploitation Risk Order
UKFIU	UK Financial Intelligence Unit
VCS	Victim Contact Scheme
VLU	Victim Liaison Unit
VRS	Voluntary Returns Service
WCU	Witness Care Unit
WPGA	WePROTECT Global Alliance

## I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for United Kingdom on 1 April 2008. GRETA’s first evaluation report on United Kingdom was published on 12 September 2012,<sup>1</sup> and the second evaluation report on 7 October 2016.<sup>2</sup>

2. On the basis of GRETA’s second report, on 4 November 2016, the Committee of the Parties to the Convention adopted a recommendation to the UK authorities,<sup>3</sup> requesting them to inform the Committee within a one-year period of measures taken to comply with the recommendation. The report submitted by the UK authorities was considered at the 22nd meeting of the Committee of the Parties (9 February 2018), and was made public.<sup>4</sup>

3. On 3 October 2019, GRETA launched the third round of evaluation of the Convention in respect of the UK by sending the questionnaire for this round to the UK authorities. The deadline for submitting the reply to the questionnaire was 3 February 2020, and the authorities’ reply was received on 28 February 2020.

4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the UK authorities,<sup>5</sup> their above-mentioned report to the Committee of the Parties, as well as information received from civil society. GRETA was prevented from carrying out a physical visit to the UK due to the sanitary and travel restrictions imposed as a consequence of the COVID-19 pandemic. Mindful of the importance of proceeding with the third evaluation of the UK without further delay, GRETA decided to hold a series of online meetings from 28 September to 5 October 2020, maintaining the option of organising a targeted physical visit whenever possible. The meetings were conducted by a delegation composed of:

- Mr Davor Derenčinović, President of GRETA at the time of the visit;
- Ms Helga Gayer, Second Vice-President of GRETA at the time of the visit;
- Ms Petya Nestorova, Executive Secretary of the Convention;
- Ms Daniela Ranalli, Administrator in the Secretariat of the Convention.

5. The GRETA delegation held online meetings with Dame Sara Thornton, Independent Anti-Slavery Commissioner, Chief Constable Shaun Sawyer, National Police Chiefs’ Council Lead for Modern Slavery, officials from the Home Office, the Foreign, Commonwealth and Development Office, the Crown Prosecution Service, the National Crime Agency, the Gangmasters Labour Abuse Authority, the Legal Aid Agency, the Criminal Injuries Compensation Authority, the Local Government Association, as well as Independent Child Trafficking Guardians.

6. In Northern Ireland, GRETA held online meetings with Ms Naomi Long, Minister of Justice, as well as with officials from the Department of Justice, the Department of Health, the Health and Social Care Board, the Police Service of Northern Ireland, the Public Prosecution Service and the Legal Services Agency. Meetings were also held with Ms Koulla Yiasouma, Commissioner for Children and Young People for Northern Ireland, and representatives of the Northern Ireland Human Rights Commission.

<sup>1</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168067a080>

<sup>2</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abcdc>

<sup>3</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b7f34>

<sup>4</sup> <https://rm.coe.int/cp-2017-33-rr2-gbr-en/16807647ce>

<sup>5</sup> <https://rm.coe.int/reply-from-the-united-kingdom-to-the-questionnaire-for-the-evaluation-/16809eee04>

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7. In Scotland, GRETA held online meetings with officials from the Scottish Government, the Crown Office and Procurator Fiscal Service, Police Scotland, the Scottish Legal Aid Board, the Scottish Guardianship Service, and the Convention of Scottish Local Authorities. A meeting was also held with members of the Scottish Parliament Cross Party Group on Human Trafficking.
  8. In Wales, the GRETA delegation held online meetings with Mr Stephen Chapman, the then Anti-Slavery Co-ordinator for Wales, and members of the Wales Anti-Slavery Leadership Group and the Wales Anti-Slavery Delivery Group.
  9. Separate meetings were held with representatives of non-governmental organisations (NGOs), lawyers representing victims of human trafficking, and survivors of human trafficking.
  10. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in Appendix 2 to this report. GRETA is grateful for the information provided by them.
  11. GRETA is grateful for the assistance provided in the organisation of the programme of online meetings by the contact person appointed by the UK authorities at the time of the evaluation, Ms Alice Ravenscroft of the Home Office Modern Slavery Unit, as well as by Mr Stephen Chapman, the then Anti-Slavery Co-ordinator of the Welsh Government, Mr Collan Cree of the Department of Justice of the Northern Ireland Executive, and Mr Gordon Smith of the Human Trafficking Team of the Scottish Government.
  12. The draft version of the present report was approved by GRETA at its 40th meeting (22-26 March 2021) and was submitted to the UK authorities for comments. The authorities' comments were received on 16 June 2021 and were taken into account by GRETA when adopting the final report at its 41st meeting (5-8 July 2021). The report covers the situation up to 8 July 2021; developments since that date are not taken into account in the following analysis and conclusions. GRETA's conclusions and proposals for action are summarised in Appendix 1.

## II. Overview of the current situation and trends in the area of trafficking in human beings in the United Kingdom

13. The number of possible victims of trafficking in human beings (THB) referred to UK's National Referral Mechanism (NRM) has grown considerably over the years: 3,804 in 2016, 5,141 in 2017, 6,986 in 2018, and 10,627 in 2019.<sup>6</sup> The 52% increase in referrals between 2018 and 2019 is the largest year-on-year increase since the NRM inception in 2009. In the first quarter of 2020, there was a 14% decrease in the number of referrals to the NRM from the previous quarter, and the second quarter of 2020 saw the second successive quarter-on-quarter decrease (-23%), which could be attributed to the effects of the COVID-19 pandemic. However, in the third and fourth quarter of 2020, the number of referrals increased, their total number reaching 10,613 for the year 2020.<sup>7</sup>

14. The proportion of male victims referred to the NRM has increased over the years. Of the possible victims referred to the NRM in 2019, 68% (7,224) were male, 32% (3,391) were female, one victim was transgender and the gender of 11 victims was not known. In 2019, 125 nationalities of possible victims were referred to the NRM. The largest number of referrals were of UK nationals, accounting for 27% (2,836), followed by Albania (1,705 referrals), Vietnam (887 referrals), China and India.<sup>8</sup> The majority (6,564) of the possible victims referred to the NRM claimed they were exploited in the UK only, 2,762 claimed to have been exploited overseas only, and 817 were exploited both in and out of the UK.

15. Further, there has been a significant increase of the number of children referred to the NRM: 1,279 in 2016, 2,116 in 2017, 3,128 in 2018, 4,550 in 2019, and 4,946 in 2020. The most common country of origin of child victims referred to the NRM in 2019 was the UK (52%), followed by Vietnam (9%), Eritrea (6%), Albania (6%) and Sudan (5%).<sup>9</sup> The vast majority of children were identified as possible victims in England (92% of child referrals). There were 174 children identified in Wales, 156 in Scotland and 16 in Northern Ireland. In the second quarter of 2020, for the first time ever, there were more NRM referrals of children than adults (58% of total referrals). The high proportion of British children is linked to the growth in exploitation for the purpose of forced criminality, in particular in "County Lines" cases.<sup>10</sup>

16. Prior to 1 October 2019, the most common form of exploitation for both adults and children was recorded as labour exploitation.<sup>11</sup> Since 1 October 2019, as a result of changes made to the way in which different types of exploitation are recorded, exploitation for the purpose of forced criminality started being recorded separately from labour exploitation and multiple exploitation types can be recorded for each referral. Labour exploitation continues to be the most common exploitation type for adult victims. Sectors considered at high risk include, but are not limited to, the garment industry, construction, hospitality (including cleaning and catering), domestic work, car washes, nail bars, waste management, logistics and warehousing (including packaging). Victims are often exploited in multiple ways, for instance a victim of forced labour is also often subject to financial exploitation including bank fraud, welfare benefit fraud, forced begging or shoplifting. In some forced labour cases, victims are also subjected to domestic servitude and sexual exploitation. There has been an increased trend of using social media and online platforms to recruit victims. In terms of sex trafficking, there has been a shift with the use of online platforms such as Adultwork. Traffickers can move victims quickly between residential properties ("pop up brothels") and

<sup>6</sup> In the previous reporting period, the number of referrals was, respectively, 1,182 in 2012, 1,746 in 2013, 2,328 in 2014, and 3,262 in 2015. In August 2019, a digital referral form was introduced with a view to enabling better data collection and analysis. <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019>.

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf)

<sup>8</sup> <https://nationalcrimeagency.gov.uk/who-we-are/publications/437-national-strategic-assessment-of-serious-and-organised-crime-2020/file>.

<sup>9</sup> ECPAT, *Child trafficking in the UK 2020: A snapshot*, p. 7, <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=b92ea99a-6dd8-480c-9660-e6c0f0764acf>.

<sup>10</sup> "County Lines" is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, using dedicated mobile phone line, and exploiting children and vulnerable adults to move and store the drugs and money, often using coercion, intimidation, violence (including sexual violence) and weapons.

<sup>11</sup> Prior to 1 October 2019, possible victims were recorded as having a single primary exploitation type, grouped into five categories: labour, sexual, domestic servitude, organ harvesting and unknown exploitation.

use holiday rental properties.<sup>12</sup> Traffickers abuse victims' vulnerabilities, including mental health issues, learning disabilities, alcohol or drug misuse, homelessness, unemployment and previous convictions. When it comes to child victims, criminal exploitation has emerged as the most commonly reported type (44% of all child referrals in the first quarter of 2020). The increase in child referrals may be due to continuities in perpetrator behaviour, adapted to maintain profitability during the lockdown, including the egregious criminal exploitation of children.<sup>13</sup>

17. In March 2020, the Office for National Statistics (ONS) published a report which highlighted the challenges in producing an accurate measure of the prevalence of modern slavery.<sup>14</sup> The ONS report brought together many sources of data as monitoring indicators and reviewed existing estimates of prevalence. Since the publication of the ONS report, in July 2020 the Centre for Social Justice estimated that there could be at least 100,000 victims of modern slavery in the UK.<sup>15</sup> This was based on data collected by the National Data Analytic Solutions partnership, using a new technique that analysed crime reports and intelligence records of West Midlands Police.

18. GRETA notes that in the five years following the entry into force of the Modern Slavery Act (MSA) 2015, the number of identified and assisted victims of modern slavery and human trafficking has continued to increase, and there is a growing sensitivity to detecting cases of labour exploitation and new forms of exploitation, such as the "County Lines" phenomenon. Through its strong measures to identify victims, the UK is setting an important model for Europe, also providing evidence and intelligence about new trends and *modus operandi* in human trafficking. However as later parts of this report demonstrate, increased victim identification can result in bottlenecks if not all parts the anti-trafficking system are developed in the same way: for example, it takes too long to make Conclusive Grounds decisions about victim identification (see paragraph 260) and to conduct investigations and criminal proceedings (see paragraphs 142 and 157).

### **III. Developments in the legislative, institutional and policy framework for action against human trafficking**

19. The legislative, institutional and policy framework for action against trafficking in human beings in the UK and its constituent jurisdictions has undergone a number of changes since GRETA's second evaluation.

20. While most of the provisions of the MSA apply in England and Wales only, some provisions also concern Northern Ireland and Scotland (in particular those related to the Independent Anti-Slavery Commissioner, transparency in supply chains and maritime powers).<sup>16</sup> It should be recalled that the Act established two offences: in section 1, slavery, servitude and forced or compulsory labour, and in section 2, human trafficking. Victims of both offences are included in the NRM protection framework. Further, it increases the maximum sentence for these offences to life imprisonment, makes it easier to confiscate the assets of traffickers and use them to compensate victims, and introduces provisions for slavery and trafficking prevention orders and risk orders. It classified slavery offences as "criminal lifestyle offences", to ensure they are subject to the toughest asset recovery regime under the Proceeds of Crime Act 2002 (POCA). The Act also introduced several measures focussed on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings. Most of the provisions of the MSA came into force on 31 July 2015, but the entry into force of some provisions was postponed.

<sup>12</sup> <https://www.theguardian.com/society/2019/oct/17/police-warn-somerset-holiday-home-owners-over-pop-up-brothels>; [https://www.bbc.co.uk/news/video\\_and\\_audio/headlines/43873248/police-tackling-rise-in-pop-up-brothels](https://www.bbc.co.uk/news/video_and_audio/headlines/43873248/police-tackling-rise-in-pop-up-brothels)

<sup>13</sup> ECPAT UK (2020), *Child trafficking in the UK 2020: A snapshot*, p. 7.

<sup>14</sup> [Modern slavery in the UK - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/modern-slavery-in-the-uk)

<sup>15</sup> [It still happens here: Fighting UK Slavery in the 2020s - The Centre for Social Justice](https://www.centreforsocialjustice.org.uk/it-still-happens-here-fighting-uk-slavery-in-the-2020s)

<sup>16</sup> See 2nd GRETA report on the UK, paragraph 21 and following.

21. In July 2018, the UK Government commissioned an Independent Review of the MSA. On the basis of the final review report, Parliament made 80 recommendations across four areas (the Independent Anti-Slavery Commissioner, Transparency in Supply Chains, Independent Child Trafficking Guardians, and legal application of the MSA). The Government's response to the Independent Review was published on 9 July 2019.<sup>17</sup> The Government accepted or partially accepted the majority of the Review's recommendations and committed to strengthen transparency in supply chains laws, appoint an international Modern Slavery and Migration Envoy,<sup>18</sup> and continue to roll out the Independent Child Trafficking Guardians (ICTG).<sup>19</sup>

22. The first Independent Anti-Slavery Commissioner (IASC), Mr Kevin Hyland, resigned in May 2018, citing a lack of independence from Government to carry out his duties.<sup>20</sup> On 1 May 2019, Dame Sara Thornton took up the role of the IASC. The Commissioner's Strategic Plan (2019-2021) is based on four priorities: improving victim care and support; supporting law enforcement and prosecution; focusing on prevention; and getting value from research and innovation. The Commissioner's Annual Report 2019-2020 was presented to Parliament in October 2020, pursuant to section 42 (10) b of the MSA.<sup>21</sup> It refers to a number of initiatives to encourage good practice across the UK and improve victim care and support, including engagement with the Local Government Association (LGA) and local authority representatives across the UK, with health professionals, and with Her Majesty's Prison and Probation Service.

23. Whilst the IASC is not intended to be the UK's National Rapporteur, some of the role's functions are akin to that of one. For instance, the IASC can undertake research into particular issues, hold investigations and make recommendations to public authorities. The Commissioner also has the powers to request particular public authorities to co-operate with her office, through, for instance, the provision of data. However, despite being physically located outside of the Home Office, the Commissioner still sits under the control of the Home Office and must consult with Government Ministers on her work plans. The previously mentioned Independent Review of the MSA focused, *inter alia*, on the role of the Anti-Slavery Commissioner. The Anti-Trafficking Monitoring Group (ATMG), a coalition of 13 anti-trafficking NGOs across the UK, made a submission pointing out the restrictions of the independence of the Commissioner and proposing a strengthening of the Commissioner's role. The review recommended, *inter alia*, that the Government should respect the IASC's statutory independence, and that the IASC's focus should be primarily on tackling modern slavery domestically. It also made practical recommendations about how the office of the IASC could work more effectively (through adequate access to data, having a clear, multi-year budget and an agreed process for budget revisions, as well as a clear complaints procedure in place). The Government accepted and implemented some of the Independent Review's recommendations.

<sup>17</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/815410/Government\\_Response\\_to\\_Independent\\_Review\\_of\\_MS\\_Act.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815410/Government_Response_to_Independent_Review_of_MS_Act.pdf)

<sup>18</sup> In November 2019, Ms Jennifer Townson was appointed as UK's first Migration and Modern Slavery International Envoy.

<sup>19</sup> 2019 UK Annual Report on Modern Slavery, October 2019, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840059/Modern\\_Slavery\\_Report\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840059/Modern_Slavery_Report_2019.pdf)

<sup>20</sup> [UK's first Independent Anti-Slavery Commissioner resigns citing government interference | The Independent | The Independent](#)

<sup>21</sup> Independent Anti-Slavery Commissioner Annual Report 2019-2020, September 2020, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918675/CCS207\\_CCS05206\\_02790-001\\_IASC\\_Annual\\_Report\\_2019-2020\\_Web\\_Accessible\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918675/CCS207_CCS05206_02790-001_IASC_Annual_Report_2019-2020_Web_Accessible_final.pdf).

24. The role of National Rapporteur used to be performed by the Interdepartmental Ministerial Group (IDMG) on Modern Slavery, which has ceased to exist, and is currently performed by the Home Secretary. As part of her role as National Rapporteur, the Home Secretary publishes an annual report on modern slavery which outlines how the UK is responding to threats associated with modern slavery and trafficking.<sup>22</sup> **Recalling the recommendation made in paragraph 31 of its second report on the UK, GRETA stresses once again that one of the key features of National Rapporteurs' mechanisms according to Article 29, paragraph 4, of the Convention should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end to maintain a constant exchange with civil society, the research community and other relevant stakeholders.**

25. The UK Government continues to engage with civil society stakeholders through the Modern Slavery Strategy and Implementation Group (MSSIG), set up in April 2016, which has six thematic sub-groups dealing with the following themes: law enforcement, prevent, protect, prepare, international and children. The MSSIG supports implementation of the UK Government's modern slavery agenda through collaboration and engagement between the Government, devolved administrations, NGOs and businesses.

26. In October 2017, the UK Government announced a range of reforms to the NRM with a view to improving victim identification and support, and providing a quicker and more certain decision-making process. Until April 2019, there were two competent authorities for the identification of victims of THB: the National Crime Agency's Modern Slavery Human Trafficking Unit, which handled cases of victims from the European Economic Area (EEA), and UK Visas and Immigration, which handled non-EEA cases. On 29 April 2019, these two competent authorities were replaced by the Single Competent Authority (SCA). Following a positive reasonable ground decision, the SCA will gather more information and evidence to make a second decision confirming victim status called a conclusive grounds decision (see paragraph 258). Negative conclusive grounds decisions can be reviewed by independent multi-agency panels of experts (see paragraph 256). The Government is in the process of reviewing the role of First Responders (which currently include specialised NGOs, police forces, specialised government agencies and local authorities) to determine which organisations are best placed to identify victims and how staff should be trained. In 2020, the Home Office embarked on an NRM Transformation Programme which aims, *inter alia*, to increase the effectiveness of the decision making, reduce the length of the identification process, and provide personalised support to victims. GRETA was informed that as part of the Transformation Programme, the Home Office has undertaken research to better understand survivors' experiences in the NRM, and has launched a process to identify areas across the UK to pilot a devolved model of decision making for child victims, which is entrusted to the local authorities (see paragraphs 224 and 285).

27. The Gangmasters Labour Abuse Authority (GLAA) replaced the Gangmasters Licensing Authority (GLA) in 2016 and its remit was broadened. The GLAA is an executive non-departmental body, financed by the Home Office, which is responsible for investigating reports of worker exploitation and illegal activity such as human trafficking, forced labour and illegal labour provision (pursuant to the MSA and the 2016 Immigration Act), as well as offences under the National Minimum Wage and Employment Agencies Acts.<sup>23</sup> In respect of England and Wales, the GLAA also has powers under the Police and Criminal Evidence Act 1984 to investigate serious cases of labour exploitation, and in 2019/20, it conducted over 200 operations across a range of sectors.<sup>24</sup> The GLAA manages a licensing scheme that regulates businesses which provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law. The GLAA budget stood at £6.5m in 2018/19 (compared to £4.37m in 2014/15) and the staff complement increased from 69 to 126.

<sup>22</sup> The latest report is available at: [2020 UK annual report on modern slavery \(publishing.service.gov.uk\)](https://www.gov.uk/government/organisations/gangmasters-and-labour-abuse-authority).

<sup>23</sup> <https://www.gov.uk/government/organisations/gangmasters-and-labour-abuse-authority>

<sup>24</sup> [2020 UK annual report on modern slavery - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/gangmasters-and-labour-abuse-authority), p. 5.

28. Proposals for a Single Enforcement Body for employment rights were published for consultation in July 2019 as part of the UK's Government's "Good Work Plan" to ensure protection and enforcement of workers' rights.<sup>25</sup> This single labour market enforcement should replace the current fragmented system of enforcement, comprising Her Majesty's Revenue and Customs (HMRC), responsible for enforcement of the right to the national minimum wage, the Health and Safety Executive (HSE), responsible for enforcement of employers' duties in relation to health and safety, and the GLAA. The consultations closed in October 2019, but the process was halted due to the general elections in December 2019. The UK Government's response to the consultation was published on 8 June 2021.<sup>26</sup> The intention is to provide a clearer route for workers to raise a complaint and get support, whilst also enabling the use of pooled intelligence to better target more co-ordinated and proactive enforcement action (see also paragraph 243). The authorities intend to use the experience of joint working and community engagement in Leicester (see paragraph 252) to inform the development of the Single Enforcement Body.

29. In 2016, Police and Crime Commissioner (PCC) Mark Burns-Williamson launched the National Anti-Trafficking and Modern Slavery Network (NATMSN) which brings together Police and Crime Commissioners from across England and Wales, the Independent Anti-Slavery Commissioner, the National Police Chiefs' Council (NPCC) lead, and the Home Office Modern Slavery Unit. The network was established to provide a strategic meeting framework nationally to raise awareness of tackling human trafficking and modern slavery in all its forms.

30. In autumn 2019, the Modern Slavery Policy and Evidence Centre was launched, with funding of £10 million provided by the UK Government. This research centre has launched research calls on several themes: victim support and recovery; prevention; business supply chains; effectiveness of legal enforcement; and impact of COVID-19 on modern slavery.<sup>27</sup>

31. In response to the COVID-19 pandemic, the UK Government has adopted a number of measures, among which the publication of a guidance, in April 2020, on how businesses should address and report on modern slavery risks during the pandemic, and a COVID-19 guidance for Children's Social Care.<sup>28</sup> In March 2020, the IASC expressed concerns about the impact of COVID-19 on the provision of support to victims<sup>29</sup> and wrote to the Home Office to raise her concerns.<sup>30</sup>

### ***England and Wales***

32. The Modern Slavery Strategy, published in 2014, remains in force.<sup>31</sup> In 2018, the UK Government published a new Serious and Organised Crime Strategy which includes modern slavery and complements the 2014 Modern Slavery Strategy.<sup>32</sup> In March 2021, the UK Government announced a review of the 2014 Modern Slavery Strategy. It is intended to publish a revised strategy in the spring of 2022 after a period of stakeholder engagement.

<sup>25</sup> [Good work plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights)

<sup>26</sup> Further information can be found at: <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights>

<sup>27</sup> <http://modernslaverypec.org/research-areas/covid-19>

<sup>28</sup> <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services/coronavirus-covid-19-guidance-for-local-authorities-on-childrens-social-care>.

<sup>29</sup> <https://www.antislaverycommissioner.co.uk/news-insights/message-from-dame-sara-impact-of-coronavirus/>

<sup>30</sup> <https://www.antislaverycommissioner.co.uk/media/1399/iasc-letter-to-rebecca-kirby-director-of-tackling-slavery-and-exploitation-home-office-april-2020.pdf>

<sup>31</sup> See 2nd GRETA report on the UK, paragraphs 46-49.

<sup>32</sup> [Serious and Organised Crime Strategy 2018 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/serious-and-organised-crime-strategy-2018)



33. Pursuant to section 48 of the MSA, Independent Child Trafficking Guardians (ICTG) were appointed in England and Wales, to represent and support children who are possible victims of human trafficking. In 2020, the network of ICTG covered one third of the local authorities of England and Wales. In their comments on the draft report, the UK authorities informed GRETA that as of May 2021, the ICTG service had been expanded to cover two third of local authorities across England and Wales. The latest evaluation of the ICTG was published by the Home Office in October 2020.<sup>33</sup> Further, statutory guidance "Working Together to Safeguard Children" was published in 2018, as well as statutory guidance on what to do when children go missing from statutory care in England and Wales.

34. As of February 2019, the Government increased support for confirmed victims in England and Wales from 45 days to a minimum of 90 days through the Modern Slavery Victim Care Contract (MSVCC) or other services. Following an open procurement call, in June 2020 the MSVCC was awarded to the Salvation Army for a five-year period. Further, on 4 January 2021, a new MSVCC was launched (see paragraph 271).

35. In April 2020, a new Statutory Guidance under section 49 of the MSA was published,<sup>34</sup> setting out the roles and responsibilities of actors involved in the NRM, explaining the different steps of the decision-making process, and defining for the first time the full range of support available to victims. Civil society was reportedly not consulted during the preparation of the Statutory Guidance.

36. Steps have been taken to increase law enforcement co-operation through the introduction of the Modern Slavery Police Transformation Unit, established in 2016 and renamed, in April 2020, the Modern Slavery and Organised Immigration Crime (MSOIC) Unit. The MSOIC is funded by the Police Transformation Fund and managed through the Devon and Cornwall Police as the lead force, since the Chief Constable of this police force, Shaun Sawyer, is the National Police Chiefs' Council (NPCC) Lead for Modern Slavery. He also chairs the National Threat Group on Modern Slavery as part of the National Crime Agency (NCA).

37. Further, in 2019 the National County Lines Co-ordination Centre was set up. It is jointly led by the NCA and the NPCC and is responsible for mapping out the threat from county lines nationally and prioritising action against the most significant perpetrators. It provides support to frontline officers and develops partnerships with other organisations to enhance the wider national response.

## ***Wales***

38. In July 2021, the Welsh Government appointed a new Head of Modern Slavery and Workers' Rights, building on the role of Anti-Slavery Coordinator that was held by Mr Stephen Chapman prior to his retirement. The new role was established to reflect the interconnections between modern slavery and other forms of labour exploitation. The Head of Modern Slavery and Workers' Rights has responsibility for the Wales Anti-Slavery Leadership Group, which was established in January 2013 and is chaired by the Deputy Director of Fair Work in the Welsh Government. It brings together representatives of a wide range of partners and has multiple sub-groups). The Leadership Group meets three times a year and has a Delivery Plan for 2021-2022. The Wales Anti-Slavery Operational Delivery Group and the six Regional Anti-Slavery Groups<sup>35</sup> co-ordinate and support the work taking place across Wales to tackle slavery and facilitate the sharing of good practice and intelligence. Further, the Welsh Government launched in 2017 the Ethical Employment in Supply Chains Code of Practice, and in 2021 undertook a consultation to identify further areas for improvement

<sup>33</sup> [An assessment of Independent Child Trafficking Guardians - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94822/An_assessment_of_Independent_Child_Trafficking_Guardians.pdf)

<sup>34</sup> [Modern slavery: how to identify and support victims - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94822/Modern_slavery_how_to_identify_and_support_victims.pdf)

<sup>35</sup> The six regional groups cover Cardiff and the Vale of Glamorgan; Dyfed Powys; Gwent; North Wales; Western Bay; and Cwm Taff.

## ***Northern Ireland***

39. The relevant legislation in Northern Ireland is the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which came into force in January 2015. The Department of Justice published the Multi-agency Modern Slavery Strategy 2019-2020 in April 2019.<sup>36</sup> Implementation and monitoring of the strategy are being taken forward through the Department of Justice and statutory partners' sub-group on modern slavery and human trafficking. The Police Service of Northern Ireland has its own control strategy to cover its areas of responsibility under the Northern Ireland Modern Slavery Strategy.

40. In October 2020, the Department of Justice launched a public consultation on a new draft Modern Slavery Strategy for Northern Ireland, covering the period 2021-2022, which was published on 24 May 2021.<sup>37</sup> The aim of the Strategy is to equip Northern Ireland to eradicate modern slavery through a collaborative partnership between law enforcement agencies, front line professionals and the general public to raise awareness of human trafficking and slavery-like offences, support victims, and bring offenders to justice. Work under the Strategy is grouped under three key themes: 1) enhancing the operational response to pursue and disrupt offenders and bring them to justice; 2) putting the protection and needs of adult and child victims at the centre of the response; 3) engaging partners across key services, businesses, NGOs and the wider public in preventing modern slavery.

41. Following a consultation over the summer of 2020, plans are being made to amend the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, with a view to removing the statutory requirement to publish an annual strategy (making it possible to have a new strategy every three years, with an annual progress report), amending section 18 to extend support to victims of slavery, servitude and forced or compulsory labour, and introducing prevention and risk orders. All the envisaged amendments will be brought forward in the Justice Bill.

## ***Scotland***

42. The relevant legislation in Scotland is the Human Trafficking and Exploitation (Scotland) Act 2015. It provides for a statutory period of support for victims which was extended in April 2018 to be the earlier of 90 days or until such times as a Conclusive Grounds decision is reached. In addition, the Act sets out court orders to disrupt trafficking activity: Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). The duty to notify requirement has not yet been enacted.

43. The Human Trafficking and Exploitation (Scotland) Act requires that Scottish Ministers develop and publish a Trafficking and Exploitation Strategy, which was done in May 2017. The strategy comprises three action areas: identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; and address the conditions, both local and global, that foster trafficking and exploitation. Each action area is followed by an implementation group with membership ranging across Government, law enforcement, victim support, local authorities, business, Scottish Trades Union Congress, NGOs and academia. Section 36 of the Act requires that the Strategy should be reviewed on a rolling three-year basis and if necessary, it may be revised. A review of the Strategy was launched on 18 October 2019 and a report was published on 30 May 2020.<sup>38</sup> A key theme emerging from the review was the need to consider gendered aspects of human trafficking in order to provide targeted support to victims. Another theme was the need to improve the identification and protection of children, in particular those trafficked for the purpose of criminal exploitation. The report also stated that more work was needed to consider long-term outcomes for survivors and a new Modern Slavery Strategy should set out some aims in this area. Further, the report referenced the pandemic and noted that a new Strategy would be informed by emerging evidence of Covid-19 impacts and would respond to any specific needs identified.

<sup>36</sup> <http://www.justice-ni.gov.uk/publications/northern-ireland-modern-slavery-strategy-2019-2020>

<sup>37</sup> <https://www.justice-ni.gov.uk/consultations/consultation-tackling-modern-slavery>. The strategy 2021/2022 is available at: [www.justice-ni.gov.uk/publications/modern-slavery-and-human-trafficking-strategy-northern-ireland-21-22](http://www.justice-ni.gov.uk/publications/modern-slavery-and-human-trafficking-strategy-northern-ireland-21-22)

<sup>38</sup> <https://www.gov.scot/publications/trafficking-exploitation-strategy-third-annual-progress-report-strategy-review/pages/10/>

44. In 2018, the Scottish Government produced a Guidance for businesses and a Guidance on age assessment (the latter was published pursuant to section 12 of the Human Trafficking and Exploitation (Scotland) Act). Further, a Guidance for Health providers was issued in 2019.

\* \* \*

45. Notwithstanding the UK authorities' explicit determination to tackle trafficking in human beings, a number of GRETA's interlocutors raised concerns about the impact of the UK's exit from the European Union. In July 2017, the Anti-Trafficking Monitoring Group (ATMG) produced a briefing on the impact of Brexit on the UK's fight against modern slavery,<sup>39</sup> highlighting that a significant proportion of the UK's legislation on working rights and the rights of trafficking survivors stem directly or are closely linked to EU legislation. At the same time, there are concerns that Brexit might result in the UK being cut off from European security and criminal justice co-operation mechanism and result in loss of access to Europol, the European Investigation Order and the European Arrest Warrant. Interlocutors in Northern Ireland raised concerns about the impact of Brexit on data access and sharing for tackling organised crime, stressing the importance of keeping close partnerships. In December 2020, the Human Trafficking Foundation raised concerns regarding the potential loss of access to EU tools for prosecuting traffickers and the risk of heightened labour abuse and exploitation for EU migrant workers in the UK following changes in their legal and administrative status.<sup>40</sup> These concerns have been shared by the IASC.<sup>41</sup>

46. Other political and legislative initiatives risk increasing vulnerabilities to human trafficking and having a detrimental impact on the situation of victims. In February 2020, the UK government announced plans for a new points-based immigration system that will apply to both EEA and non-EEA migrants, prioritising high-skilled workers. Frontline and migrant organisations have noted that the offence of illegal working, part of the UK's hostile environment for undocumented migrants, acts as a major driver of exploitation and barrier to justice, as exploitative employers are able to use threat of immigration and criminal repercussions towards workers who challenge precarious working conditions, propagating impunity for cases of human trafficking for labour exploitation. A study commissioned by the IASC has shown that the homeless population in Britain is extremely vulnerable to exploitation.<sup>42</sup> This vulnerability is compounded for EU nationals by threat of removal and makes them much more likely than UK nationals to enter unsafe work and end up in situations of exploitation. Civil society respondents have reported an increased reluctance of victims from EU countries to enter the NRM system for fear of removal and deportation (see paragraph 262 and following).

47. In addition, the IASC has noted in her 2019-2020 report that the Seasonal Workers Pilot, which was to be expanded from 2,500 to 10,000 workers, while the farming sector regularly employs an estimated 70,000 seasonal workers, could result in a rise in irregular recruitment routes, fraud and deception. The report noted that there is a lack of clarity around visas and processing costs that seasonal workers must pay to come to the UK, and anecdotal evidence of workers paying recruitment fees and not being aware that they can change employers.<sup>43</sup>

<sup>39</sup> Anti-Trafficking Monitoring Group (2017), *Brexit and the UK's fight against modern slavery*. Available at: <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

<sup>40</sup> <https://www.humantraffickingfoundation.org/policy>.

<sup>41</sup> <https://www.antislaverycommissioner.co.uk/news-insights/dame-sara-welcomes-report-examining-impact-of-brexit-on-modern-slavery/>.

<sup>42</sup> The Passage, *Understanding and responding to modern slavery within the homelessness sector*, 2017. Available at: <https://www.bing.com/newtabredir?url=http%3a%2f%2fwww.antislaverycommissioner.co.uk%2fmedia%2f1115%2funderstan-ding-and-responding-to-modern-slavery-within-the-homelessness-sector.pdf>

<sup>43</sup> Independent Anti-Slavery Commissioner Annual Report 2019-2020, pp.42-43.

48. A new Plan for Immigration policy statement was presented by the UK Government in March 2021, proposing a series of changes to UK laws, policies and procedures concerning immigration and asylum matters, with the following three objectives: "1) to increase the fairness and efficacy of the system in order to better protect and support those in genuine need of asylum; 2) to deter illegal entry into the UK, thereby breaking the business model of people smuggling networks and protecting the lives of those they endanger; 3) to remove more easily from the UK those with no right to be there".<sup>44</sup> Under the proposed immigration changes, anyone who claims asylum outside of official resettlement schemes which operate abroad will only be eligible for a temporary status, without full refugee entitlements such as family reunion or recourse to public funds, and will be regularly reassessed for removal from the UK. Anyone identified as having travelled through a "safe third country" will have their claims deemed inadmissible and be subject to expedited removal. At the same time, the plan introduces harsher sentences for "illegal entry" and "facilitation" and measures to fast-track the decision, appeals, and removal process to act as a deterrence against asylum seekers coming to the UK. The policy statement was accompanied by an engagement and consultation process that ran for six weeks from 24 March 2021, and was followed by the publication of a Government response to the consultation in July 2021. The UK authorities have stated that the new Plan is a tool for improving THB victims' assistance and support, especially concerning their access to a discretionary leave to remain (see paragraph 303). However, the new Plan has been strongly criticised for creating a two-tiered approach to asylum, discriminating between those who arrive via legal pathways, such as resettlement or family reunion visas, and those who arrive irregularly.<sup>45</sup> In its observations on the new Plan for Immigration policy statement, issued in May 2021, the UNHCR has stressed that asylum seekers are often forced to arrive or to enter a territory without prior authorisation, and has highlighted the risks of undermining the *non-refoulement* principle and create discrimination between refugees.<sup>46</sup> Further, the UNHCR has noted that "it is clearly foreseeable that some of the refugees targeted by these penalties may be victims of trafficking".<sup>47</sup> According to civil society organisations, the Plan risks facilitating exploitation by driving people underground and leaving them unable to access mainstream services.<sup>48</sup> While acknowledging the interaction between people smuggling and trafficking in human beings, GRETA is concerned that the planned legislative and policy measures risk increasing the vulnerability of victims of trafficking who are undocumented migrants, as they may be reluctant to approach the authorities for fear of being prosecuted for immigration-related offences, resulting in failure to identify them as victims, provide them with the necessary assistance, and investigate human trafficking offences. In this context, GRETA stresses that the implementation of the new Plan for Immigration must be done in compliance with the obligations arising from the Council of Europe Anti-Trafficking Convention, in particular the obligations to identify victims of trafficking, including among asylum seekers, and to refer them to assistance, as well as the non-punishment provision contained in Article 26 of the Convention.

49. GRETA refers to a report by the NGO Reprieve, published on 30 April 2021, which documents the circumstances by which numerous British families, currently detained in North East Syria (NES), were recruited in the UK and potentially trafficked to and/or within territories controlled by the Islamic State group (ISIS)<sup>49</sup>. According to this report, after years of exploitation including forced marriage, rape and domestic servitude, these British women and their children managed to escape ISIS territory and make their way to the north of the country held by Kurdish authorities (AANES) where they are now detained indefinitely without charge or trial in desert camps, facing potential transfer to jurisdictions where they are at risk of torture and the death penalty. The report highlights the alleged failure of the UK authorities to prevent trafficking from within the UK, identify persons as victims of trafficking and provide them with assistance and protection. GRETA notes that the links between the fight against terrorism and the fight against trafficking in human beings raise a number of complex issues and represent one of the major

<sup>44</sup> [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/new-plan-for-immigration)

<sup>45</sup> [Cruel, impracticable, and false: the bogus assumptions underlying the New Plan for Immigration – The Sheffield Institute for Policy Studies.](#)

<sup>46</sup> <https://www.unhcr.org/uk/60950ed64.pdf#zoom=95>

<sup>47</sup> Ibid., paragraph 17.

<sup>48</sup> See, for example, [https://www.antislavery.org/wp-content/uploads/2021/04/ASI\\_Briefing\\_NewPlanForImmigration.pdf](https://www.antislavery.org/wp-content/uploads/2021/04/ASI_Briefing_NewPlanForImmigration.pdf); [Together With Refugees](#); [Young Leaders Report – Safe Passage](#); <https://www.antislavery.org/wp-content/uploads/2021/05/Immigration-Plan-Consultation.pdf>

<sup>49</sup> [Trafficked to Syria: British families detained in Syria after being trafficked to Islamic State \(reprieve.org\)](https://www.reprieve.org.uk/news/trafficked-to-syria-british-families-detained-in-syria-after-being-trafficked-to-islamic-state)

challenges for European states and international organisations. GRETA recalls that the fight against terrorism must be conducted in compliance with international obligations, in particular the European Convention on Human Rights and the Council of Europe Anti-Trafficking Convention. In this context, GRETA stresses the importance of proactively investigating any allegation of trafficking in human beings, including in cases of potential victims of trafficking recruited on national territory to join a terrorist organisation abroad, ensuring that victims of trafficking are identified as such and receive the support and assistance provided for by the Convention, and applying the non-punishment principle.

## **IV. Access to justice and effective remedies for victims of human trafficking**

### **1. Introduction**

50. Victims of human trafficking, by virtue of their status as victims of crime and victims of human rights violations, have the right to access to justice and effective remedies for any harm committed against them. These rights must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of parties to the Convention, irrespective of their immigration status or presence on the national territory, and notwithstanding their capacity or willingness to co-operate in any criminal investigation.

51. The right to effective remedies is a reflection of the human rights-based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of THB, and effectively investigate trafficking offences.<sup>50</sup>

52. According to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons,<sup>51</sup> the right to an effective remedy is considered to include restitution,<sup>52</sup> compensation,<sup>53</sup> rehabilitation,<sup>54</sup> satisfaction<sup>55</sup> and guarantees of non-repetition.<sup>56</sup> All victims of trafficking require access to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm

<sup>50</sup> *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgment 30 March 2017; *S.M. v. Croatia*, application No. 60561/14, Grand Chamber judgment 25 June 2020.

<sup>51</sup> UN General Assembly, Basic principles on the right to an effective remedy for victims of trafficking in persons, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, A/69/33797.

<sup>52</sup> Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

<sup>53</sup> Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, child care or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

<sup>54</sup> Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

<sup>55</sup> Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

<sup>56</sup> Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in the victims' recovery, as well as social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which outlines the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.<sup>57</sup>

53. The Convention provides specifically for the substantive right of victims of trafficking to compensation and legal redress, as well as for a number of procedural rights necessary to ensure access to these entitlements. These include the rights to be identified as a victim of trafficking, to be granted a recovery and reflection period, as well as a residence permit (to enable a victim to remain in the country and seek access to remedies), and to receive counselling, information, legal assistance and free legal aid. Another important procedural right is provided by the non-punishment provision of the Convention (Article 26), according to which victims of human trafficking must not be subjected to penalties for their involvement in unlawful activities that they have been compelled to commit. Further, the Convention requires State Parties to enable the seizure and confiscation of the assets of traffickers, which could be used to fund State compensation schemes for victims.

54. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.<sup>58</sup>

55. Civil society, including NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.<sup>59</sup> In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons<sup>60</sup> and Justice at Last - European Action for Compensation of Victims of Crime,<sup>61</sup> which aim to enhance access to compensation for trafficked persons.

56. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.<sup>62</sup> The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate victims' access to remedies for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.<sup>63</sup> States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

57. Because human trafficking is often a transnational crime, effective international co-operation is essential for fulfilling the obligations with regard to the right to justice and effective remedies. This includes co-operation in tracing and seizing criminal assets, and in returning confiscated proceeds for the purpose of compensation.

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<sup>57</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: [https://www.unicef-irc.org/portfolios/documents/472\\_un-declaration-crime.htm](https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm)

<sup>58</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8. Available at: [http://icat.network/sites/default/files/publications/documents/Ebook%20ENG\\_0.pdf](http://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf)

<sup>59</sup> OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

<sup>60</sup> <http://www.compactproject.org/>

<sup>61</sup> <http://lastradainternational.org/about-lsi/projects/justice-at-last>

<sup>62</sup> United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

<sup>63</sup> UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

## 2. Right to information (Articles 12 and 15)

58. Victims who are no longer under their traffickers' control generally find themselves in a position of great insecurity and vulnerability. Two common features of victims' situation are helplessness and submissiveness to the traffickers, due to fear and lack of information about how to address their situation. Article 12, paragraph 1, sub-paragraph d, of the Convention provides that victims are to be given counselling and information, in particular as regards their legal rights and the services available to them, in a language that they understand. Further, pursuant to Article 15, paragraph 1, of the Convention, Parties must ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings, in a language they can understand.

59. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.<sup>64</sup>

60. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.<sup>65</sup>

61. In **England and Wales**, the right to information is not expressly recognised in the Modern Slavery Act. The publication of the Statutory Guidance under section 49 of the MSA, setting out for the first time the full range of support available for victims and simplifying the existing information, represents an important clarification in terms of victims' access to information and indicates at what stages and by which bodies the information should be provided. The provision of information takes place at different stages and is provided by different actors. Before being referred to the NRM, information to possible victims is provided by First Responders. As adults need to give informed consent to enter the mechanism, First Responders are required to explain what the NRM is, the level of support that is available once in the mechanism, and the possible outcomes of the process. Once referred to the NRM, possible victims receive a leaflet which lists all the support available, including legal aid. Once a Reasonable Ground Decision is issued, a second leaflet is provided. Victims who receive a positive Reasonable Ground Decision can elect to receive support through the Modern Slavery Victim Care Contract (MSVCC). The MSVCC supplier is required to ensure that victims can access all available information and advice regarding their legal entitlements, which may include, but are not limited to, their rights to stay in the UK, the right to access mainstream benefits, and the right to apply for special measures at court.

<sup>64</sup> See Explanatory Report on the Convention, paragraphs 160-162.

<sup>65</sup> See 8th General Report on GRETA's activities, paragraphs 168-169.

62. Chapter 2 of the Code of Practice for Victims of Crime sets out the services and entitlements that are to be provided to adult victims of crime.<sup>66</sup> Victims of the most serious crimes are eligible for enhanced entitlements, which includes an assessment as to the applicability of special measures at court. Human trafficking is included in the list of the “most serious crimes” (chapter 1.8). Police forces inform possible victims of their rights in accordance with the requirements set out in the Victims’ Code, although the method by which victims are informed can differ from force to force.<sup>67</sup> Leaflets for victims also are available in a variety of different languages from the Home Office and are often used by the police. The National Police Chiefs Council (NPCC) Modern Slavery portfolio has produced dedicated guidance and training for police officers to assist in the identification of, and engagement with, victims of modern slavery and trafficking, which includes fully explaining to victims their rights.

63. In **Northern Ireland**, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 sets out that victims are entitled to information, translation, interpretation and assistance in obtaining legal advice. A ‘Know your Rights’ brochure, available in various languages, is given to victims by First Responders to explain the NRM process. The Victim Witness Care Unit is a dedicated unit of the Public Prosecution Service (PPS) Northern Ireland and it ensures that victims are informed about criminal proceedings.

64. In **Scotland**, information is provided by NGOs funded by the Government: the Trafficking Awareness Raising Alliance (TARA), which supports adult female victims of trafficking for the purposes of commercial sexual exploitation, Migrant Help, which supports other adult victims of trafficking and exploitation, and The Anchor Service, which is part of National Health Service (NHS) Greater Glasgow and Clyde and provides a psychological service to adult victims of human trafficking and exploitation identified in Scotland. In addition to verbal information, Migrant Help provides written information (available in nine languages). TARA provides a ‘Recovery Book’ available in English, Romanian, Vietnamese, Albanian and Mandarin, and arranges translation for other languages as required. The Crown Office and Procurator Fiscal Service’s (COPFS) Victim Information and Advice Service provides victims of human trafficking and exploitation with information about their case, the criminal justice system, and appropriate support agencies, as well as applying to courts for special measures to assist victims when giving evidence.

65. Concerning children, information is provided by local authorities who are responsible, pursuant to the Children Act 1989, for safeguarding and promoting children’ welfare, including of victims of trafficking.<sup>68</sup> Independent Child Trafficking Guardians (ICTGs) are responsible for informing children of their rights and assist them to obtain legal advice and assistance. If a child is identified in an area covered by the ICTG service in **England and Wales**, the ICTG will inform the child of their rights. In **Northern Ireland**, an Independent Guardian Service was introduced in 2018 and it supports, advises and represents children and young adults until the age of 21 years. In **Scotland**, all unaccompanied children are allocated guardians who are responsible for providing them with information about their rights and ensuring legal representation.

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<sup>66</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/476900/code-of-practice-for-victims-of-crime.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF)

<sup>67</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/476900/code-of-practice-for-victims-of-crime.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF)

<sup>68</sup> The roles and responsibilities of the local authorities are described in the Department for Education’s ‘Care of unaccompanied migrant children and child victims of modern slavery’ statutory guidance, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656429/UASC\\_Statutory\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UASC_Statutory_Guidance_2017.pdf)



66. At all stages of the NRM process, victims are provided with translation and interpretation services where necessary (face-to-face or by telephone) and documents are given, where possible, in their spoken language. Victims may further be provided with translation and interpretation services through the MSVCC. While performing its duties, the GLAA informs workers of their rights in 18 languages. Translation and interpretation services are also provided in criminal proceedings under the Police and Criminal Evidence Act, when victims report a criminal offence, when they are being interviewed by the police, and when they give evidence as a witness. The UK authorities have specified that all interpreters and translators are registered and asked to provide criminal records certificates where appropriate. Victims are able to change an interpreter or translator if they are unhappy with the service they receive. Outside of the NRM process the Ministry of Justice has an obligation to provide interpreters under the Human Rights Act 1998. The responsibility of providing interpreters and translators falls on the police or the CPS. The services are available at no cost for victims and witnesses who require them in order to participate in proceedings.

67. In **Northern Ireland**, support providers, contracted by the Department of Justice, support and refer victims to interpretation services. For children and young people, interpreting services are provided through a regional contract with the Northern Ireland Health and Social Care Interpreting Service and Independent Guardian Service. In **Scotland**, possible victims receive translation and interpretation services from support providers (see paragraph 64) and are also provided with interpreters by the Police.

68. GRETA notes that the provision of information on rights hinges, in practice, on the person entering the NRM. Presumed victims who do not enter the NRM process are unlikely to obtain a clear picture of their rights and of the NRM process itself, due to the lack of concrete guidance and training of First Responders. Although the publication of the Statutory Guidance (2020) represents an improvement, NGOs noted that First Responders provide information to presumed victims in a formalistic way, and that the quality of information on rights reportedly varies significantly across First Responders and can be incomplete. Concerns have also been raised about the quality of the information leaflets provided by the UK authorities, including out-of-date information, missing or unclear information about the right to apply for Discretionary Leave (i.e. residency permit). In this context, the UK authorities have noted that in July 2020 and July 2021 the Home Office launched two online training modules for all First Responders which provides guidance on how to spot the signs of modern slavery, and what to do when a potential victim of modern slavery is identified.

69. According to NGOs, children are not uniformly informed of their rights at an early stage. In England and Wales, a significant variation exists between different local authority practices. Reduced funding for local authorities and lack of training for social workers on child trafficking means that many children are not informed of their rights.

70. Moreover, NGOs have pointed out that it is not always clear how the obligation to provide translation and interpretations services is met at different stages by different agencies. There is no funding for First Responders in England and Wales to provide translation and interpretation services, and the quality of interpretation/translation services is inconsistent. In 2018, a research for the IASC by the Anti-Trafficking Monitoring Group and the NGO AFRUCA found that it was very difficult to find interpreters to assist in meetings between survivors and their legal advisors, especially in the North East of England. In the framework of legal assistance, the Ministry of Justice sets a maximum rate that they will pay for interpreting services and where the language is not common it can be very difficult (if not impossible) to pay an interpreter. According to the UK authorities, the Legal Aid Agency has published guidance<sup>69</sup> that allows higher rates to be payable where it is not possible to otherwise find an interpreter. The Legal Aid Agency provides written translation only in some cases, rather than as a rule. However, the complexity of issues and the trauma suffered makes it more important that matters are recorded in writing and that the victim can read correspondence.

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Legal Aid Agency [guidance on the Remuneration of Expert Witnesses in Family Cases](#).

71. GRETA welcomes the efforts of the authorities to provide victims with information materials that are as accessible and comprehensive as possible. GRETA notes, however, that the information materials should not only indicate what rights are guaranteed, but also how to access such rights in practice (for example, the information about the right to compensation should include information about how and through what means obtain legal advice). GRETA stresses that victims should be provided with information on rights in a manner which takes into account their cognitive skills and psychological state. For example, victims who are traumatised may have difficulties in adequately understanding and analysing the information before taking a decision. This is why it is important that information on rights be provided repeatedly by different professionals, including psychologists, social workers and lawyers, while ensuring that the provision of information is structured and consistent throughout the victims' pathway of engaging with different agencies and organisations.

**72. While welcoming the steps taken to provide information to victims of THB, GRETA considers that the UK authorities should strengthen the systematic provision of information to potential victims of trafficking (adults and children) regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. First Responders, law enforcement officers, social workers and local authorities should be trained and instructed on how to properly explain to victims of THB their rights, taking into account their cognitive skills and psychological state, and apply the NRM to systematically refer them to specialised services which enable victims to exercise their rights.**

**73. GRETA also considers that the UK authorities should take additional steps to ensure the availability in practice and at all stages of the identification and criminal proceedings of interpreters/translators, including by providing adequate funding to ensure adequate quality of interpreting and translation services.**

**74. As regards child victims, GRETA considers that the legal guardianship system should continue to be rolled out across England and Wales in order to ensure that trafficked children are systematically and adequately informed of their rights (see also paragraph 300).**

### **3. Legal assistance and free legal aid (Article 15)**

75. Article 15(2) of the Convention obliges Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case law<sup>70</sup> also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in a civil matter, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

76. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.<sup>71</sup>

<sup>70</sup> *Airey v. Ireland*, 9 October 1979.

<sup>71</sup> See 8th General report on GRETA's activities, paragraph 167.

77. As explained previously, prior to referral to the NRM, First Responders provide potential victims with information on their rights and the support they may be eligible to receive through the MSVCC and are sign-posted to legal advice, including to qualified immigration advisers where required. Upon entering MSVCC support, support workers ensure that victims are provided with information on the rights and services available to them, including access to legal aid, legal representatives and legal advice. Where needed, the support worker will facilitate access to these services.

78. In recent years all jurisdictions within the UK have passed new legislation amending the criteria of the legal aid schemes and the eligibility of individuals applying for civil legal aid. The biggest changes have occurred in **England and Wales**, where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) made significant changes to the operation of the civil legal aid scheme, requiring a capital means test to everyone and increased contributions. LASPO allows victims of trafficking with positive Reasonable Grounds Decisions to access legal aid regardless of their immigration status or type of exploitation. Legal aid is available through providers who have a contract with the Legal Aid Agency (LAA). According to LASPO, anyone can apply for legal aid in relation to any of the civil legal services that are in scope (including asylum, housing, some family matters or judicial review). Additionally, sections 32 and 32A of Schedule 1 of LASPO set out civil legal services specifically for victims of trafficking and slavery, servitude and forced or compulsory labour: an application for leave to enter or to remain in UK, a claim under employment law arising in connection with the exploitation, and a claim for damages arising in connection with the trafficking or exploitation. Potential victims, both adult and children, may apply for legal aid in relation to asylum claim at any time, regardless to the NRM decision making process. Where a civil legal service is not listed within Schedule 1 of LASPO, a person can apply for Exceptional Case Funding (ECF) where failure to provide legal aid would risk breaching his/her human rights, and subject to a means and merits test (see paragraph 89).

79. The provision of legal aid is subject to assessments of the person's means and the merits of the case. The means tests are set out in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013<sup>72</sup> and the merits tests, in the Civil Legal Aid (Merits Criteria) Regulations 2013.<sup>73</sup> The means test constitute an income and capital test. If an individual's income or capital is above a certain threshold, they may be required to make a contribution to the cost of the legal aid they receive in legal representation. Some welfare benefits are excluded from the relevant income ('passporting benefits'). The merit test is an assessment of the likelihood of success of the case and of whether it is in the interest of justice to provide legal aid.

80. Under sections 32 and 32A of LASPO, trafficked children cannot obtain legal aid before receiving a positive Reasonable Ground Decision. In 2019, Part 1 of Schedule 1 to LASPO was amended so as to bring legal services relating to applications for leave to remain in the UK under the Immigration Rules within scope for all separated migrant children. Where a child has access to an ICTG, the latter may obtain legal advice or instruct a legal representative to act on the child's behalf.

81. In **Northern Ireland**, legal assistance is available to possible victims of THB even before an NRM referral is made. The Department of Justice contracts support providers (Migrant Help and Belfast & Lisburn Women's Aid) to provide victims of trafficking with independent legal advice and legal representation, regardless of their immigration status. The Legal Services Agency, created in 2015 under the Legal Aid and Coroners Courts Act, serves as an agency of the Department of Justice. Legal aid is funded under the Legal Aid Fund and is provided through support providers, subject to merit and means tests. Exceptional Funding is available where a refusal might result in a violation of human rights. Representation in court under criminal legal aid is only available to defendants, there is no separate representation in court for victims (such as victims of THB), but they can access advice and assistance on criminal matters through legal aid.

<sup>72</sup> <http://www.legislation.gov.uk/ukSI/2013/480/contents/made>

<sup>73</sup> The Civil Legal Aid (Merits Criteria) Regulations 2013, <http://www.legislation.gov.uk/ukSI/2013/104/contents/made>

82. In **Scotland**, reforms to legal aid have mainly focused on criminal legal aid, but some changes have also been made to the financial criteria in relation to civil legal aid. The Scottish Legal Aid Board (SLAB) operates legal aid funded by the Scottish Government. Legal assistance and legal aid are subjected to three statutory tests: 1) proving the legal basis of the application (probable cause); 2) that it is reasonable to use public funds accordingly; 3) the applicant's financial circumstances. There is no requirement to be resident in Scotland and immigration status and type of exploitation are irrelevant.

83. Means testing is common to all three legal aid schemes (England and Wales, Northern Ireland and Scotland) and examines the financial eligibility of a person applying for civil legal aid. Although this provision does not constitute in itself a breach of the Convention, it may raise issues under Article 15 when it systematically prevents victims from accessing legal aid. Civil society pointed out difficulties in providing evidence (especially for migrants) for the means test, and the very strict limits for eligibility. In practice, many victims of trafficking find themselves ineligible for legal aid despite being on a low income and in receipt of state benefits.

84. There is no Government data on how many victims of modern slavery and human trafficking have received legal aid.<sup>74</sup> According to NGOs and lawyers, the system for granting legal aid is bureaucratic, and decision-making is inconsistent and obstructive. As a result, many victims are unable to get legal advice when they need it, and the litigation against traffickers is protracted. This is due to three main factors. First, a dearth of trusted legal advisors to take on cases. Secondly, a lack of timeliness in the advice, as legal aid is provided only once a survivor enters the NRM, but not before. Thirdly, the reduced scope of the current legal aid programmes, which exclude key remedies such as state compensation or welfare rights claims.

85. GRETA was informed that following the entry into force of LASPO, there has been a very significant reduction in legal aid providers. According to information provided by civil society, many trafficking survivors across the UK are unable to get legal advice when they need it, and legal aid is particularly difficult to access in rural areas. In mid-2018 ATLEU has sought evidence from organisations providing services to victims of trafficking in response to the Government's LASPO Post-Implementation Review. The research found that there were "legal aid deserts" particularly outside London, and even within London there are still capacity issues for good legal representatives. Even in areas with legal advisers competent to deal with matters related to modern slavery, waiting times could be well over eight weeks. Further, 78% of local authorities in England and Wales did not have a single community care legal aid provider in their area. In Scotland, all firms doing human trafficking related legal aid work appear to be based in Glasgow (with a very small number based in Edinburgh or Aberdeen). Immigration cases with a trafficking element are considered financially unviable by many legal aid providers due to their length and the lack of clarity around whether the work will be funded. As a result, many providers are deterred from undertaking this work, which leaves victims and support workers struggling to secure lawyers.<sup>75</sup> The UN Committee on Rights of the Child found that the reduction in legal aid in UK had a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them.<sup>76</sup> GRETA highlights the importance of providing trafficked children with legal assistance in order to ensure their identification and effective access to justice.

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<sup>74</sup> There have been two recent Parliamentary Questions about the numbers of victims of modern slavery accessing legal advice (on 1 December 2017 and on 16 May 2018), in response to which it was indicated that the LAA cannot identify all applicants for legal aid who have been presumed victims of modern slavery as such a status is only captured in cases where the legal aid scheme makes specific provision for such individuals, for example, immigration advice for those identified through the NRM.

<sup>75</sup> Available at: <https://www.antislavery.org/wp-content/uploads/2019/04/ASI-ATLEU-ATMG-HTF-Kalayaan-submission-to-CEDAW-UK-Jan-2019.pdf>

<sup>76</sup> Concluding Observation on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, 3 June 2016, paragraph 29(b).

86. In England and Wales, there are a number of legal aid providers who can provide specialist civil legal services in all categories for victims of trafficking. In Scotland, while there are not specialist lawyers to represent victims in court, there are specialised anti-trafficking NGOs funded by the Scottish Government which provide specialist legal advice. TARA and JustRight Scotland (JRS) are also funded by the Government to provide weekly legal clinic to potential victims of trafficking. This enables legal intervention for victims early on in their recovery, allows a wider range of legal advice to be accessed beyond immigration issues, including applying for Criminal Injuries Compensation. In Northern Ireland, the Department of Justice is not aware of specific specialisms across legal professionals. However, the Law Centre NI's casework includes representing victims of modern slavery to secure their rights, including regularising immigration status where relevant.

87. Under the current legislation, across all UK jurisdictions, presumed victims are entitled to legal aid when they enter the NRM process, regardless of their immigration status, if they meet the financial eligibility criteria. Access to legal aid thus depends on a timely and correct identification. According to the information provided by specialised NGOs, local authorities often fail to secure adequate legal advice for trafficked children because of the lack of specific knowledge or skills among local authorities' staff. NGOs specialised in supporting trafficked children expressed concerns about negative trafficking decisions being used in asylum appeals of victims of trafficking to discredit children's claims.<sup>77</sup> The great impact of a negative decision further highlights the crucial role of legal assistance during the victim identification process. NGOs highlighted that difficulties in identifying victims are significantly higher in the case of victims with an irregular migration status (see paragraph 264). Some victims do not consent to being referred into the NRM due to fear about the involvement of immigration services, being unable to work once within the NRM process, or uncertainties around support provided within the NRM. Legal aid is neither available for pre-NRM advice, nor during the identification process, to help possible victims in preparing evidence to demonstrate their status. It is important to recall that many victims are traumatised and vulnerable and it could be very difficult for them to put forward a coherent account of their experiences orally or in writing. A report published by the Modern Slavery Policy and Evidence Centre and carried out by the University of Liverpool found that legal advice for victims of modern slavery was "severely hampered", despite strong evidence that this is key to securing their immigration status and protecting them from re-trafficking. The report, based on interviews with immigration lawyers and support providers working with survivors in England, found that there was a lack of clarity among them about what legal aid persons referred to the NRM - and potential victims who have not yet been referred to the NRM - are entitled to receive, particularly for immigration related cases.<sup>78</sup> GRETA notes that the absence of legal aid prior to the access to the NRM fails to provide possible victims with advice in order for them to make an informed choice based on their options, and prevents them from giving properly informed consent as to whether to enter the NRM.

88. Reference can be made to the following case which highlights the importance of early access to legal assistance.<sup>79</sup> A male victim of trafficking from an African country was brought to the UK and held in exploitation for over nine years, working in car washes, garages and painting houses. He was not paid, worked sometimes seven days a week, and was sexually assaulted and verbally abused by the people who exploited him. He was detained by the Home Office in 2015 and held in different immigration removal centres. His asylum claim was rejected, and he was told he would be removed from the UK. He approached the Salvation Army, was interviewed late at night and signed a form referring him into the NRM, without reading it as he was paralysed by the fear of his imminent removal. At this point he had no immigration solicitor. He was told he would have a proper interview about his case with the Home Office later. He was then given a negative reasonable grounds decision. He managed to avoid removal and was released from detention. He finally received advice from an immigration solicitor who prepared a claim for protection with a detailed witness statement that led to his case being reconsidered under the NRM. He eventually received a positive Conclusive Grounds decision, some three years after the first decision. He has been

<sup>77</sup> <https://www.ecpat.org.uk/Pages/FAQs/Category/child-trafficking-exploitation-and-slavery-faqs>

<sup>78</sup> [Modern slavery survivors at higher risk of being re-trafficked due to barriers accessing legal advice, finds report | The Independent](#)

<sup>79</sup> [ATLEU LASPO PIR Briefing and Evidence 2018.pdf - Google Drive](#)

diagnosed with Post-Traumatic Stress Disorder, linked to his experiences in exploitation. His trafficking case was turned down in 2015 due to an alleged lack of information about key parts of the case. With the assistance of a solicitor, fuller information was provided, and his account was accepted by the Home Office.

89. Free legal aid is not available for victims of trafficking seeking state compensation before the Criminal Injuries Compensation Authority (CICA) in England and Wales. Exceptional Case Funding (ECF) is technically available where the case is not on the scope of legal aid and human rights would be breached if the person does not get funding for a lawyer, however, according to lawyers and civil society representatives consulted by GRETA, access to ECF is very difficult in practice and the great majority of requests are rejected. By way of example, in England, between April 2014 and April 2018, ATLEU made 30 applications for ECF in relation to CICA matters and all 30 were refused. The UK authorities informed GRETA that in May 2020, CICA launched its new Apply service for adult victims of sexual violence and in January 2021, this service was extended to adult victims of physical violence. The service can now be accessed by over 60% of applicants and work has begun to enable children and those with appointed representatives to use the service. The LAA maintains that an application to CICA does not require legal advice and assistance as it is merely a form filling exercise. However, the state compensation procedure is quite complex, and victims must prove that they have suffered a physical injury or a diagnosable psychiatric injury as a direct result of a crime of violence in order to receive an award.

90. By way of illustration, GRETA would like to refer to the following case.<sup>80</sup> S., a female victim, was trafficked to the UK for the purpose of labour exploitation. She was required to work lengthy hours in a textile business for which she received no payment. She was fearful as she was subjected to threats in the event she disclosed her treatment. However, she was eventually assisted by the police and gave evidence at the trial leading to the conviction of her trafficker. S. and her family were threatened with violence by the trafficker to deter her from giving evidence. She was diagnosed as suffering from a mental injury attributable to her experiences. S. was refused compensation under the Criminal Injuries Compensation Scheme on the basis that she had not suffered an immediate threat of violence; it was considered that the time between the threat and the work she was compelled to do amounted to a threat to harm in the future. S. applied for ECF to challenge the decision, but was refused it on the basis that she would not require legal advice or assistance to make representations to CICA or in the alternative she could attend and represent herself at any appeal hearing. S. is illiterate in both English and her mother tongue. She required advice in connection with judicial review proceedings against the LAA's refusal of funding and was unable to pursue her CICA appeal.

91. GRETA stresses that legal assistance is crucial for ensuring access to compensation for victims of trafficking. Because of the complexity of the procedure as well due to victims' psychological conditions, lack of knowledge of the legal system and vulnerability, access to compensation without the assistance of a lawyer may be particularly difficult for THB victims.

92. **Noting that access to legal assistance and free legal aid is essential for victims' access to justice, GRETA urges the UK authorities to take further steps to ensure that:**

- **victims, and in particular children, receive legal assistance during the identification process and are properly informed of their rights and options before entering the NRM;**
- **access to free legal aid is ensured across the UK and is granted in a timely manner;**
- **the assistance of a lawyer is ensured for state compensation proceedings, by making the Exceptional Case Funding scheme accessible in practice to victims seeking compensation before the Criminal Injuries Compensation Authority.**

93. **GRETA also invites the UK authorities to raise awareness among Bar Associations of the need to encourage training and specialisation of lawyers, and ensure that trafficking victims are assisted by specialised lawyers.**

#### **4. Psychological assistance (Article 12)**

94. Human trafficking and exploitation may have serious psychological and physical consequences for the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking overcome the trauma they have been through, and to achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic intervention due to the violence they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy, conducted by an experienced clinician.<sup>81</sup> In the case of trafficked children, specialist child psychologists should be employed.

95. In **England and Wales**, potential and confirmed victims of trafficking have access to mainstream mental health support through the NHS. The MSVCC covers support to access medical care and counselling. The initial needs-based assessment covers emotional and mental wellbeing (level of trauma, risk of self-harm suicide, etc). Subsequently, the MSVCC will conduct a detailed needs-based assessment, which covers psychological and emotional needs as well as cultural and spiritual needs. In addition, since 2019, a Recovery Needs Assessment (RNA) is undertaken for all confirmed victims of modern slavery (see paragraph 272). All needs assessment should be conducted in a language understood by the victim.<sup>82</sup> Victims who exit the main service on or after 4 January 2021 with a positive Conclusive Grounds decision are eligible for reach-in support from MSVCC Prime Contractor (i.e. the Salvation Army). The aim of this support is to help a smooth and sustainable transition after exit from the NRM. The assistance includes medical treatment, mental health services and substance dependency (detoxification) services.<sup>83</sup>

96. In **Northern Ireland**, support for adult victims is provided by Migrant Help and Belfast & Lisburn Women's Aid, which are funded by the Government. Health care and social care can be provided even if the presumed victim has not entered the NRM. Victims of sexual exploitation can receive care and support from the Sexual Assault Referral Centre.

<sup>81</sup> See OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

<sup>82</sup> Home Office, *Recovery Needs Assessment Guidance*, August 2020, <https://www.gov.uk/government/publications/recovery-needs-assessment-rna-process-guidance>

<sup>83</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/950690/January\\_2021\\_-\\_Modern\\_Slavery\\_Statutory\\_Guidance\\_E\\_W\\_Non-Statutory\\_Guidance\\_S\\_NI\\_v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950690/January_2021_-_Modern_Slavery_Statutory_Guidance_E_W_Non-Statutory_Guidance_S_NI_v2.pdf)

97. In **Scotland**, the Anchor Service, which is the psychological trauma service of NHS Greater Glasgow and Clyde, provides a psychological service to adult victims of human trafficking and exploitation identified in Scotland. Increased funding by the Scottish Government of £1.5 million has been announced for support services working with victims of human trafficking (see paragraph 276). Child victims of trafficking receive support through local authorities and the Scottish Guardianship Service. In 2019, the Scottish Guardianship Service, in partnership with The Anchor Service, received funding for a three-year mental health project called "The Allies", the aim of which is to provide early intervention support for asylum seeking and trafficked young men. The Scottish Government is providing £186,000 to the Anchor Service to reflect the increasing demand for psychological support. Further, the Scottish Guardianship Service launched a befriending service for separated and trafficked children, to help mitigate the loneliness, isolation and unfamiliarity that many children who have been victims of trafficking experience. In 2019, 38 matches were made between young people and trained volunteer Befrienders.<sup>84</sup>

98. In her 2019-2020 annual report, the Independent Anti-Slavery Commissioner underlined the importance of approaching human trafficking also as a health care issue. In February 2020, the Commissioner chaired a roundtable with Public Health England (PHE) to discuss a public health approach to modern slavery. The roundtable identified three areas of work to progress. Firstly, PHE committed to leading the development of a framework for multi-agency partnerships to respond to modern slavery through a public health lens. In addition, PHE agreed to develop work to better understand the health needs of victims. Lastly, commitment was made to encouraging consistent standards in care, including an understanding of how the system needs to change to best support survivors. Due to the impact of COVID-19, PHE had to place these actions on hold in the short to medium term.<sup>85</sup>

99. GRETA had the opportunity to hold online meetings with a number of survivors of human trafficking. Some of them indicated that during their stay at shelters run by the Salvation Army and sub-grantees, they did not have access to trauma therapists. In the context of the COVID-19 pandemic, waiting times for psychologists had reportedly increased (e.g. seven months). Survivors gave accounts of difficulties they had experienced as a result of the disruption of mental health support. GRETA is concerned by the difficulties faced by victims in accessing psychological assistance and the impact this has not only on their mental health, but also on their effective access to compensation, which may depend on proving a diagnosable psychiatric injury.

100. **While welcoming the commitment made to improving mental health support to victims after exiting the NRM, GRETA considers that the UK authorities should guarantee timely access of victims of trafficking to psychological assistance and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion.**

## 5. Access to work, vocational training and education (Article 12)

101. Article 12, paragraph 4, of the Convention requires State Parties to enable victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education. An important element of the recovery and successful social inclusion of trafficked persons is their economic empowerment, which can be achieved through job placement, micro-businesses and social enterprises.<sup>86</sup> GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.<sup>87</sup>

<sup>84</sup> <https://www.gov.scot/publications/trafficking-exploitation-strategy-third-annual-progress-report-strategy-review/pages/6/>

<sup>85</sup> [https://www.antislaverycommissioner.co.uk/media/1461/ccs207\\_ccs0520602790-001\\_iasc\\_annual-report-2019-2020\\_e-laying.pdf](https://www.antislaverycommissioner.co.uk/media/1461/ccs207_ccs0520602790-001_iasc_annual-report-2019-2020_e-laying.pdf), p. 14.

<sup>86</sup> Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

<sup>87</sup> See 8th General report on GRETA's activities, paragraph 183.



102. In the UK, right to work depends on immigration status. Victims from outside the EEA who are irregular migrants are unable to work whilst they are in the NRM process, until such time as they receive a positive Conclusive Grounds Decision which may entitle them to a residence permit (discretionary leave to remain). This has been identified as one of the greatest concerns of survivors consulted by GRETA. Restrictions on the right to work prevent victims from recovering their autonomy and their dignity, and it affects their decision on whether enter or not the NRM. The delays in the issuance of NRM decisions exacerbates this situation, especially in England and Wales, where some victims have waited for over two years for their Conclusive Grounds decision.<sup>88</sup>

103. Access to work may be further compromised when a possible victim of trafficking is also an asylum seeker, due to two reasons: (i) delays in obtaining a decision on Discretionary Leave (DL) to Remain<sup>89</sup>; (ii) restrictions in accessing the labour market. According to the practice adopted in the last few years, the decision on DL should remain suspended when an application for asylum is pending. This practice was formalised on 10 September 2018, when the Secretary of State for the Home Department published a policy, "Discretionary leave considerations for victims of modern slavery", under which no decision would be made on a residence permit under Article 14 of the Council of Europe Anti-Trafficking Convention until a person's entitlement to any other form of leave, including asylum, had been determined. As a result, victims of trafficking are not issued with a residence permit as such, and continue to be considered as asylum seekers for the purpose of access to the labour market, thus facing limitations. Following the case of *R (JP and BS) v Secretary of State for the Home Department* [2020] 1 WLR 918, where the England and Wales High Court considered this policy unlawful, the policy was changed. On December 2020, a new "Discretionary leave considerations for victims of modern slavery" guidance was published, stating that even if asylum claim should normally be decided before any consideration is given to whether the victim is eligible for DL, in some cases it may nonetheless be appropriate to consider a grant of DL in advance of consideration of the asylum claim, where the individual situation requires it. GRETA welcomes this policy change and its possible impact (not yet assessable) on access to work for victims of trafficking who are also asylum seekers. GRETA was also informed that the Home Office is undertaking a review of its policy in respect of asylum seekers' right to work, in response to the recommendations made by the Lift the Ban coalition's report, published in October 2018, which may overcome the limitations on access to work for asylum seekers.

104. Currently, asylum seekers in respect of whom a decision at first instance has not been taken within one year of the date on which it was recorded have limited access to work according to Part 11B of the Immigration Rules. The choice of employment is limited to the list of shortage occupations (SOL) published by the United Kingdom Border Agency (UKBA). No work in a self-employed capacity is allowed, and there can be no engagement in setting up a business. In this respect, reference should be made to the case of *IJ (Kosovo), R (On the Application Of) v Secretary of State for the Home Department*,<sup>90</sup> which concerned access to the labour market for victims of trafficking who are also asylum seekers. The contention at the heart of the claim is that the SOL restriction and its application are inconsistent with the requirement under Article 12 of the Council of Europe Anti-Trafficking Convention. This case was seen and decided upon in the context of the above-mentioned case *R (JP and BS) v Secretary of State for the Home Department*.<sup>91</sup> The Court found that the SOL restriction, when applies regardless of the personal situation of applicants, runs the risk of being discriminatory. The Court noted that the Secretary of State for the Home Department has a residual discretion to consider granting a wider permission to work in individual cases, but the policy at the time did not acknowledge this discretion or explain how it was to be applied, contributing to making such guidance misleading.

<sup>88</sup> See the Independent Anti-Slavery Commissioner Annual Report 2019-2020, p. 14.

<sup>89</sup> Discretionary leave to remain in the UK (i.e. residence permit) is granted to people who are able to prove to the Home Office that their circumstances are compelling on compassionate grounds or are such that they can be granted leave outside the immigration rules. This can only be approved by the Secretary of State.

<sup>90</sup> [LJ \(Kosovo\), R \(On the Application Of\) v Secretary of State for the Home Department \[2020\] EWHC 3487 \(Admin\) \(18 December 2020\) \(bailii.org\)](#)

<sup>91</sup> *Ibid.*, paragraph 37.

105. Access to vocational training and education is in theory possible for victims of trafficking, but there are financial issues, and it depends on the availability of scholarships provided by charities. The UK authorities have referred to initiatives by companies which are part of the Government's Business against Slavery Forum, made up of the CEOs of 13 multinational businesses committed to tackling modern slavery in their own sectors and beyond, such as Co-op's Bright Future programme providing employment opportunities to survivors. Further, the bank HSBC provides bank accounts to survivors who do not possess the necessary documentation required under banking regulations to open an account.

106. Survivors with whom GRETA had exchanges stressed the importance of access to education, vocational training and work for their recovery and rehabilitation. They noted the need for education and employment support by the authorities to break the vicious circle of exploitation. The Independent Anti-Slavery Commissioner has expressed her concerns about the current situation and the risk of further restrictions on the right to work of migrants following the UK's exit from the EU, also drawing attention to the difficulties experiencing in non-British victims in accessing education.

**107. GRETA considers that the UK authorities should make further efforts to support victims of THB in their economic and social inclusion through the provision of education, vocational training and job placement. This should involve raising awareness amongst different employers and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking.**

**108. GRETA also considers that the UK authorities should ensure that identified victims of trafficking who are also asylum seeker, are not discriminated against on account of their status, and can access to the labour market on the same conditions as other identified victims of trafficking.**

## **6. Compensation (Article 15)**

109. Article 15(3) of the Convention establishes a right of victims to compensation. The compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced). However, even though it is the trafficker who is liable to compensate the victim, in practice there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. Article 15(4) therefore requires that Parties take steps to guarantee compensation of victims. The means of guaranteeing compensation are left to the Parties, which are responsible for establishing the legal basis of compensation, the administrative framework and the operational arrangements for compensation schemes. In this connection, Article 15(4) suggests setting up a compensation fund or introducing measures or programmes for social assistance to, and social integration of, victims that could be funded by assets of criminal origin. Of relevance in this respect is the European Convention on the Compensation of Victims of Violent Crimes, pursuant to which, when compensation is not fully available from other sources, the State shall contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence, as well as the dependents of persons who have died as a result of such crime, even if the offender cannot be prosecuted or punished.

110. Compensation fulfils multiple purposes: payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, as well as being seen as a form of punishment and deterrence of traffickers. As such, compensation plays a crucial role in the fight against human trafficking, not only as an instrument of restorative justice, but also by way of prevention and recognition by States of their failure to meet their human rights obligations.

111. Victims often leave the country where they were exploited at the end of the criminal proceedings. This creates obstacles to making civil claims for compensation, which in addition are associated with a number of other barriers, such as high costs, unavailability of free legal aid and victim-support services, as well as the claimant bearing the burden of proof of the amount of the damage. State parties should therefore consider adopting a procedure through which victims are entitled to obtain a decision on compensation by the offender as part of the criminal trial, within a reasonable time.

112. As described in GRETA's second report, there are four routes by which victims of THB can claim compensation in **England and Wales**: (i) under the Sentencing Act 2020, where the judge can award compensation on conviction (compensation order); (ii) under section 8 of the MSL (Slavery and Trafficking Reparation Order), after the criminal trial; (iii) civil route through legal action on behalf of the victim, including a claim against the employer through employment tribunals for victims of forced labour or domestic servitude; (iv) state compensation through the Criminal Injuries Compensation Scheme. More details on these routes are provided in paragraphs 115-128.

113. Section 10 of **Northern Ireland's** Human Trafficking and Exploitation Act (2015) provides a power for the Crown Court to impose a reparation order onto those convicted of offences of slavery, servitude, forced or compulsory labour, and human trafficking. Courts are obliged to consider whether to make such an order where they have the power to do so and to give reasons where they have determined not to do so. Compensation awarded by the court may be limited by the defendants' means. The Public Prosecution Service affirmed that it was not aware of any compensation from perpetrators awarded to victims of trafficking in criminal proceedings. Victims can also use civil court remedies or the Industrial Tribunals and Fair Employment Tribunal Northern Ireland. Further, victims can claim state compensation from the Northern Ireland Criminal Injuries Compensation Scheme (see paragraph 130).

114. In **Scotland**, the human trafficking legislation does not have a bespoke reparation order/or equivalent. Under the Criminal Procedure (Scotland) Act 1995, courts are required to consider, where relevant, whether a compensation order is required to pay compensation to the victim.<sup>92</sup> The judge sets the amount to be paid, which takes into account the crime committed and the offenders' ability to pay. Compensation orders are enforced by the court (through, for example, deductions from the offender's earnings or benefits), who can impose a sentence of imprisonment upon anyone who has not made designated payments. The authorities and civil society were not aware of compensation being awarded as part of these criminal proceedings in Scotland. It is also possible for a victim of trafficking to bring a civil claim against an accused person, or to refer the case to an Employment Tribunal. Training courses are provided to judges (provided by the Judicial Institute), new prosecutors (provided by the Crown Office and Procurator Fiscal Service) and solicitors.

115. In **England and Wales**, under the Sentencing Act 2020, a compensation order is available to the criminal courts.<sup>93</sup> Compensation orders may be imposed by the criminal courts on conviction, as well as, or instead of, dealing with the offender in any other way (i.e. another type of sentence such as a community order or prison sentence). To receive compensation via the criminal justice process, a victim needs to provide a witness statement. In deciding the amount of the compensation order, the court must have sufficient evidence. In practice this may include victim impact assessments and detailed psychiatric evidence for this group (or evidence of physical harm). Difficulties arise from the fact that compensation via the criminal process takes into account the financial means of the offender, and it is limited to situations where the calculation of damages is straightforward.<sup>94</sup> The confiscation of criminal assets is regulated by the Proceeds of Crime Act (POCA) 2002. A court can award a compensation immediately following conviction where there are no confiscation proceedings or following the latter (see paragraph 144). The number of compensation orders is reportedly low, and despite the fact that the amount of compensation

<sup>92</sup> Criminal Procedure (Scotland) Act 1995, section 249, available at: [www.legislation.gov.uk/ukpga/1995/46/contents](http://www.legislation.gov.uk/ukpga/1995/46/contents)  
<sup>93</sup> <https://www.legislation.gov.uk/ukpga/2020/17/contents>

<sup>94</sup> See *R v Horsham Justice ex p Richards (1985) 1 WLR 986*.

is unlimited by statute (when the offender is over the age of 18),<sup>95</sup> sometimes the sums received by victims are nominal, e.g. £200. The UK authorities have specified that, in determining whether to make a compensation order, and the amount to be paid under such an order, the court must take into account the financial circumstances of the offender, striking a balance between seeking reparation and not imposing debts that are unrealistic or unenforceable.

116. The Slavery and Trafficking Reparation Order, under section 8 of the MSA, enables courts to order a person convicted of a modern slavery offence to pay reparation to the victims for the exploitation and degradation they have suffered.<sup>96</sup> There needs to be a Confiscation Order for the Reparation Order to be made. The amount awarded to victims under Reparation Orders cannot exceed the Confiscation Order's amount, which in turn cannot exceed the criminal benefit of a defendant. The difficulty in obtaining compensation through this method arises from the fact that Reparation Orders can only be considered if the defendants' assets are realisable. Reparation Orders are made as part of a community sentence, and are not broken down by crime type, the UK authorities were unable to pull out the number of Reparation Orders under the MSA, but GRETA's interlocutors were not aware of any victims of THB having received a Reparation Order. According to the UK authorities, the 2018 independent review of the MSA recommended that compensation should be at the forefront of the court's mind. In October 2020, the Sentencing Council was consulted on draft sentencing guidelines for offences under the MSA, and it is anticipated that definitive versions of the guidelines will be published later in 2021.

117. Civil claims for compensation are often lengthy and complex, and effectively rely on the victim being legally represented. Costs in these cases can be a significant barrier, and it can be difficult for victims to recover the full amount of their loss. Civil claims are in scope for legal aid, but in practice, many victims rely on pro bono assistance. Civil claim against the employer through employment tribunals is available for victims of forced labour or domestic servitude, for aspects such as underpayment or unlawful deduction of wages. The amount of compensation for loss of earnings is calculated on the basis of the National Minimum Wage (NMW). However, victims face several difficulties in obtaining compensation through this route. First, claims before the employment tribunals are lengthy and complex (it is frequently in excess of 18 months to reach a full trial). Second, the Deduction from Wages (Limitation) Regulations 2014 prevents victims from obtaining more than two years owed in National Minimum Wage, even though they may have been paid little or nothing for several years. Third, the Family Worker Exemption and "live-in domestic workers exemption", contained in the NMW Regulations 2015, provide that employers' family and live-in domestic workers are not entitled to receive the NMW or any payment at all if the worker is "treated as a member of the family". This exemption is frequently used as a litigation tool by traffickers to defend themselves in court or tribunal claims.

118. In relation to the above, the Home Office has pointed out that the Family Worker Exemption sets out conditions for work done by a worker in relation to the employer's family household, to which the National Minimum Wage does not apply. The regulations set out requirements for this exemption, which are quite specific. 'Live-in domestic workers exemption' applies, for instance, to *au pairs* allowed to go and work in the UK for up to two years under the Youth Mobility Scheme visa. This visa requires an applicant to provide evidence they can support themselves in the UK and is only available to nine different nationalities. The Home Office affirmed that these exemptions do not apply, in practice, to foreign domestic workers, as the Immigration Rules require the workers to ask for an overseas domestic worker visa, under which there are very narrow conditions, and the employer to pay at least the minimum wage rate the worker is entitled to.

<sup>95</sup> If an offender is under 18, there are limits to what can be awarded for an individual offence, up to a maximum of £5,000 as defined in section 139 of the Sentencing Code.

<sup>96</sup> See the explanatory notes to section 8 of MSA.

119. Further, the Home Office informed GRETA that workers have alternative routes of claiming their rights. A worker can bring a contractual claim provided the employment has been terminated. If brought in an employment tribunal, a contractual claim is limited to £25,000, but the worker may bring a contractual claim in the courts (High Court) where this limit would not apply, and neither would the two-year cap. However, proceedings in courts involve higher fees and the worker is more likely to have costs awarded against them if they lose. Her Majesty's Revenue and Customs' (HMRC) Notice of Underpayment can go back up to six years and this is the route that most workers take.

120. NGOs pointed out that victims of trafficking who did not have the right to work in the UK at the time of their exploitation face barriers in claiming compensation for breaches of labour law in civil or employment tribunals. Under UK law, undocumented workers are not excluded from the definition of "worker" or "employee". However, employers can use the "illegality defence", asking the court to strike out the claim of an undocumented worker, on the basis that the employment relationship is voided due to the worker's lack of required authorisation to work in the country. The impact of the "illegality defence" has been limited in recent case law: in July 2019, the England and Wales Court of Appeal (EWCA) decided that, when a migrant worker is unaware of the fact that they are undocumented, for instance when the employer is responsible for applying for their visa, or when they do not have access to their documents to check whether they have a valid visa, the illegality defence cannot be relied upon.<sup>97</sup>

121. The UK authorities confirmed that, in most cases, it is not possible for undocumented workers to enforce their contract, as the contract itself would be illegal. However, this does not represent an absolute bar to recovering unpaid wages. Indeed, it may depend on the facts of the individual case, with a key consideration that needs to be made on whether the worker knew or had reasonable cause to believe that they lacked lawful permission to work. If they did not, then potentially they may be able to enforce their contract through the employment tribunal to recover the wages. Where the worker has been forced to work against their will, this would potentially pave the way for other types of action, in particular under criminal and tort law. GRETA is concerned that the 'illegality defence' continues to constitute an obstacle in terms of access to justice for THB victims who are irregular migrants.

122. According to information available to GRETA, there are no mechanisms in place to ensure that perpetrators are held into account following a costs order against them. Civil society mentioned one particular case where a victim of domestic servitude was awarded £100,000 in compensation by the employment tribunal, but was then tasked to enforce the order by herself or by employing an enforcement agency, with no legal aid or support provided.

123. For many victims, given the limited prospects of obtaining compensation from perpetrators, state compensation is the only route to obtain compensation. The Criminal Injuries Compensation Scheme (CICS), which applies in **England, Wales and Scotland**, provides state-funded compensation to people who have been physically or mentally injured because they were victims of a violent crime. Human trafficking is not recognised *per se* as a crime of violence, so victims should prove that they have a physical injury or a diagnosable psychiatric injury in order to receive an award. The scheme is subjected to the following eligibility criteria: the victims should have been conclusively identified as victims of trafficking (through the NRM); they must have suffered a physical or psychological injury as a direct result of a crime of violence in Great Britain; the applicant must have taken all reasonable steps to obtain any other compensation; co-operation with the investigation is a requirement to access compensation and having an unspent criminal conviction may be a preclusion; and application must be made within two years of the criminal injury suffered.<sup>98</sup> A state compensation request can be made while the outcome of the criminal proceedings is still pending. A victim of trafficking can apply regardless of their residence status or nationality, and regardless of whether they are physically present in the UK. The scheme operates on a tariff-based system, which is used to calculate the value of awards in order to ensure that the award

<sup>97</sup> *Okedina v Chikale* (2019) EWCA Civ 1393.

<sup>98</sup> The CICA may extend the time limit in exceptional circumstances where the applicant could not have applied earlier, and where the evidence means an application can be determined without further extensive enquiries. In addition, different rules apply where the applicant was under 18 years of age at the time of the incident giving rise to the criminal injury.

reflects the severity of the injury sustained. The maximum overall cap for injury awards and additional payments is £500,000. Compensation payments available under the scheme are exempt from the statutory charge by virtue of regulation 5(1) (d) Civil Legal Aid (Statutory Charge) Regulations and its predecessors.

124. Applications to the Criminal Injuries Compensation Authority (CICA) do not require the involvement of a lawyer, and legal aid is not available for such claims in England and Wales. Victims who are not entitled to legal aid can apply for an Exceptional Case Funding grant, however, as noted previously (see paragraph 89), very few applications are accepted. In Scotland, the applicants may be eligible for legal aid from the Scottish Legal Aid Board, however, GRETA was informed that access to legal aid remains limited as lawyers do not consider taking these cases financially viable.

125. The authorities informed GRETA that CICA does not collect comprehensive data concerning the status, or the eligibility to receive compensation, of victims of modern slavery and human trafficking because they are not "crimes of violence" as defined by the CICS. However, it is possible to assume that an applicant is a victim of trafficking if they reply affirmatively to the question in the application form, asking if they have been identified as a victim of human trafficking by the competent authorities. In the period from 1 December 2016 to 30 September 2020, 212 applicants answered positively to that question. Of those 212 applications, five applications have been deferred to obtain confirmation of the applicant's status as a victim of human trafficking or as a person granted temporary protection, asylum, or humanitarian protection, 95 are under consideration, 82 were not offered a compensation award, and 30 were offered awards with a combined total of £411,187.

126. Civil society noted that victims experience multiple obstacles in obtaining state compensation. An application must be made within two years of the criminal injury suffered. This is not realistic for many victims, due to trauma, lack of knowledge and assistance, and most do not realise that they need to do this on top of being referred into the NRM. There is normally no legal aid available for victims of trafficking to apply to the CICA or to challenge their decisions. Some victims are able to get pro bono legal representation, but this is not available for everyone. The CICA is able to withhold awards of compensation to an applicant "unless you co-operate fully with the investigation into the crime and any prosecution that follows" and, according to civil society, routinely does so without any consideration of the applicant's reasons or circumstances. When compensation is paid, this is usually after years of waiting and is frequently considered by victims of slavery to be insultingly low, not taking into account the psychological injuries from trafficking and modern slavery. In this connection, the UK authorities have specified that the CICA provides its staff with guidance on the circumstances which may lead applicants to delay reporting incidents to the police, which includes recognition of the particular circumstances of victims of trafficking. The CICA has also continued to invest in its work with specialist agencies, such as the NGO Trafficking Awareness Raising Alliance (TARA) support service, to build a trauma-informed workforce through increased awareness and training to support victims of human trafficking to support applicants through the compensation process.

127. GRETA notes that the non-inclusion of human trafficking in the list of "crimes of violence" under the CICS has a significant impact on the victims' access to state compensation, in particular with regard to the burden of proof and the need to demonstrate a physical injury or a diagnosable psychiatric injury. A victim who has been severely exploited, but is not able to demonstrate the injury, will not receive an award. Meeting the required standard of proof, especially for psychological injuries, without the assistance of a lawyer is even more difficult, and severely limits victims' access to compensation. According to the UK authorities, where applicants may have difficulty in accessing the diagnosis or prognosis of a psychiatrist or clinical psychologist who has treated the applicant the CICA can refer the claim to one of the clinical psychologists it directly employs. They will provide an expert opinion for the sole purpose of meeting the CICS criteria.

128. A research undertaken in February 2019 showed that out of 137 applications for compensation made by victims of trafficking over a two-year period, only eight had received an award, while 50 were rejected outright.<sup>99</sup> Moreover, the study revealed that the application process was quite slow: 79 of the 137 applications made by victims were still to be determined. NGOs consulted by GRETA further noted that it is extremely difficult for claims to be made or continued once the victim has departed from the UK, due both to the lack of legal aid and the existing requirement to attend appointments in the UK to process the application.

129. The 2018 Independent Review of the MSA recommended that all victims of modern slavery should receive appropriate compensation, not just those who give evidence in court, and that the police should maintain contact with victims, making sure they are aware of the possibility of receiving compensation in the future. The review also recommended the provision of specific training for all participants in the criminal justice system and the recommendation was accepted by the UK Government. The authorities informed GRETA that lawyers and judges undertake continuous training. Chapter 7 of the judiciary's training manual, the Equal Treatment Bench Book focuses on Modern Slavery with a subsection specifically on compensation. This book is constantly updated and is referred to by the Judiciary of England and Wales in their training courses.<sup>100</sup>

130. The **Northern Ireland**, the Criminal Injuries Compensation Scheme (2009) is a tariff-based scheme that comprises both physical and mental injuries. It applies both for compensation from perpetrators and the State. The eligibility criteria do not exclude victims of trafficking on the basis of location, irregularity of residence, or nationality. Claims may be withheld or reduced on the following conditions: the individual has not reported the circumstances of the injury to the police and can offer no reasonable explanation for not doing so; the individual chooses not to fully co-operate with Compensation Services, the police or other authorities during their application; the individual has a criminal conviction. Each application can be reviewed, on a case-by-case basis, considering the specific situation of the victim. According to data provided by the authorities, the number of applications for state compensation were five in 2015, one in 2016, one in 2017, none in 2018 and two in 2019.

131. Victims of human trafficking who return to their countries of origin are entitled to compensation through the different routes listed in paragraph 109. A reparation order can be granted regardless of whether the victim remains in the UK after giving evidence. Victims of trafficking, including EU/EEA nationals, would in theory also be able to pursue a state compensation claim, employment tribunal and/or civil claim. However, civil society organisations pointed out that the support provided by the UK authorities to survivors who return to their country of origin is not enough to enable them to obtain compensation and other remedies. If the victim has not taken steps to update the police of any change in contact details because of the gap between sentencing and POCA proceedings, they will not be aware that an order has been made. In addition, there may be logistical and financial difficulties in victims returning to the UK for issues relating to their litigation such as examination by a medical expert and attendance at a tribunal hearing or civil trial. Victims who are no longer in the UK can in theory obtain legal aid and pursue a compensation claim in the UK, but the LAA will only accept documents in English or French, so steps need to be taken to prepare appropriate translations, often with the cost borne by the legal aid provider. There are also logistical difficulties in terms of the administrative demands of the LLA in requiring ongoing documentation on financial means of victims which provides additional difficulty especially as wage slips will be in a different language.

<sup>99</sup> Freedom of Information request undertaken in February 2019 by ATLEU.

<sup>100</sup> <https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf>

132. While welcoming the availability of a range of legal avenues to claim compensation, and the fact that provision has been made in the CICS to recognise the right of victims of modern slavery and human trafficking to apply for compensation, GRETA is concerned by the low number of victims of human trafficking who have received compensation from either the perpetrators or the state. **GRETA urges the UK authorities to make additional efforts to guarantee effective access to compensation for victims of trafficking, in line with Article 15 of the Convention, including by:**

- **enabling all victims of trafficking, including undocumented migrants, to exercise their right to compensation, and carrying out a review of the “illegality defence”, aimed at enabling victims of trafficking who are irregular migrants to seek unpaid salaries before employment tribunals;**
- **ensuring that the Family Worker Exemption and the “live in domestic workers exemption” do not prevent domestic workers who are victims of trafficking from accessing compensation;**
- **ensuring that victims of labour exploitation have accessible remedies for obtaining more than two years owed in National Minimum Wage;**
- **making full use of the legislation on the freezing and forfeiture of assets and international co-operation to secure compensation to victims of THB;**
- **improving training programmes on compensation for legal practitioners, prosecutors and the judiciary, and encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB;**
- **enabling victims of trafficking to effectively exercise their right to state compensation within reasonable time, by ensuring their access to legal aid when submitting applications to the CICS as well as to experts who can assess psychological injuries, and providing appropriate guidance to CICA;**
- **ensuring that the amount of compensation from the Northern Ireland Criminal Injuries Compensation Authority is not made dependent on the victim’s co-operation with the authorities or prior convictions.**

133. **GRETA also reiterates its recommendation from the second evaluation round and invites the UK authorities to develop a system for recording claims for compensation by victims of trafficking, as well as compensation awarded to victims of trafficking.**

## **7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)**

134. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB. Article 27(1) of the Convention establishes that the investigation or prosecution of THB offences must not depend on victims’ reports. The aim is to avoid traffickers’ subjecting victims to pressure and threats in attempts to deter them from complaining to the authorities. Pursuant to Article 27(2), if the competent authority with which the complaint has been lodged decides that it does not itself have jurisdiction in the matter, then it must forward the complaint without delay to the competent authority of the Party in whose territory the offence was committed. Further, under Article 27(3), each Party shall ensure to non-governmental organisations and other associations which aim at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence of trafficking in human beings.



135. Article 23 requires Parties to match their action to the seriousness of the offences and lay down criminal penalties which are “effective, proportionate and dissuasive”. Further, paragraph 3 of Article 23 places a general obligation on Parties to adopt appropriate legal instruments enabling them to confiscate or otherwise deprive offenders (e.g. by so-called “civil” confiscation) of the instrumentalities and proceeds of human trafficking criminal offences. As trafficking in human beings is nearly always engaged in for financial profit, measures depriving offenders of assets linked to or resulting from the offence are an effective anti-crime weapon. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. It requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so. The identified, seized and confiscated illegal profits of trafficking should be used to compensate victims of trafficking, directly or through a victim compensation fund.

136. Further, Article 22 of the Convention requires Parties to ensure that legal persons can be held liable for human trafficking offences committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person who has a leading position within the legal person. Liability under this article may be criminal, civil or administrative.

137. According to the 2020 UK Annual Report on Modern Slavery Report, modern slavery remains one of the highest priority serious and organised crime threats for the National Crime Agency (NCA). There has been a continued uplift in operational activity to tackle modern slavery, involving a range of law enforcement agencies. Monthly operational data shows that in June 2020, there were 1,845 active law enforcement investigations, compared with 1,479 in June 2019. This has been complemented by increased training for frontline police officers on the signs of modern slavery and improved operational intelligence on the nature of modern slavery.<sup>101</sup>

138. Reference should be made to Project AIDANT, which involves a series of NCA-led operations bringing together resources from the NCA, Border Force, Immigration Enforcement, HMRC, GLAA and UK police forces. Between 2017 and 2019 the NCA co-ordinated UK law enforcement agencies to deliver 18 phases of Project AIDANT operational activity across the UK and some cases with international partners. During this time, Project AIDANT resulted in over 770 arrests, and safeguarding over 1,220 potential victims. Between April 2019 and March 2020, the following Project AIDANT phases took place: labour exploitation; child exploitation; sexual exploitation; ports and borders; Adult Service Websites. The most recent work has focused on the food packaging and processing sector, the shellfish industry, and the textiles and garment sector. These sectors had previously been identified as high-risk, and the COVID-19 pandemic has heightened existing vulnerabilities.

139. Adult Service Websites continue to be a prevalent enabler of sexual exploitation, where traffickers advertise victims online. The NCA Modern Slavery Human Trafficking Unit (MSHTU) is working to empower companies to identify modern slavery and exploitation on their platforms and report it to law enforcement. Work is ongoing, alongside the Home Office and other law enforcement partners, to enhance existing understanding, explore demand elements of sexual exploitation and work with industry appropriately to holistically tackle this issue.<sup>102</sup> For protecting victims of sexual exploitation online, the UK Government published, in April 2019, an Online Harms White Paper that sets out plans for tackling online harms and keeping children safe online, including for sexual exploitation. Further, the WePROTECT Global Alliance (WPGA) is a global movement driven and funded by the UK Government, aiming at bringing together the expertise and resources required to transform the fight against this crime worldwide. A significant amount of “pay per view” live streaming of abuse, watched in the UK, takes place in various countries, including the Philippines. In recent cases, the NCA has identified that this threats crosscuts with human trafficking, where multiple children are commercially exploited by crime groups. In response, the NCA has established an office in Manila in October 2018 which aims to tackle child sexual abuse.

<sup>101</sup> 2020 UK Report on Modern Slavery, p. 11.

<sup>102</sup> Ibidem.

140. The Home Office has invested an additional £2 million to continue to support the law enforcement activity in 2020/2021 under the new Modern Slavery and Organised Immigration Crime Programme. This investment will enable the police to continue to drive forward work to help raise awareness of modern slavery with national helplines supporting a range of vulnerable victims and increase modern slavery prosecutions, as well as including a new focus on building capability to respond to the organised immigration crime.

141. In **England and Wales**, according to the MSHTU's database, there were a total of 5,435 'live' police operations from December 2016 to October 2019. The CPS can only provide data on numbers of defendants convicted on offences that were investigated as THB but were prosecuted for offences under different legislation (MSA, Sexual Offences Act, Asylum and Immigration (Treatment of Claimants, etc.) Act, Coroners and Justice Act). This is usually in circumstances where law enforcement have not been able to provide evidence to support a MSA offence. According to this data, the total number of human trafficking offences charged and reaching a first hearing was as follows: 370 in 2015/2016 (of which 14 under the MSA); 312 in 2016/2017 (of which 98 under the MSA); 340 in 2017/2018 (of which 248 under the MSA); and 455 in 2018/2019 (of which 335 under the MSA). The number of convicted perpetrators of trafficking and modern slavery offences was, respectively, 31 in 2015, 55 in 2016, 48 in 2017 and 20 in 2018. Further, in 2019, 67 convictions were reportedly secured under the MSA.

142. The Criminal Procedure Rules and Criminal Practice Directions does not provide any specific direction that gives priority to human trafficking cases. Crown Courts operate Better Case Management (BCM) which ensures that cases are kept on track, hearing dates are observed and evidence from both prosecution and defence is served and disclosed in a timely fashion. The Crown Prosecution Service (CPS) informed GRETA that in 2019/2020, 77.8% of all cases referred by the police following investigation were charged and prosecuted. During the same period, the conviction rate was 74.4%. The CPS has given commitment to provide early investigative advice to the police in human trafficking and modern slavery cases. Prosecutors can help strengthen cases where a proactive investigation by the police has commenced, to remove the burden from vulnerable victims in proving a case, but also in bringing evidence-led prosecutions. Bringing evidence-led prosecutions has been successful in "County Lines" cases where children and vulnerable victims have not provided testimony. These cases have resulted in significant sentences and prosecutors have successfully obtained Slavery and Trafficking Prevention Orders, but because of the time lag between investigative advice and prosecution/conviction (sometimes up to two years), this positive trend is not reflected in current data. According to criminal courts' statistics published on 26 March 2020, the average number of days taken from first listing at magistrates' court to completion at Crown Court for modern slavery cases in England and Wales was 310 days in 2018 and 298 days in 2019.

143. Since the MSA came into effect in 2015, of the 74 offenders sentenced where modern slavery was the principal offence, 62 (84%) received an immediate custodial sentence. Of all offenders sentenced to immediate custody for this offence, the average custodial sentence length was 61 months.<sup>103</sup>

144. The purpose of confiscation proceedings under Part 2 of the Proceeds of Crime Act (POCA) 2002 is to recover the financial benefit that the offender has obtained from the criminal conduct. The MSA amended Schedule 2 POCA 2002 so that slavery and trafficking were listed as "criminal lifestyle offences", which allows investigators to deny offenders the full benefit of their criminal activities without the need to link every penny to a specific offence. Following confiscation, the prosecution can request the court to make a Reparation Order for all or part of the confiscated amount, to be paid to the victim. Section 6 of the POCA 2002 makes confiscation discretionary when civil proceedings are commenced or anticipated, so that compensation (through the civil proceedings) takes priority. Section 13 (5)-(6) of the POCA 2002 ensures that where a defendant cannot pay both confiscation and compensation orders, compensation is paid out of sums recovered under the confiscation order. Therefore, there is a priority for victims in all cases whether they provide witness statement evidence in criminal proceedings or if there are civil proceedings brought by them. Where compensation is payable out of confiscation, which is usual in human

<sup>103</sup> Ibid., p. 9.

trafficking or modern slavery cases, the powers of the POCA 2002 to enforce the confiscation order are very strong. They include prison sentences of up to 14 years with no early release for non-payment, the appointment of receivers, ordering banks to transfer monies, restraint (freezing) orders, and attachment of earnings. Where there is unusually just a compensation order, the order is enforced as if it is a court fine, non-payment of which can mean a sentence of imprisonment and with all the above powers with the exception of freezing orders.

145. GRETA was informed that assets seized from traffickers amounted to £3.2 million in 2016/2017, £7.9 million in 2017/2018, and 4.6 million in 2018/2019. While the amounts seized from traffickers have increased since 2015, NGO have stressed that the lack of adequate funds for financial investigations is a serious barrier to the implementation of the POCA 2002. GRETA notes the important amount of assets seized from traffickers, which contrasts with the low amount of compensation awards to victims of trafficking (see paragraphs 115-116).

146. The UK Financial Intelligence Unit (UKFIU) collaborates across UK policing and law enforcement agency in relation to modern slavery and human trafficking. It facilitates the transmission of financial intelligence, including to and from overseas jurisdictions who are part of the EGMONT group, a united body of 164 Financial Intelligence Units which provides a platform for the secure exchange of expertise and intelligence. According to UKFIU, in 2019, there were 5,000 suspicious activity reports related to modern slavery/human trafficking.

147. Further, UK policing and law enforcement agencies are increasingly utilising the Joint Money Laundering Intelligence Taskforce (JMLIT) to assist human trafficking investigations. The JMLIT is a public/private sector collaborative group in which financial institutions and law enforcement can share tactical information relating to THB investigations. It has coverage of over 95% of the UK's high-street banking institutions and results from the JMLIT have directly assisted THB investigations.

148. At the time of the online evaluation meetings in October 2020, the Police Service **Northern Ireland** indicated that 11 active investigations were ongoing (two for labour exploitation, eight for sexual exploitation and one for domestic servitude). The Public Prosecution Service (PPS) Northern Ireland informed GRETA that the number of persons prosecuted for human trafficking and exploitation offences was nine in the period 2017-2020, and the number of persons convicted was four in the same time period. While the majority of the prosecuted cases concerned sexual exploitation, there was one domestic servitude case underway.

149. There have been two human trafficking cases resulting in confiscation of assets in Northern Ireland: Operation Pyritic and Operation Fog, where monies were successfully seized and recovered as criminal property through the courts. Assets confiscated under the Proceeds of Crime Act 2002 (POCA) may be directed towards a range of projects. For example, £58,000 was allocated to an NGO in January 2019 for a two-year period to fund interventions to support vulnerable individuals at risk of being exploited or who fear being controlled in the labour market.

150. In **Scotland**, the number of prosecutions for human trafficking offences in the period 2016-2020 was 14, including four in 2017 (two for sexual and two for labour exploitation), five in 2018 (three for sexual and two for labour exploitation), four in 2019 (one for sexual exploitation and three for labour exploitation) and one in 2020 (for sexual exploitation). GRETA was informed that the number of convicted perpetrators was nine: seven in 2017 (six sentenced to imprisonment and one sentenced to Community Payback Order), one in 2018 (sentenced to Community Payback Order and Compensation Order), one in 2019 (sentenced to imprisonment) and none in 2020.

151. Confiscation is allowed under the Human Trafficking and Exploitation (Scotland) Act 2015 and under the Proceeds of Crime Act 2002 (section 15). Police Scotland works in conjunction with the Crown Office and Procurator Fiscal Service (COPFS) Proceeds of Crime Unit to seize assets. There has been only one THB case resulting in confiscation orders being made against two individuals, totalling £104,209, of which £13,533 will be paid to victims as compensation with the rest allocated to CashBack for Communities programme.

152. According to civil society, the excessive length of the procedure is an issue. It can take three years for a criminal investigation due to the complexity and the fact that evidence may need to be obtained from multiple jurisdictions. During this time, an employment tribunal, civil proceedings or criminal injures compensation authority will be stayed pending the outcome of the criminal case, thus delaying compensation. Delays in proving legal aid delays proceedings further.

153. Modern slavery and trafficking are prosecuted *ex officio* and failure to investigate can give rise to civil remedy. In **England and Wales**, complaints about the quality of service received from police forces can be made directly to the force in question or to the Independent Office for Police Conduct. In **Scotland**, complaints can be made to Police Scotland. If victims are not satisfied with how their complaint was dealt with, they can also contact the Police Investigations and Review Commissioner within three months of the date on which the police sent their findings about the complaint. Complaints about the work of the COPFS can also be made to the Scottish Public Services Ombudsman. In **Northern Ireland**, the Police Ombudsman's Office provides independent, impartial investigation of complaints about the police in Northern Ireland. However, according to civil society, while complaints mechanisms and review processes exist, they are unlikely to be accessible to victims of trafficking in practice, because of lack of assistance and risks of repercussions if they are foreign nationals.

154. The MSA created the Slavery and Trafficking Prevention Orders (STPOs) and the Slavery and Trafficking Risk Orders (STROs). The Risk Orders apply in England and Wales and allow to protect victims prior to prosecution. Similar legislation exists in Scotland, the Human Trafficking and Exploitation Act 2015, which created Trafficking and Exploitation Prevention and Risk Orders. Prevention Orders can be considered by the trial judge as an ancillary order when sentencing. Prosecutors cannot apply for Prevention Orders themselves, but can remind the court of their sentencing powers. In each legal system across UK, sentencing is a matter for the court to determine, but the prosecutor can lodge an appeal against the sentence where it is judged to be "unduly lenient". The Sentencing Council is shortly to publish new sentencing guidelines for sentencing of offences under the Modern Slavery Act in England and Wales in which Prevention Orders appear as a further prompt. Risk Orders can only be applied for by law enforcement, and the CPS will become involved only if they are breached. The CPS informed GRETA about two cases in which defendants were prosecuted for breach of Risk Orders and received imprisonment sentences. In Northern Ireland the legislation does not include Risk Orders, but the Independent Anti-Slavery Commissioner has asked the Department of Justice to reconsider their value. According to information provided in the IASC's annual report for 2019-2020, the early increases in the number of Prevention Orders in England and Wales have not been sustained (30 in 2017/2018, 50 in 2018/2019 and 28 in 2019/2020).

155. Except in Northern Ireland, plea bargaining is allowed for modern slavery and human trafficking, with procedural safeguards to ensure that the protection of the rights of victims or the possibility of seizing the proceeds of crime are not affected. In England and Wales, the Code for Crown Prosecutors (Chapter 9) gives guidance to prosecutors on the general principles to be applied when considering accepting guilty pleas. In cases where the defence is offering pleas to alternative charges, prosecutors must ensure that the proposed charge does not reduce the protection of the rights of the victim, and that confiscation and forfeiture will still apply so that assets can be seized for victim compensation.<sup>104</sup> The usual process would be for the proceeds of crime prosecutor to advise the criminal prosecutor if the impact of any alternative pleas upon confiscation, before any decision are made. The CPS does not collect data on the number of THB cases where plea bargaining has been used in its case management system. In Scotland, according to the COPFS Prosecution Code, "it will not be appropriate to accept a reduced plea for reasons of convenience or where, despite there being sufficient evidence, to do so will distort the court's assessment of the offending behaviour and of the appropriate sentence."<sup>105</sup>

156. There has been one case, decided in February 2016, in which the company director of two bed-making factories was sentenced under the MSA to 27 months' imprisonment for conspiracy to traffic for forced labour, where he knew (or ought to have known) that the workers he employed were victims of human trafficking.<sup>106</sup> In March 2021, three employees of the bed-making factories were awarded damages of over £700,000 in a compensation claim against their former employer.<sup>107</sup> There are no other cases involving a legal entity being prosecuted under anti-trafficking legislation in any of the four jurisdictions.

157. GRETA welcomes the increase in investigations and prosecutions for modern slavery and human trafficking offences following the entry into force of the MSA in 2015. However, GRETA is concerned by the fact that the number of prosecutions and convictions for human trafficking remains low compared to the number of identified victims. Trafficking cases are complex crimes, frequently with a transnational dimension, often involving multiple victims and perpetrators, and may include many other offences such as fraud, assault or extortion.<sup>108</sup> Cuts to the criminal justice system and lack of resources contribute to low prosecution and conviction rates of perpetrators. Lack of sustainable support for victims is another factor which impacts the UK authorities' ability to prosecute traffickers. GRETA stresses that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat THB and to guarantee victims' access to justice.

**158. GRETA considers that UK authorities should take further steps to ensure that THB cases are investigated proactively, prosecuted successfully, and lead to effective, proportionate and dissuasive sanctions. In this context, the authorities should:**

- **strengthen the conduct of financial investigations in THB cases with a view to securing confiscations and compensation of victims;**
- **continue providing training to police officers, prosecutors and judges and sensitising them to the rights of victims of THB;**
- **ensure that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ).<sup>109</sup>**

<sup>104</sup> <https://www.cps.gov.uk/publication/code-crown-prosecutors>

<sup>105</sup> COPFS Prosecution Code, available at:

[https://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Prosecution20Code20\\_Final20180412\\_1.pdf](https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412_1.pdf)

<sup>106</sup> *R v "R", "P" & "D"* [2015] EWCA Crim 2079.

<sup>107</sup> [Three Kozee Sleep employees awarded over £700,000 in damages — ATLEU](#)

<sup>108</sup> Anti-Trafficking Monitoring Group (2018), *Before the harm is done: examining the UK's response to the prevention of trafficking*. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>.

<sup>109</sup> <https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

## 8. Non-punishment provision (Article 26)

159. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.<sup>110</sup> Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

160. As noted in GRETA's second report on United Kingdom, section 45 of the MSA 2015 provides for a statutory defence, i.e. legislative protection from prosecution, for victims of modern slavery and human trafficking. The defence applies to adults who were compelled to carry out criminal offences as a result of their exploitation, and to children who committed the offence as a direct consequence of being victims of trafficking or slavery.<sup>111</sup> Schedule 4 of the MSA contains a list of more than 100 offences of various degrees of seriousness where the statutory defence cannot be used. GRETA noted that section 45 excludes the possibility of withdrawing prosecution and punishment for this wide list of offences and was concerned that this gave a rather narrow interpretation of the non-punishment principle. There was no case law to illustrate how this provision was applied in practice as the MSA had been adopted very recently, but GRETA considered that the UK authorities should ensure that the non-punishment provision was capable of being applied to all offences that victims of THB were compelled to commit.

161. No legislative changes have been made in the meantime. The UK authorities continue to argue that the statutory defence applies to offences that victims are typically forced to commit, such as cannabis cultivation, and does not apply to certain serious offences in order to avoid creating a legal loophole allowing criminals to escape justice. The authorities also affirm that, where the defence does not apply, prosecutors can exercise their discretion and decide whether it is in the public interest to prosecute, and they can stop a prosecution if it is found to be an abuse of process.

162. As regards children, according to section 45 of the MSA, it has to be established that their action was a direct consequence of their exploitation and that a reasonable person in the same circumstances and with the same characteristics would do this act. In its second report on the UK, GRETA noted the "reasonable person" test indirectly introduces an element of compulsion that should not have to be proven in children's cases. GRETA was informed of a number of cases where child victims of trafficking were criminalised. A UNICEF report found that there is a very low level of awareness among prosecutors, police, and defence solicitors of the non-punishment provision for children, as well as little monitoring of the use of the presumption against prosecution or the statutory defence across the UK.<sup>112</sup>

163. According to the CPS, in applying the "reasonable person" test the prosecutor would consider relevant characteristics of the suspect/victim, including their age, sex, physical or mental illness or disability which would make a child more vulnerable to criminal exploitation by their traffickers. All the elements are taken into account when reviewing a case in which a positive NRM decision had been made (*MK v R and GEGA v R* (2018) EWCA Crim 667).

164. In 2020 the CPS issued updated guidance to prosecutors on the non-prosecution of suspects who might be victims of human trafficking, according to which 'In considering whether a trafficking/slavery victim has been compelled to commit a crime, prosecutors should consider whether a suspect's criminality or culpability has been effectively extinguished or diminished to a point where it is not in the public interest to prosecute. A suspect's criminality or culpability should be considered in light of the seriousness

<sup>110</sup> See 2nd General Report on GRETA's activities, paragraph 58.

<sup>111</sup> See 2nd GRETA report on the UK, paragraph 287 and following.

<sup>112</sup> [UNICEF UK. \(2017\). \*Victim not criminal: trafficked children and the non-punishment principle in the UK\*. Available at: \[https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing\\\_Victim-Not-Criminal\\\_2017.pdf\]\(https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing\_Victim-Not-Criminal\_2017.pdf\)](https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf)

of the offence. The more serious the offence, the greater the dominant force needed to reduce the criminality or culpability to the point where it is not in the public interest to prosecute.”<sup>113</sup>

165. The CPS informed GRETA that significant training has been delivered to prosecutors, law enforcement, the Bar and magistrates to raise awareness of the non-punishment provision. The Director of Public Prosecutions has recorded a short video (available on the CPS intranet) advising prosecutors that they should be alert to the non-punishment provision when reviewing cases; this is also used in induction training for new prosecutors. Further, online training activities have been delivered nationally to over 130 prosecutors and legal trainers in 2020 and a further programme to train local CPS trainers started in November 2020. Further advice and support have been provided to police forces and investigators in respect of specific cases and a training course has been developed by the National Crime Agency and the National County Lines Co-ordination Centre, in collaboration with the Modern Slavery and Organised Immigration Crime Programme. GRETA welcomes the setting up of a comprehensive training programme and encourages the authorities to continue their efforts to train prosecutors and police forces on the non-punishment provision.

166. Case-law shows that it may still be in the public interest to prosecute, despite the person (adult or child) being a victim of trafficking.<sup>114</sup> In *R v EK* [2018]<sup>115</sup>, the decision to prosecute a victim of trafficking was considered justified because the offences were serious, and because the level of “dominant force or compulsion” needed to reduce the victim’s criminality to a level below which she should not have been prosecuted was considered to be not significant enough.<sup>116</sup>

167. GRETA notes that section 45 of the Modern Slavery Act is silent in respect of the burden of proof required to establish the defence.<sup>117</sup> The ruling in *R v MK* [2018]<sup>118</sup> clarified that the burden of proof is on the prosecution to prove that an individual is not a victim of modern slavery, once the defence is raised by that individual. However, if the prosecution fails to prove that the defendant cannot be considered as a victim of trafficking, the burden of proof in respect of the other elements of the statutory defence falls on the defendant. The defendant is called upon to prove, on the balance of probabilities, that: in the case of an adult, he/she was compelled to commit the offence; the compulsion was a direct consequence of him/her being or having been a victim of slavery or relevant exploitation; a reasonable person in the same situation and having his/her relevant characteristics would have no realistic alternative to doing the act which constitutes the offence.<sup>119</sup> The more serious the offence, the greater the dominant force needed to extinguish the criminality.<sup>120</sup> GRETA is concerned that such an allocation of the burden of proof could make it particularly difficult to apply the non-punishment provision in practice.

168. The CPS guidance states that, where the vulnerable children or adults may be prosecuted, prosecutors should consider applying the statutory defence or the CPS policy on the non-prosecution of suspects who may be victims of trafficking. However, according to the guidance, “prosecutors should also be alive to the fact that, if a person, by joining an illegal organisation or a similar group of people with criminal objectives and coercive methods, voluntarily exposes and submits himself to illegal compulsion, he cannot rely on the duress to which he has voluntarily exposed himself as an excuse either in respect of the crimes he commits against his will or in respect of his continued but unwilling association with those capable of exercising upon him the duress which he calls in aid (*R v Fitzpatrick* [1977]

<sup>113</sup> Crown Prosecution Service (CPS) Guidance (2020), available at: [Charging \(The Director's Guidance\) - sixth edition, December 2020 | The Crown Prosecution Service \(cps.gov.uk\)](#)

<sup>114</sup> *R v VSJ & others* [2017] EWCA Crim 36, see also *R v GS* [2018] EWCA Crim 1824.

<sup>115</sup> *R v EK* [2018] EWCA Crim 2961.

<sup>116</sup> See Independent Anti-Slavery Commissioner Report, *The Modern Slavery Act 2015 Statutory Defence: A call for evidence*, October 2020, <http://www.antislaverycommissioner.co.uk/media/1478/the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf>

<sup>117</sup> Ibidem.

<sup>118</sup> <https://www.bailii.org/ew/cases/EWCA/Crim/2018/667.html>

<sup>119</sup> *MK and Persida Gega v SSHD* [2018] EWCA Crim 667, decided on 28/03/2018.

<sup>120</sup> *R v VSJ Ors* (2017) EWCA Crim 36.

N.I.L.R. 20).<sup>121</sup> GRETA is concerned by this interpretation, which may significantly reduce the scope of application of the non-punishment provision.

169. In her Strategic Plan 2019-2021, the IASC committed to working with criminal justice agencies to gain a better understanding of what is happening on the ground in respect of the use of the section 45 statutory defence. She observed that no quantitative data exists with which to assess the scale and impact of the statutory defence and outlined that "there are cases where victims have not used this defence and been imprisoned and there are cases where criminals have attempted to abuse this defence. There is little clarity about the use of this defence which makes it harder to know that victims are being protected and the system is being protected from those who seek to abuse the defence."<sup>122</sup> In order to gain a better understanding of the use of the statutory defence, in January 2020, the IASC launched a call for evidence. The evidence compiled by the Commissioner comprised some 200 cases, 87% of which involved drug trafficking. The evidence has been categorised into four reoccurring issues: (i) the police are not consistently considering, from the outset of an investigation, whether the suspect could be a victim of trafficking and whether the statutory defence may apply; (ii) there is a discontinuance of investigations and prosecutions as soon as the statutory defence is raised; (iii) there is an over-reliance, throughout the criminal justice system, on the NRM decision making of the Single Competent Authority; (iv) the statutory defence is being raised late in the criminal justice process. In addition, the collected evidence suggests that child protection intervention following NRM referrals triggered by the statutory defence is inadequate. The IASC's call for evidence illustrates that, once the statutory defence is raised, very little detail is given about the exploitation to the police or to the prosecution. Instead, there is a mere acknowledgement of the trafficking element, which makes it almost impossible to investigate.<sup>123</sup>

170. The Independent Review of the MSA examined how the statutory defence was working in practice and concluded that it strikes a correct balance between protecting genuine victims and preventing misuse from opportunistic criminals. However, GRETA is concerned about the number of cases where the non-punishment provision was not applied, and victims of trafficking were sentenced. GRETA was informed that, in many cases, the status of victim of trafficking is acknowledged only during the sentencing phase. The CPS explained that the statutory defence can be considered before charging a defendant: where the police have sufficient evidence that a suspect is a victim, they can decide not to refer the case to the CPS that in turn can decide not to charge where there is evidence that the suspect may be a victim of trafficking and the other elements of the defence are evidenced. However, this remains a challenge where victims, either because of fear or because of poor advice, choose not to reveal details of their situation and plead guilty to an offence.

<sup>121</sup> [Defences - Duress and Necessity | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk/defences-duress-and-necessity)

<sup>122</sup> Independent Anti-Slavery Commissioner Report, *The Modern Slavery Act 2015 Statutory Defence: A call for evidence*, October 2020, <http://www.antislaverycommissioner.co.uk/media/1478/the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf>

<sup>123</sup> The call for evidence refers, *inter alia*, to the following example. "X" was arrested for class A possession with intent to supply having been found in possession of crack cocaine and heroin. During the interview he refused to answer any questions and did not provide any explanation. He was asked whether he was a victim of modern slavery, but would not engage with the interviewing officers. A referral to the NRM was made at this stage due to concerns around his age and criminal activity. A negative Reasonable Grounds decision was received based on the information provided. "X" initially pleaded guilty at court and the case was adjourned for pre-sentence Youth Offending Team report. He became aware he could potentially receive a custodial sentence and introduced the section 45 defence to a social worker. The NRM was resubmitted by social services and a positive Reasonable Grounds decision and subsequently Conclusive Grounds decision were received. The case was subsequently discontinued as the CPS concluded that there was insufficient evidence to rebut the section 45 defence. "X" has not provided an account of his actions, admitted his involvement in the offences or provided any details of who or how he has been exploited.



171. NGOs and lawyers consulted by GRETA highlighted that officers in charge of criminal law and immigration enforcement frequently fail to identify trafficking victims, and in doing so, prevent in practice the application of section 45 of the MSA. In a research study conducted by the University of Bedfordshire and IOM examining vulnerabilities to trafficking from Albania, Vietnam and Nigeria, interviews were carried out with 21 Vietnamese nationals who had been returned from UK prisons or Immigration Removal Centres. All interviewees provided detailed descriptions of the violent and exploitative journeys they had taken from Vietnam to the UK, as well as in-depth descriptions of their lives in the UK, which often involved engaging in criminal activities (such as cannabis cultivation), either because they were compelled to do so or lacked any realistic alternatives. The interviewees also described how they had been detected by the authorities, prosecuted and convicted for the offences they had committed as a result of their exploitation, subsequently spending time in prison and being forcibly returned to Vietnam. In each case it appeared that the indicators of trafficking and exploitation had not been detected or acted upon by any of the professionals that the interviewees had come into contact with while in the UK. Instead, they had all been treated as criminals and/or immigration offenders.<sup>124</sup>

172. GRETA notes that there is still insufficient understanding of the statutory defence exists among investigators, prosecutors and judges, and insufficient attention is being given to the issue of trafficking among the prison population.<sup>125</sup> By way of example, reference can be made to the following cases:

- two Vietnamese men were each given 12 months custodial sentences at Portsmouth Crown Court in April 2017 for cannabis cultivation despite the Recorder Nicholas Atkinson QC describing their circumstances as “an example of modern-day slavery”;<sup>126</sup>
- in a case in May 2019 an Albanian man was given a 12-month custodial sentence for his involvement in cannabis cultivation despite the defending solicitor explaining that he had been referred to Home Office department dealing with modern slavery.<sup>127</sup>

173. GRETA notes that a joint investigation by Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), the College of Policing and the Independent Office for Police Conduct (IOPC) found that victims of human trafficking are being criminalised by the police rather than recognised as victims, hindering attempts to tackle the crime and leaving vulnerable people at risk. The report from the investigation found that foreign victims are sometimes wrongly treated as immigration offenders, with their details passed onto the Home Office, deterring them from supporting any investigation. The probe was prompted by a complaint by the NGO Hestia. It found that quality support for victims was “inconsistent” across police forces, with victims not always “kept safe or made to feel safe following their first contact with the police”.<sup>128</sup>

<sup>124</sup> Hynes, P. et al (2019), *'Between Two Fires': Understanding Vulnerabilities and the Support Needs of People from Albania, Viet Nam and Nigeria who have experienced Human Trafficking into the UK*, University of Bedfordshire and International Organization for Migration (IOM), available at: [https://unitedkingdom.iom.int/sites/default/files/two\\_fires\\_footnotes\\_final\\_0.pdf](https://unitedkingdom.iom.int/sites/default/files/two_fires_footnotes_final_0.pdf)

<sup>125</sup> IOM carried out a desk-based review of over 180 inspection reports of prisons and young offender institutions conducted between January 2015 and July 2019 by Her Majesty’s Inspectorate of Prisons (HMI Prisons), as well as 14 inspection reports of immigration detention between February 2015 and June 2019. The purpose of the review was to understand the way in which the HMI Prisons incorporates trafficking in its inspection framework and to learn about the types of responses taken to victims of trafficking who might be in such facilities. Analysis of the inspection reports show that out of more than 140 reports of men’s prisons, only four made any reference to the responses to potential victims of trafficking, and highlighted difficulties and lack of knowledge of staff to identify and support THB victims. By stark contrast, all 15 inspection reports of women’s prisons conducted since 2015 referenced the prison’s response to potential victims of trafficking.

<sup>126</sup> <https://www.portsmouth.co.uk/news/crime/raid-uncovers-400-000-cannabis-factory-at-havant-home-tended-by-trafficking-victims-1-7903483>

<sup>127</sup> <https://www.somersetlive.co.uk/news/somerset-news/illegal-immigrant-who-came-uk-2829215>

<sup>128</sup> [Modern slavery survivors criminalised rather than recognised as victims, police watchdogs find | The Independent](#)

174. Reference should be made to the recent judgment of the European Court of Human Rights (ECtHR) in *V.C.L. and A.N. v. United Kingdom*<sup>129</sup> which became final on 5 July 2021. The judgment concerns two cases of Vietnamese nationals who were minors at the time they were arrested while working at cannabis farms in the UK. The facts in these cases occurred before the entry into force of the MSA. Both Vietnamese boys were charged with drug offences and received prison sentences after they pleaded guilty on the advice of their initial lawyers, despite strong evidence and concerns raised by the UK Border Agency, social services and an NGO that they were or may have been victims of trafficking. The Court of Appeals subsequently dismissed their appeals and their appeal to the Supreme Court was also refused. In this case, the ECtHR examined for the first time the compatibility of the prosecution of victims of trafficking with Articles 4 and 6 of the European Convention on Human Rights (ECHR). Although it ruled that such prosecution would not *per se* violate Article 4 of the Convention, the Court found that the UK authorities had failed to present clear reasons consistent with the definition of trafficking contained in the Council of Europe Anti-Trafficking Convention why they disagreed with the findings of the Competent Authority who had recognised the applicants as victims of trafficking, and decided to continue the criminal proceedings against them. As the appeals stage did not cure the initial shortcomings, and the applicants were not given the opportunity to be heard about them being trafficked, they did not receive a fair trial, in violation of Article 6, paragraph 1, of the ECHR. The ECtHR awarded the applicants 25,000 euros each in respect of non-pecuniary damage, and 20,000 euros each in respect of costs and expenses. In a third-party submission to the ECtHR made in the case of *A.N. v United Kingdom*, GRETA stressed that to protect and assist trafficking victims, it is of the utmost importance to properly identify them in a timely manner. GRETA noted that the non-punishment principle enshrined in Article 26 of the Anti-Trafficking Convention aims to safeguard the human rights of trafficking victims and avoid further victimisation. Criminalisation of victims contravenes the State's obligation to provide services and assistance to them, and discourages them from coming forward and co-operating with the investigation into those responsible for their trafficking.

175. In **Scotland**, section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015 requires the Lord Advocate to publish instructions to prosecutors regarding the non-prosecution of victims of human trafficking and exploitation. Such instructions were published in May 2016 and continue to be applied. Prosecutors must report all cases where there are reasonable grounds to believe that the accused may be a victim of trafficking to the National Lead Prosecutor, who is responsible for taking all decisions regarding the non-prosecution of victims. This ensures expertise and consistency in the decision-making process. According to a UNICEF research, there appears to be significant scope for flexibility in the application of the Lord Advocate's Instructions in cases concerning trafficked children. Important aspects of the policy and subsequent practice are that there is no "reasonable person test" to satisfy; there is no need for an NRM decision before engaging the non-prosecution principle because prosecutors are proactively establishing whether there is a case of child trafficking; and the Instructions apply to all stages of the criminal justice process, including post-conviction.

176. In **Northern Ireland**, section 22 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 states that the statutory defence applies to victims (adults and child) who have been compelled to commit certain offences where coercion was attributable to slavery or exploitation.

<sup>129</sup> *A.N. v. United Kingdom*, no. 74603/12, and *V.C.L. v. United Kingdom*, no. 77587/12.

177. **Recalling the recommendations made in its second report, GRETA urges the UK authorities to:**

- **ensure that the non-punishment provision is capable of being applied to all offences that victims of trafficking were compelled to commit, by ensuring that victims are promptly identified as such and receive adequate support from their first contact with law enforcement agencies;**
- **ensure that the allocation of the burden of proof does not substantially hinder the application of the non-punishment provision;**
- **remove the requirement to apply the “reasonable person” test in the framework of the statutory defence of child victims pursuant to section 45 of the MSA;**
- **strengthen their efforts to ensure the compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, by further developing the existing guidance and promoting it through training of police staff, prosecutors and judges, including staff working in prisons and immigration detention centres, as well as social workers and all First Responders.**

## **9. Protection of victims and witnesses (Articles 28 and 30)**

178. Under Article 28 of the Convention, Parties must take the necessary measures to provide effective and appropriate protection from potential retaliation or intimidation to victims and witnesses of human trafficking, as well as to members of civil society organisations supporting victims during criminal proceedings and, where appropriate, to victims’ family members. Intimidation of victims and witnesses is nearly always aimed at suppressing evidence against defendants. Effective protection can be of various types (physical protection, relocation, identity change...) and depends on the assessment of the risks that victims and witnesses run. In addition, Article 28(3) provides that a child victim shall be afforded special protection measures, taking into account the best interests of the child. Regarding the period during which the protection measures are to be provided, the Convention aims in a non-exhaustive manner at the period of investigation and of the proceedings or the period following them. The period in which protection measures have to be provided depends on the threats to the persons concerned. Moreover, because trafficking in human beings is often international and some countries are small, Article 28(5) encourages Parties to enter into agreements or arrangements with other countries so as to implement Article 28.

179. Further, Article 30 of the Convention requires Parties to adapt their judicial procedure so as to protect victims’ privacy and ensure their safety, including special protection measures for child victims. While the measures provided for in Article 28 address extra-judicial protection, the measures referred to in Article 30 are concerned with the procedural measures to be introduced. The following means can be used, in accordance with the European Convention on Human Rights and the case-law of the European Court of Human Rights, to achieve the objectives of Article 30: non-public hearings, audio-visual technology, recordings of testimony, and anonymous testimony.

180. The legislation on the protection of witnesses and victims was described in detail in GRETA’s second evaluation report on the UK. Victims’ protection in criminal investigations is regulated by the Trafficking People for Exploitation Regulation 2013 (England and Wales). The regulation aims to prevent secondary victimisation, by ensuring that interviews are conducted considering the psychological state and the vulnerability of the victims.<sup>130</sup> Similar provisions exist in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and the Victims and Witnesses (Scotland) Act 2014.

<sup>130</sup> See 2nd GRETA report on the UK, paragraph 312 and following.

181. Victims' protection in criminal proceedings is regulated by section 46 of the MSA, which extends automatically the applicability of special measures to victims of trafficking. These measures are included in the Youth Justice and Criminal Evidence Act 1999. Special measures apply to witnesses who are giving evidence in court and include screening the witness from the accused, giving evidence by live link, giving evidence in private, video recorded evidence in chief and video recorded cross-examination or re-examination.<sup>131</sup> Section 24 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 and sections 271 to 271M of the Criminal Procedure (Scotland) Act 1995 provide for similar additional protection.

182. When victims are engaged in legal proceedings, the police undertake risk assessments, alongside the prosecutor, to determine the type of protection that should be applied. The transfer of modern slavery investigations data to the Police National Database in December 2020 has allowed for a greater level of information sharing across police forces and development of intelligence in relation to repeat and vulnerable victims. This is supported through the inclusion of markers on person records within the system making it easy to quickly identify if a person has previously been involved in a modern slavery or human trafficking offence and could be a repeat or vulnerable victim. Witness protection, as defined in the Serious Organised Crime and Police Act 2005, is directed to persons who have provided crucial evidence and against whom there is a substantial threat. This is managed by the UK Protected Persons Service (UKPPS), a network of regional police units, led by the NCA. The protection measures depend on the level of threat to the individual in question and may involve removing people from the area of threat to a new, safe location. The Metropolitan Police, Police Scotland and Police Service of Northern Ireland retain their own units, which are aligned to the UKPPS.

183. The Modern Slavery and Organised Immigration Crime Unit (MSOIC) and the CPS do not maintain any central records of numbers of cases in which witness protection measures were employed or referred to the UKPPS.

184. In **England and Wales**, victims are informed by the police (within five working days) of the arrest, interviewed under caution, released of a suspect. In serious cases, including slavery and trafficking, the police develop detailed victim contact plans involving other support agencies where appropriate. The Witness Care Unit (WCU) in a police force manages the care of victims and witnesses from the point of charge through to the conclusion of a case. A witness care officer keeps witnesses informed of the case's progress and provides support and assistance (this includes the need for special measures). Victim Liaison Units (VLUs) provide a dedicated service to victims in cases where the CPS decides not to prosecute or to discontinue or substantially alter a charge.

185. Under the Victims' Code, which came into effect on 16 November 2015, victims are entitled to be informed of the outcome of any bail hearing and that the Domestic Violence, Crime and Victims Act 2004 provides for a Victim Contact Scheme (VCS) by which victims of specified categories are entitled to make representations and receive information about an offender's release from detention. However, according to NGOs, it is unclear whether the VCS covers victims of trafficking.

186. In **Scotland**, all cases involving THB are referred to the COPFS Victim Information and Advice service which provides victims and witness with information about their case and the criminal justice system and applies for special measures to assist the witness when giving evidence in court.

187. In **Northern Ireland**, every case is allocated a designated case worker from the PPS Victim Witness Care Unit, is responsible for providing practical information to victims during the course of prosecution.

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<sup>131</sup> See [Special Measures | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk/special-measures)

188. The UK Government Victims Strategy, published in September 2018, reaffirmed a commitment to rolling out pre-recorded cross examination for vulnerable witnesses in Crown Court centres in England and Wales. The Victims Strategy also committed to testing this for other categories of intimidated witnesses such as victims of sexual offences and modern slavery offences in the early adopter Crown Courts which have been identified to trial the new digital case management system from September 2020.

189. **GRETA invites the UK authorities to ensure that the available protection measures are effectively applied to protect victims and witnesses of THB and to prevent intimidation during the investigation, as well as during and after the court proceedings.**

## 10. Specialised authorities and co-ordinating bodies (Article 29)

190. Under Article 29(1) of the Convention, Parties have to adopt the necessary measures to promote specialisation of persons or entities in anti-human-trafficking action and victim protection. Each country must have anti-trafficking specialists in sufficient numbers and endowed with appropriate resources. The staff of specialised authorities and co-ordinating bodies should, as far as possible, be composed of both women and men. To combat trafficking effectively and protect its victims, it is essential that proper training is provided to relevant officials.

191. In **England and Wales**, the Home Office funds the Modern Slavery and Organised Immigration Crime Unit (MSOIC) to develop intelligence, identify best practice and share information. The Home Office allocated £11.6 million to the MSOIC between October 2016 and March 2020. From 2017 to 2020, through the work of the MSOIC, most UK police forces have taken steps to create dedicated units. The MSOIC are currently mapping all 43 models and is expected to publish a report detailing the findings and showing the best practices.

192. The Joint Slavery and Trafficking Analysis Centre (JSTAC) was created in order to deliver a single, authoritative picture of the threat posed by modern slavery and human trafficking to the UK and its interests overseas. Made up of analysts from the NCA, police, UKBF, Immigration Enforcement (IE), HMRC and the GLAA, JSTAC mirrors a joint-working model used to gather intelligence on terrorism. JSTAC is an example of good practice in multi-agency working. It has seconded a national expert to Europol to increase co-ordinated activity between UK law enforcement and their European counterparts.

193. The Crown Prosecution Service (CPS) Proceeds of Crime Unit is responsible for securing restraints orders, confiscation orders, civil recovery and reaching asset sharing agreements with counterparts overseas. The CPS also has a number of overseas Criminal Justice Advisors (CJAs) whose primary focus is on asset recovery.

194. According to information provided by the UK authorities, since 2017, more than 6,400 specialist modern slavery training days have been delivered to more than 4,000 police officers and staff. All forces in England and Wales have participated. Forces are also able to increasingly deliver their own activity with a network of more than 150 trainers having been equipped to support the delivery of general awareness training locally. Over 1,500 investigators have been equipped with specialist investigation skills and 575 investigators have been trained in interviewing skills for THB cases. More than 800 analyst and research staff working for the police and other law enforcement agencies have received specialist training, via a national conference and at 26 one-day events, on the research techniques needed to support the prevention, intelligence and investigation work needed to tackle modern slavery.<sup>132</sup>

195. The Police Service **Northern Ireland** (PSNI) has a dedicated Modern Slavery and Human Trafficking Unit (MSHTU). When required, assistance is received from specialist units such as PSNI Economic Crime Unit, police analyst and intelligence officers and partner agencies.

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<https://policingslavery.co.uk/transforming-our-response/the-policing-response/>

196. In **Scotland**, the Police National Human Trafficking Unit provides investigative and intelligence development support and supports a network of Human Trafficking Champions in each local policing division. In addition, the police division in Greater Glasgow has established a dedicated human trafficking and exploitation team. Further, the COPFS has appointed a National Lead Prosecutor and nine local lead prosecutors for human trafficking and exploitation.

197. The National Crime Agency (NCA) has a Modern Slavery and Human Trafficking Tactical Advice Team, with four experienced investigators, who provide support to investigations across the UK and facilitate enquiries overseas. In the financial year 2019/2020 the MSHT Tactical Advice team provided 695 instances of tactical advice, deploying officers 36 times leading to 72 disruptions. The NCA has also a network of International Liaison Officers (including in Albania, Romania, Nigeria, China, Vietnam) who provide support in investigations.

198. As noted in paragraph 27, the Gangmasters and Labour Abuse Authority (GLAA) is responsible for investigating labour exploitation across the whole UK economy, having special police powers in England and Wales. The GLAA also manages a licensing scheme that regulates businesses which provide workers to the fresh produce supply chain and horticulture industry.

199. Civil society observed that, despite the UK Government's commitment to strengthening coordination between the bodies responsible for preventing and combating trafficking, there is a lack of integrated approach and the roles of the different actors is not clear. According to the UK authorities, this gap should be filled with the review of the Modern Slavery Strategy announced in March 2021 (see paragraph 32), which aims to ensure better coordination between different actors. The UK Government has affirmed its commitment to engage with the Devolved Administrations, including through quarterly meetings of officials in all four jurisdictions.

200. **GRETA welcomes the UK authorities' efforts to establish specialised anti-trafficking bodies and considers that they should ensure that effective co-ordination and information exchange exists among the different actors.**

## **11. International co-operation (Article 32)**

201. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between State Parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another "to the widest extent possible". This principle requires them to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the provisions of the Convention neither cancel nor replace the provisions of relevant international or regional instruments<sup>133</sup> on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

202. To drive progress and collaboration at an international level, in September 2017, the former UK Prime Minister Theresa May convened a group of world leaders at a modern slavery side event during the 72nd Session of the UN General Assembly to endorse the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking, a political declaration on a set of common principles to use as the basis for country strategies and international action to meet SDG 8.7. To date over 90 countries have endorsed the Call to Action, with more showing interest in joining. Through their bilateral engagement and diplomatic networks, the UK authorities have strived to raise standards globally.

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<sup>133</sup> For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

203. In addition, the UK Government has engaged with source countries from which a high number of vulnerable people are trafficked into the UK. The UK's international efforts to fight slavery are supported by an Overseas Development Assistance commitment of over £200 million including the Home Office's £11 million Modern Slavery Innovation Fund to test innovative approaches to build the evidence base on what works.<sup>134</sup> UK Aid funded programmes work to reduce vulnerability to exploitation, address the permissive environments that allow modern slavery to thrive, and support businesses to employ innovative approaches to eradicate exploitation in their supply chains.

204. As of December 2019, England and Wales were participating in 24 live Joint Investigation Teams (JITs) on THB with seven EU member states, including financial investigations. Police Scotland have been involved in seven human trafficking related JITs. The COPFS has successfully concluded the prosecution of two JITs in 2019, with the Slovak Republic and Romania, where the trials took place. Another JIT was ongoing with Romania on a separate THB investigation. The Police Service Northern Ireland co-operated, in 2018, with the Republic of Ireland and Romania in relation to a JIT to investigate THB. The PSNI Modern Slavery Human Trafficking Unit has taken part in four JITs with countries including Romania, Sweden, Lithuania and also within the UK, with Scotland.

205. The CPS informed GRETA that they were involved in 18 live JITs on human trafficking, with Romania (nine JITs), Poland (five JITs), the Czech Republic (two JITs) and one each with the Netherlands and Slovakia. A good practice, in the CPS' view, is to develop and maintaining good relationships with authorities from source/destination countries and, where possible, attach law enforcement from countries where high volume of trafficking into policing unit in host country. According to this practice, in London, officers from Romania and Poland are seconded to work in policing in the Met Police Unit dealing with modern slavery and human trafficking.

206. In addition to formal joint investigations, the NCA International Liaison Officer network facilitates sharing of intelligence with a range of international partners. An example of this is Operation Fort, one of the largest modern slavery cases ever brought to trial in Europe. Following a complex investigation led by West Midlands Police, a criminal gang responsible for trafficking over 400 potential victims from Poland to the UK for forced labour was brought to justice. The NCA International Network supported the West Midlands Police with the exchange of intelligence and liaison with Polish authorities. The NCA also leads projects overseas that assist the investigation of THB offences in the UK and other European countries (for example, the Joint Border Task Force (JBTF) in Nigeria, which comprises Officers from the Nigerian National Agency for the Prohibition of Trafficking in Persons who are mentored by NCA, Immigration Enforcement, Border Force and the CPS).

207. GRETA was informed that the UK had signed bilateral treaties with Nigeria and Vietnam on asset tracing and recovery.

208. The UK has played an important role in the EU Policy Cycle for organised and serious international crime EMPACT THB project, where they had the lead until 2018. Following exit from the EU, the UK now acts as associated non-EU member of the EMPACT-THB project. According to the Home Office, the security agreement reached with the EU enables the UK to work with counterparts across Europe to tackle serious crimes such as human trafficking. These operational capabilities include, *inter alia*, arrangements that will simplify and speed up co-operation with EU Member States on mutual legal assistance and asset freezing and confiscation; effective operational co-operation with Europol and Eurojust; fast and effective exchange of national DNA, fingerprint and vehicle registration data via the Prüm system; fast and effective arrangements for exchanging criminal records data via shared technical infrastructure. The agreement also provides an additional basis for bilateral law enforcement cooperation to continue between the UK and EU Member States.

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<sup>134</sup> 2020 UK Modern Slavery Report, p. 6.

209. Since 2014, the Santa Marta Group, an alliance of police chiefs and Catholic bishops formed upon an initiative by the Catholic Bishops' Conference of England and Wales, has been organising international conferences and building a network of experts against modern slavery. The Group currently has members in over 35 countries.

210. **GRETA welcomes the UK authorities' active participation in multilateral and bilateral international co-operation in the fight against trafficking in human beings, and invites them to continue and maintain their efforts in this area after the UK's exit from the EU.**

## 12. Cross-cutting issues

### a. gender-sensitive criminal, civil, labour and administrative proceedings

211. As noted in CEDAW General recommendation No. 33 on women's access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.<sup>135</sup>

212. GRETA notes that women generally encounter obstacles with respect to access to justice within and outside the legal system. Some of these obstacles are of a legal or institutional nature, while others have socio-economic and cultural grounds. The legal and institutional barriers include discriminatory or insensitive legal frameworks including legal provisions that are explicitly discriminatory; gender blind provisions that do not take into account women's social position; and gaps in legislation concerning issues that disproportionately affect women. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or child care.<sup>136</sup> Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".<sup>137</sup>

213. Concerning **England and Wales**, the authorities have referred to the CPS Violence against Women and Girls Strategy 2017-2020, which groups together offences that are committed primarily, but not exclusively, by men against women, with female victims being disproportionately represented. The Strategy is part of a wider strategy recognising that certain offences disproportionately affect women. It provides a framework outlining the approach taken to these crimes in line with international conventions and the Government's strategy.<sup>138</sup>

214. In **Northern Ireland**, under section 18 of the NI Human Trafficking Act, assistance and support must be offered from a person who is the same gender as the person receiving it.

215. In **Scotland**, the Victims and Witnesses Act 2014 make provisions to improve and increase rights and support for victims and witnesses. This includes giving a victim of certain offences the right to specify the gender of the investigation officer and of the medical examiner. Similar provisions apply in Northern Ireland as well.

<sup>135</sup> CEDAW General recommendation No. 33 on women's access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en)

<sup>136</sup> Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, available at: <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

<sup>137</sup> Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

<sup>138</sup> <https://www.cps.gov.uk/legal-guidance/violence-against-women-and-girls-guidance>



216. Since 2015, the UK authorities have published a limited number of guidance documents regarding gender and certain dimensions of the criminal justice system. However, civil society respondents pointed out that no UK authority, including the UK labour market enforcement authorities, has adopted a specific policy regarding the gendered aspects of trafficking in human beings.

217. The UK authorities have indicated that the support provided to victims through the MSVCC is offered and provided for all gender identities, taking into account individual needs, including access to single sex support services where required.

b. child-sensitive procedures for obtaining access to justice and remedies

218. In **England and Wales**, child victims are protected by the Youth Justice and Criminal Evidence Act 1999. This sets out the range of special measures applicable to vulnerable and intimidated witnesses, for which there is automatic entitlement for children. All children provide evidence via Achieving Best Evidence pre-recorded video evidence and, where applicable, pre-recorded cross-examination. A judicially led project called the "Young Witness Initiative", a Young Witness Protocol to expedite cases in the courts involving witnesses under 10 years old, was published in 2016 and revised in 2018. To date, there are no known modern slavery or human trafficking court cases involving persons under 10 years of age as witnesses. The authorities have also referred to the CPS guidance for prosecutors outlining the measures that can be taken to help safeguard children in the course of criminal proceedings, ensuring that "expedition, sensitivity and fairness" are respected.

219. Furthermore, the Civil Procedure Rules (Part 21) contain special measures for children in civil proceedings. Children must have a litigation friend to conduct proceedings on their behalf, unless the court makes an order enabling the child to conduct them. The rules provide for case management by judges enabling the process to be sensitive to the needs of children (e.g. potential for use of video evidence). The Ministry of Justice is currently working with the Civil Justice Council on reforms to improve facilities for children in the civil courts.

220. In **Scotland**, the Victims and Witnesses Act 2014 ensures that children are protected by established child protection measures and that child witnesses are fully aware of their rights and understand the criminal justice process. The Vulnerable Witness (Criminal Evidence) (Scotland) Act 2019 creates a new rule for child witnesses under 18 to ensure that, where they are due to give evidence in the most serious cases (including human trafficking and slavery, servitude and forced and compulsory labour), they will be allowed to have it pre-recorded in advance of the trial. Child victims are interviewed by specially trained officers and, where possible, by social workers.

221. In **Northern Ireland**, child interviews are carried out by specially trained police officers either in care suites or specifically adapted spaces. Interviews with children are conducted in accordance with the joint protocol arrangements between the Social Services and PSNI. PSNI Modern Slavery Human Trafficking (MSHTU) officers act as a dedicated point of contact for every child investigation.

222. A judge must consider how to facilitate the giving of any evidence by a child in the Immigration and Asylum Tribunal as detailed in The Child, Vulnerable Adult and Sensitive Appellant Guidance (Presidential Guidance Note No.2 of 2010) and identify reasonable adjustments that need to be made to the hearing depending on the nature of a person's vulnerability. Child victims of trafficking may access these and additional special measures in the context of asylum and age assessment challenges, but they are highly dependent on the legal team representing the child and their sensitivity to request specific sets of special measures. Some judges may themselves raise the need if the child's representatives have not. NGOs have referred to cases which highlight significant failings such as an age dispute hearing where the child's trafficker was brought in as a witness for the Local Authority disputing the child's age to give evidence, and remained in the tribunal while the child gave evidence. GRETA is concerned by these failings to protect children in Immigration and Asylum Tribunals and refers to the Guidelines of the Committee of

Ministers of the Council of Europe on child-friendly justice. Where a child is involved, special measures applying in criminal proceedings should be adopted also in civil and immigration proceedings.

223. Currently, the UK has one Child House called “The Lighthouse”, which was opened in October 2018 as part of a pilot<sup>139</sup> and is based on the Barnahus model and Child Advocacy Centres in the United States. This service is a first of its kind, following the identified significant gaps in the emotional and health support provided to children.<sup>140</sup> It is designed as a child-friendly, multidisciplinary service for victims of child sexual abuse and exploitation. The service is available to children in Barnet, Camden, Enfield, Haringey and Islington. The Lighthouse offers a significant example of best practice with regards to children’s access to support and child-friendly justice, such as the provision of Achieving Best Evidence (ABE) Interviews being conducted by a child psychologist rather than a trained ABE police officer, mental examination and sexual health support, therapeutic support for up to two years for the child, young person and carer and using the Lighthouse as a remote site for court evidence (location of live link, early out of court examination if the case goes to trial). Albeit the service is not available to all child victims of trafficking but only those who have been sexually abused and/or exploited, it is a promising multi-disciplinary model to support and protect children, in accordance with the Council of Europe Guidelines for Child-Friendly Justice. According to the authorities, the pilot has already achieved encouraging results, including increased referral numbers for child sexual abuse and positive feedback from service users and practitioners. The authorities informed GRETA that a guidance supporting local areas wishing to adopt a similar approach will be published soon. **GRETA welcomes the Child House pilot and considers that the UK authorities should further develop this good example of child-friendly justice which can enhance the protection of child victims of trafficking.**

224. GRETA notes that the increasing number of child victims of trafficking in UK calls for adequate measures to ensure that children receive effective support throughout the complex procedure involving trafficked persons, from identification, through assistance to criminal and compensation proceedings. On 7 July 2021, the UK authorities launched an online training module for First Responders targeting police and local authorities, with a particular focus on child victims of modern slavery. The authorities have also referred to the NRM devolved child decision making pilot (see paragraphs 26 and 285). The purpose of this pilot is to test whether determining if a child is a victim of modern slavery within existing safeguarding structures is a more appropriate model for making modern slavery decisions for children. Decisions will be taken through a multi-agency structure with representation from the three safeguarding partners: the local authority, health and police. This approach will enable decisions about whether a child is a victim of modern slavery to be made by those involved in their care and ensure the decisions made are closely aligned with the provision of local, needs-based support and any law enforcement response.

225. GRETA welcomes the rolling out of the Independent Child Trafficking Guardians (ICTG) scheme, which as of May 2021 covers two third of local authorities across England and Wales.<sup>141</sup> Nevertheless, GRETA is concerned that five years after it was introduced under the Modern Slavery Act 2015, the ICTG scheme is still not fully operational. This delay is all the more alarming in the context of rising numbers of identified child victims. **In this respect, see the recommendation in paragraph 300.**

226. **GRETA invites the authorities to ensure that the NRM process is child-friendly and adapted to the specific needs and vulnerability of children (see also paragraph 300).**

<sup>139</sup> See: <https://www.london.gov.uk/press-releases/mayoral/uks-first-child-houses-to-launch> and <https://www.thelighthouse-london.org.uk/>

<sup>140</sup> Goddard, A. Harewood, E and Brennan, L. (2015), *Review of pathway following sexual assault for children and young people in London*. Available at: <https://www.england.nhs.uk/london/wp-content/uploads/sites/8/2015/03/review-pathway-cyp-london-report.pdf>

<sup>141</sup> The local authorities were selected based on need: London (excluding the London Borough of Croydon), Essex, West Yorkshire, Merseyside, Kent, Surrey, Warwickshire, Bedfordshire, North Yorkshire, Gloucestershire and Bristol, and Lancashire.

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c. role of businesses

227. Section 54 of the MSA contains a requirement on businesses with a turnover of £36 million or more per year that provide products or services in the UK to publish an annual statement explaining what steps, if any, they have taken to tackle trafficking and slavery in supply chains. A Government's statutory guidance was published in 2017, which includes guidance for companies about responding to an incident of modern slavery, and provides further details on carrying out human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights.

228. In 2019, the UK Government launched resources to support public sector organisations identify and mitigate modern slavery risk in their supply chains. This includes the Modern Slavery Assessment Tool (a free tool that helps public bodies work closely with their suppliers to introduce robust modern slavery due diligence) and a Procurement Policy Note and guidance published by the Cabinet Office (which sets out how UK Government departments must take action to ensure modern slavery risks are identified and managed in Government supply chains). Further, the Welsh Government launched in March 2017 a guidance titled Ethical Employment in Supply Chains - Code for Practice, which is aimed at the public sector and also covers the private sector. In Scotland, in October 2018 a guidance for businesses on how to identify and prevent human trafficking in their operations was published.

229. Following the previously mentioned review of the MSA, in July 2019 the UK Government committed to strengthening section 54 of the MSA, in particular by making the content of statements mandatory and imposing sanctions on non-compliant companies,<sup>142</sup> as well as creating an online central reporting service for businesses' modern slavery statements, to make it easier for consumers, NGOs and investors to scrutinise the action that businesses are taking to prevent modern slavery in their supply chains. The registry for modern slavery statements was launched in March 2021.

230. In July 2019, the UK Government launched a public consultation to gather views from stakeholders on proposed measures to strengthen the legislation on transparency in supply chains.<sup>143</sup> The consultation ran until 17 September 2019, and in September 2020 the Government published its response to the consultation.<sup>144</sup> The Government committed to extend transparency in supply chains requirements, under section 54 of the MSA, to public bodies, using a budget threshold of £36 million to determine which public bodies will be required to report.

231. On 26 March 2020, the UK Government published a modern slavery statement, setting out the steps taken to identify and prevent modern slavery in central Government supply chains.<sup>145</sup> The statement assesses the risk of modern slavery across around £50bn of UK Government annual spending. From 2021 onwards, Ministerial departments will publish individual annual statements.

232. According to civil society, an estimated 40% of eligible companies are not complying with the legislation, and a significant percentage of those who are complying are doing the bare minimum. The overall rate of compliance with the obligation introduced by section 54 of the MSA is excessively low, in part due to the absence of sanctions in case of a failure to comply. In January 2021, the Government committed to introducing financial penalties for organisations who fail to meet their legal obligation under section 54 of the Modern Slavery Act. Failure to comply with the production of a Modern Slavery statement for a particular financial year could mean an injunction through the High Court or in Scotland, court proceedings for specific performance of a statutory duty under section 45 of the Court of Sessions Act 1998, requiring the organisation to comply. However, GRETA was informed that this provision has never

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<sup>142</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf)

<sup>143</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816348/Transparency\\_in\\_supply\\_chains\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816348/Transparency_in_supply_chains_consultation.pdf)

<sup>144</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf)

<sup>145</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875800/UK\\_Government\\_Modern\\_Slavery\\_Statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf)

been applied. Therefore, although it has improved some corporate practices and enhanced transparency of supply chains where businesses have taken the initiative to map and publish them, it has not ensured companies are obliged to take meaningful action.<sup>146</sup> In this connection, reference is made to the situation in the garment industry in Leicester (see paragraph 248).

233. The IASC plays an important role in this sense, providing scrutiny of the actions of the Government and assessing its effectiveness. In January 2021, the IASC published a report which found worryingly low levels of awareness of forced labour and exploitation of workers in the UK's financial sector.<sup>147</sup> The report, carried out in partnership with Themis and the TRIBE Freedom Foundation, shows how finance, which generates \$150 billion in profits every year, is at the heart of labour exploitation. It noted that many companies see the publishing of a Modern Slavery Statement as nothing but a tick-box exercise. The IASC has written to CEOs of major financial institutions asking them to respond to the worrying findings of the report.

**234. GRETA welcomes the UK authorities' commitment in preventing and eradicating human trafficking from businesses and supply chains, including in the public sector, and considers that the authorities should continue their efforts, making full use of the existing legislation and further developing it, by introducing mandatory sanctions for companies which fail to comply with their due diligence obligations under the MSA.**

d. measures to prevent and detect corruption

235. Trafficking in human beings can occur in various contexts. Human traffickers may form part of organised criminal groups, which frequently use corruption to circumvent the law and money laundering to conceal their profits. Other Council of Europe legal instruments, in particular those designed to combat corruption, money laundering and cybercrime, are also relevant to combating human trafficking.

236. In **England and Wales**, state officials, as all citizens, can be prosecuted for criminal offences, including those under the MSA. The authorities informed GRETA about a case, in 2019, where a former special police constable and his wife were convicted of offences of trafficking of human beings from Hungary into the UK for the purpose of sexual exploitation and controlling the prostitution of women.

237. In **Northern Ireland**, where an offence is committed by a public official in relation to the performance of his or her duties, this is to be treated as an aggravating factor for the purposes of sentencing. The authorities are not aware of any such cases.

238. In **Scotland**, courts are allowed to increase the sentence where human trafficking offence is committed by a public official and the conviction is recorded in a way which highlights the fact that it was committed by a public official.

239. In its second report, GRETA expressed concerns about the situation of overseas domestic workers working in diplomatic households in UK and the impact of diplomatic immunity on victims' access to justice.<sup>148</sup> Since the last evaluation, there have been no prosecutions against diplomatic or consular staff for their alleged involvement in THB. The UK authorities have stressed that if a diplomat or consular official or their family members are alleged to have committed a serious offence, like human trafficking, and this is drawn to the Government's attention by the police, if requested, a waiver of the individual's immunity will be sought to allow the police to investigate the allegation and, if necessary, for the person to face justice in the UK. If the sending State refuses to waive the individual's immunity, they would be expelled.

<sup>146</sup> [Modern slavery: top companies fail to name supply chain risks - European Coalition for Corporate Justice](#)

<sup>147</sup> [Modern Slavery and Human Trafficking in Financial Services — THEMIS \(themisservices.co.uk\)](#)

<sup>148</sup> See 2nd GRETA report on the UK, paragraphs 101-102.

240. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). GRETA recalls that in the 5th evaluation round of the UK by GRECO, the UK authorities were invited to pursue their efforts to improve the oversight of police misconduct, to ensure that training on integrity and ethics be better linked to the day-to-day work of police staff, to reaffirm the obligation for police officers to report corrupt conduct.<sup>149</sup> The UK authorities have indicated that they used GRECO's evaluation to review their systems and strengthen them, where appropriate. The Code of Ethics, introduced by the College of Policing in 2014 (and now undergoing a programme of work to review and refresh it) is a thread in all training and development courses and sits at the heart of the National Decision Model, ensuring it is central in all policing decisions. The authorities have also referred to UK's Anti-Corruption Strategy 2017-2022, which establishes a comprehensive framework to guide UK government efforts to tackle corruption at home and abroad. Legislative reforms, introduced in February 2020, overhauled the police complaints and discipline systems, simplifying the complaints system, giving new powers to the Independent Office for Police Conduct and ensuring a more proportionate approach through clarifying the threshold for misconduct.

**241. GRETA endorses GRECO recommendations and invites the UK authorities to pursue their efforts to prevent and detect corruption and to include measures against corruption in a THB context in the next national anti-corruption strategy.**

**242. Further, GRETA invites the authorities to proactively detect and investigate cases THB in diplomatic households, ensuring victims' protection and access to justice.**

## **V. Follow-up topics specific to the United Kingdom**

### **1. Measures to prevent and combat trafficking for the purpose of labour exploitation**

243. In its second report on the UK, GRETA welcomed the efforts made to prevent trafficking for the purpose of labour exploitation, and considered that the UK authorities should take further measures to strengthen the capacity and remit of the relevant inspectorates - Employment Agency Standards Inspectorate, Employment Agency Inspectorate in Northern Ireland, GLAA, Her Majesty's Revenue and Customs (HRMC) National Minimum Wage, Health and Safety Executive (HSE) - and ensure that ongoing training is provided to all inspectorate staff to enable proactive identification and referral of human trafficking cases for labour exploitation. GRETA also asked the authorities to ensure that inspections can take place in private households with a view to preventing abuse of domestic workers and detecting cases of THB, and to implement the recommendations of the Ewins Review,<sup>150</sup> including to reform the overseas domestic workers visa system to allow for change of employment and, for domestic workers employed in diplomatic households, to ensure that work contracts are concluded with Embassy missions rather than individual diplomats.

244. The expanded mandate of the GLAA (see paragraph 27) is an example of good practice in preventing and investigating trafficking for the purpose of labour exploitation, as well as raising awareness. However, according to civil society organisations, the UK continues to fail to guarantee independence between labour inspections and immigration enforcement, which is leading the GLAA to fail its core function of supporting vulnerable workers. While the GLAA's budget and staff have increased, there are concerns that they still do not match the volume of activities which the GLAA is called upon to perform. GRETA stresses the importance of ensuring that the GLAA is supported by adequate funding. The authorities have indicated that the UK Government spends £33 million a year on state enforcement of employment rights. This covers national minimum wage, employment agencies gangmasters licensing and modern slavery related to worker exploitation.

<sup>149</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c>, p. 57-58.

<sup>150</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_6\\_11\\_15\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf)

245. Reference has already been made in paragraph 28 to the plans to set up a Single Enforcement Body, by merging the currently existing three bodies in the area of labour market enforcement (GLAA, HMRC and HSE). **GRETA stresses the importance of endowing this new Single Enforcement Body with a remit and resources which would enable it to effectively prevent and combat human trafficking for the purpose of labour exploitation.**

246. The UK Government's significant commitment to preventing and combating human trafficking in supply chains was described in a preceding section (see paragraphs 227-231). While welcoming the Government commitment and the measures taken to prevent and combat trafficking for the purpose of labour exploitation, GRETA notes that labour exploitation is the most common form of exploitation for adult victims of human trafficking in the UK, with the number of possible victims referred to the NRM having increased significantly in the last few years. At-risk sectors include the garment industry, construction, hospitality (including cleaning and catering) domestic work, car washes, nail bars, waste management, logistics and warehousing (including packaging).

247. The growing number of unregulated hand car washes has raised concerns that exploitation may be spreading within the industry. In October 2018, a report of the University of Nottingham and the Office of the IASC looked at the prevalence of labour exploitation in hand car washes and the challenges and approaches to tackling it. The research found that the average wage for a day's work was £40. Prosecutions are difficult to pursue due to workers failing to consider themselves as victims. Some workers return to exploitative hand car washes after being in the NRM.<sup>151</sup> In June 2019, the Church of England's Clewer Initiative for modern slavery released the Safe Car Wash app, in partnership with the NCA, the GLAA, the IASC, the NPCC and the LGA. The app enables hand car wash users to report concerns over workers. Between June and December 2019, 2,271 completed entries were made via the app. In 41% of these cases (930 entries) users were told, after responding to a number of questions, that there was a likelihood of modern slavery at the hand car wash and advised to call the Modern Slavery Helpline, but only 18% of those people actually went on to make the call.<sup>152</sup> The Home Office has endorsed the Responsible Car Wash Scheme, a voluntary pilot, led by industry and supported by the GLAA, HMRC and the Environment Agency. The scheme is underpinned by a code of practice, to help drive up standards and practices in hand car washes. In 2020/21, the UK Government provided funding for the pilot to support activity to test the effectiveness of voluntary licensing in a local authority area, for the production of a toolkit and delivery of a webinar, which can be used more widely by other local authorities in the future. The pilot will also help the UK Government to build the evidence base on whether licensing is an effective regulation mechanism in hand car washes.

248. In July 2020, media investigations and reports provided evidence of unacceptable working conditions in the garment industry in Leicester, putting workers' health at risk during lockdown, and failure to pay the minimum wage to workers (e.g. as little as £2.50 per hour, whereas the national minimum wage is currently £9.30).<sup>153</sup> An independent review into the allegations was carried out by Alison Levitt QC on behalf of Boohoo Group PLC, the fast fashion retailer whose supply chain includes the Leicester factories. The report, published in September 2020, concluded that the allegations of poor working conditions and low rates of pay were substantially true, and that Boohoo's monitoring of its Leicester supply chain was inadequate.<sup>154</sup> According to the report, the failures did not arise from intentional exploitation of Leicester factory workers, but were rather caused by weak corporate governance. While the report stopped short of finding evidence of modern slavery, conditions in the garment factories in Leicester are a breeding ground for more serious abuses and call for reinforced inspections and robust legislation, including penalties for businesses failing to comply.<sup>155</sup> In February 2021, Liberty Shared submitted a petition to the US Customs and Borders Protection to exclude products produced "wholly or

<sup>151</sup> <https://www.antislaverycommissioner.co.uk/media/1238/labour-exploitation-in-hand-car-washes.pdf>.

<sup>152</sup> <https://www.bbc.com/news/uk-england-47829016>

<sup>153</sup> [Leicester: Up to 10,000 could be victims of modern slavery in textile factories | UK News | Sky News;](https://www.sky.com/news/uk/leicester-up-to-10000-could-be-victims-of-modern-slavery-in-textile-factories)

<sup>154</sup> <https://www.theguardian.com/business/2020/sep/25/boohoo-report-reveals-factory-fire-risk-among-supply-chain-failings>

<sup>155</sup> [Forced labour in Leicester's garment industry - Anti-Slavery International](https://www.antislaveryinternational.org/forced-labour-in-leicesters-garment-industry)

in part” by forced labour in the supply chains of and sold by Boohoo and its owned and affiliated companies. In summer 2020, the Government established a multi-agency taskforce, led by the GLAA, which has visited more than 250 premises across the Leicester garment industry, securing warrants on premises that presented a high-risk and where business owners did not grant access. Additional premises remain under investigation and the taskforce continues work in Leicester responding to intelligence and tackling exploitation. GRETA welcomes the establishment of a multi-agency taskforce, but is concerned by the extent of the labour exploitation phenomenon in Leicester and stresses the importance of making further efforts to effectively prevent and combat trafficking in the garment industry.

249. Civil society has drawn GRETA’s attention to the risk of heightened labour abuse and exploitation for EU migrant workers following the UK’s exit from the EU and consequent changes in their legal and administrative status. In December 2020, the IASC addressed her concerns to Alice Matthews, Head of the Single Competent Authority, in relation to the access of the victims of trafficking to the EU Settlement Scheme (EUSS). The EUSS allows EU citizens and their non-EU family members to be granted immigration status that they require in order to continue living, working or studying in the UK beyond 30 June 2021. In particular, concerns were raised about the risk that victims of modern slavery would not be registering for the EUSS and about the specific challenges faced by victims of trafficking, including the difficulties experienced by those without access to identity documents and those who are unable to provide evidence of their time spent in the UK. The IASC asked for assurance that sub-contractors are actively communicating with their clients about the EUSS and that they are signposting them for the appropriate legal advice and support required to apply.<sup>156</sup> The UK authorities have referred to several measures taken in this respect. The EUSS guidance was updated on 1 April 2021 to include information on the reasonable grounds for submitting an application after 30 June. Being a victim, or potential victim, of modern slavery is one of the examples provided of reasonable grounds for applying after that deadline.

250. In March 2021, Focus of Labour Exploitation (FLEX) published a report on the risks of human trafficking for forced labour in the UK Seasonal Workers Pilot, a temporary labour migration programme that seeks to respond to concerns about labour shortages in agriculture, particularly following the end of free movement. Drawing on primary data collected with workers in Scottish farms, the report highlights the risk of human trafficking for forced labour for workers coming to work on the Seasonal Worker Visa and provides details of these risks in line with a range of ILO forced labour indicators, including deception about the nature of the work, degrading living conditions, excessive dependency on employers and lack of freedom to change employer. It proposes strategies to the UK and Scottish governments to tackle these risks and to protect current and future workers, particularly in light of the recent expansion of the scheme.<sup>157</sup> Together with the Scottish Government and JustRight Scotland, Fife Migrants Forum (FMF) and FLEX have published new guidance for seasonal migrant workers coming to Scotland to work in the soft fruit sector. This guidance is translated into Bulgarian, Romanian, Ukrainian and Russian.

251. According to civil society reports, migrant domestic workers in the UK continue to suffer from trafficking and exploitation. The number of NRM referrals of possible victims of domestic servitude was around 520 adults and 170 children in 2019. GRETA was informed that the recommendations from James Ewins QC’s independent review<sup>158</sup> had not been implemented. One of the recommendations was to introduce information and awareness sessions for overseas domestic workers (ODW) to enable victims of abuse to be identified or to self-identify, and to empower them to take steps to leave their abusive employers. A request for proposals for an independent provider to deliver the information sessions was opened in June 2018 and attracted two bids, but neither bid was successful. An estimated 3,000 to 4,000 domestic workers were considered to have been eligible to attend a session during the six months of the intended pilot. In July 2019, the Financial Times reported that the UK government was set to drop any existing plans to introduce anti-slavery and anti-trafficking safeguards for persons using an ODW visa, as

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<sup>156</sup> <https://www.antislaverycommissioner.co.uk/media/1547/iasc-letter-to-alice-matthews-head-of-the-single-competent-authority-december-2020.pdf>.

<sup>157</sup> <https://www.labourexploitation.org/publications>

<sup>158</sup> For more details on the review, see paragraph 101 of GRETA’s 2nd report on the UK.

it had failed to find a contractor to run the meetings in which workers would be informed of their rights.<sup>159</sup> The authorities informed GRETA that the Immigration Rules governing ODWs were redrafted in May 2021 in order to provide an opportunity to communicate visa requirements and conditions of stay much more clearly.

252. Over the past six months, there has been a government petition to reinstate the terms of the original ODW visa (in place from 1998 to 2012). This petition was in response to the government's failure to progress on commitments made in 2016 to safeguard workers and due to the fact that whilst workers are permitted to change employer, they do not have the right to renew their visa beyond six months, leaving them either trapped with their employer or, should they leave, struggling to find decent work with limited time remaining. The petition was signed by 12,724 people and closed on 27 February 2021. The government announced on 5 March 2021 that it did not intend to change the current terms of the visa scheme, making no reference to the commitments made in 2016.<sup>160</sup> However the Home Office informed GRETA that proposals to reform the ODW visa from next year are currently being developed. GRETA encourages the UK authorities to follow their commitment on this important issue.

253. While welcoming the steps taken to prevent human trafficking for the purpose of labour exploitation, GRETA is concerned by indications of the prevalence of this phenomenon in the UK. **GRETA considers that the UK authorities should step up their efforts to prevent human trafficking for the purpose of labour exploitation, including by:**

- **further strengthening the remit and capacity of labour market inspectorates and ensuring that ongoing training is provided to all inspectorate staff to enable proactive identification and referral of victims of THB for the purpose of labour exploitation;**
- **taking measures to reduce labour exploitation among overseas domestic workers, by implementing the recommendations of the Ewins Review, introducing information and awareness sessions, and monitoring the issuing of ODW visas;**
- **continuing to tackle labour exploitation in car washes and raise awareness among users and workers;**
- **strengthening the provision of information to presumed victims of THB on their rights and the possibilities to receive assistance;**
- **continuing to monitor the impact of Brexit and the COVID-19 pandemic on labour exploitation, and ensuring that victims of trafficking receive adequate information and support for being registered for the EU Settlement Scheme.**

<sup>159</sup> Wright R., *Ministers set to drop plans to safeguard overseas domestic workers*, Financial Times, 12 July 2019.  
<sup>160</sup> <https://petition.parliament.uk/petitions/326765>.



## 2. Identification of victims of trafficking

254. The framework for the identification of victims of trafficking provided by the National Referral Mechanism (NRM), first set up in 2009, has been described in detail in GRETA's first and second evaluation reports.<sup>161</sup> Since 2017, the NRM has undergone a number of changes and continues to be reformed. In April 2019, a Single Competent Authority (SCA), based within the Home Office, became responsible for all NRM decisions (both Reasonable and Conclusive Grounds). The SCA has casework teams in seven locations and operations in all four nations of the UK. In 2019, it employed 130 staff involved in making NRM decisions. In January 2021, the Home Office announced that it was recruiting 300 additional case workers. Subsequently, in their comments on the draft GRETA report, the authorities indicated that the SCA was recruiting over 350 new team members across the UK to increase the capacity for NRM decision-making. The SCA also comprises a technical specialist and case preparation team, a post-decision and training team and a casework support team.

255. Designated First Responders, who have encountered a person (adult or child) suspected to be a victim of trafficking, should present a referral to the SCA. Since August 2019, First Responders use a digital referral form, making it easier to refer victims and providing a single point for referrals across the UK. As specified in section 52 of the MSA, specified public authorities in England and Wales have a statutory duty to notify the Home Office when they come across potential victims of modern slavery.<sup>162</sup> This duty is discharged by either referring a child or a consenting adult potential victim to the NRM, or by notifying the Home Office if an adult victim does not consent to enter the NRM by completing a duty to notify form. The victim's details can be anonymous in the duty to notify form. GRETA was informed that the list of First Responders had not changed in the last five years and there was insufficient training provided to them. To improve the identification of victims, the Home Office is reviewing the role of First Responders, how non-statutory organisations can apply to become a First Responder, and the training that should be provided. As already noted in paragraph 68, the Home Office also launched two online training modules to help First Responders identify potential victims and make referrals into the NRM.<sup>163</sup>

256. Independent multi-agency assurance panels of experts have been set up to review all negative Conclusive Grounds decisions, adding a further level of scrutiny of such cases. These independent panels can recommend to the Home Office to reconsider any case where they do not agree with the decision that was made by the casework team. All panel chairs have been appointed via a public appointment process and are paid. Panel members have been drawn from a selection of professionals, including law enforcement, local authorities and NGOs, in non-paid (voluntary) capacity. GRETA was informed that the review process was made difficult by the lack of good-quality information about victims and the occasional poor quality of the SCA decisions. There is reportedly a backlog of cases pending before panels.

257. As noted in paragraph 13, the number of NRM referrals has grown substantially over the years (from 1,182 in 2012, to 10,627 in 2019). Communication campaigns, such as the "Hidden in Plain Sight" campaign targeting frontline professions who were more likely to encounter victims of modern slavery, have increased awareness and understanding of this complex crime, leading to over 1,000 referrals to the Modern Slavery Helpline through calls and online referrals on the website. In 2019, the majority of the referrals into the NRM came from governmental agencies (4,643), with over half of these referrals (2,494) coming from UK Visas and Immigration. Police accounted for a quarter of referrals (2,739). The proportion of referral by local authorities was 22% (2,306) and by NGOs, 9% (909). The majority (91%) of NRM referrals were investigated by police forces in England, Police Scotland received 5% of referrals, Welsh police forces 3%, and the Police Service of Northern Ireland less than 1%.

<sup>161</sup> See GRETA's 1st report on the UK, paragraphs 205-214, and GRETA's 2nd report on the UK, paragraphs 141-144.

<sup>162</sup> In Scotland and Northern Ireland, the statutory duty to notify still does not apply.

<sup>163</sup> The e-learning is available through the specialist policing unit, Modern Slavery Organised Immigration Crime MSOIC website: <https://www.policingslavery.co.uk/transforming-our-response/training-delivery/first-responder-training/>

258. According to the SCA guidance, a person may request reconsideration of a negative Reasonable Grounds or Conclusive Grounds decision if additional evidence becomes available or there are specific concerns that a decision made is not in line with the SCA guidance,<sup>164</sup> which states that a request for reconsideration can be made only by First Responders or support providers involved in the case. The latter are not obliged to consider a victim request nor to provide reasons for not making a reconsideration request. If a legal representative or NGO outside the NRM requests a reconsideration, they should be notified that the SCA cannot reconsider the NRM decision because they are not entitled to make a reconsideration request under the guidance. This policy has been deemed unlawful in the case of *R (DS) v SSHD* [2019] EWHC 3046 (Admin), decided on 15 November 2019, due to rigidity and lack of admission of exceptions, as “however strong the merits of a case for reconsideration, the identity of the requesting person may determine whether the request is considered or ignored.”<sup>165</sup>

259. The Home Office informed GRETA that although individuals are encouraged to approach the support provider or First Responder involved in their case to submit a request for reconsideration, the SCA will not reject a reconsideration request on the basis of who has made it and the Statutory Guidance has been updated to this effect. There are no time limits on requests for reconsideration on the basis of new available evidence. Reconsiderations requests made on the basis of specific concerns that a decision is not in line with guidance should be brought within three months of a decision notice being issued by the SCA subject to exceptional circumstances that may have caused reasonable delay.

260. According to the NRM statistics, on 10 February 2020, out of the total of 10,627 NRM referrals in 2019, 8,429 had received a positive Reasonable Grounds decision, 1,064 a negative Reasonable Grounds decision, 693 a positive Conclusive Grounds decision, and 90 a negative Conclusive Grounds decision; 26 were awaiting a Reasonable Grounds decision, and 227 were withdrawn.<sup>166</sup> In 2020, the SCA made 3,454 Conclusive Grounds decisions, of which 89% (3,084) were positive. The average (median) time taken from referral to a Conclusive Grounds decision made in 2020 was 339 days. As of 1 February 2021, the majority (82%) of referrals made in 2020 were awaiting a Conclusive Grounds decision. Civil society drew attention to the excessive length of the procedure for granting victim status, which can take several months, leaving victims in a situation of uncertainty that increases their vulnerability. The IASC has also expressed concerns about the timeliness of NRM decisions, particularly in England and Wales, with some individuals waiting in excess of two years for a Conclusive Grounds decision.<sup>167</sup> In October 2019 the IASC wrote to ministers to raise this issue and to highlight the impact of delays on the well-being of victims.<sup>168</sup> The excessive length of the identification procedure leaves victims in an state of uncertainty, which increases their vulnerability and the risk of being re-trafficked.

261. In its previous reports, GRETA observed a significant difference between the percentage of positive Conclusive Grounds decisions concerning EU/EEA citizens and those concerning non-EU/EEA citizens. NRM statistics show that as of 10 February 2020, 97% of UK and EU citizens had received a positive Conclusive Ground decision, compared with 74% for non-European citizens.<sup>169</sup>

262. In its second report, GRETA asked the UK authorities to monitor the implication of the Immigration Act 2016 offence of illegal work for the identification and protection of victims of trafficking. The Immigration Act 2016 made it a criminal offence to work in the UK without required documentation and made it legal for the government to seize wages from undocumented workers as “proceeds of crime”. The CPS informed GRETA about the recent case of *R v Andrewes* (2020) EWCA Crim 1055, where the Court of Appeal found that it would be disproportionate to confiscate the value of wages where the

<sup>164</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/993172/Modern\\_Slavery\\_Statutory\\_Guidance\\_EW\\_Non-Statutory\\_Guidance\\_SNI\\_v2.3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993172/Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v2.3.pdf), p. 145

<sup>165</sup> *R (DS) v SSHD* [2019] EWHC 3046 (Admin), paragraph 83.

<sup>166</sup> <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019>, table 27.

<sup>167</sup> See Independent Anti-Slavery Commissioner Annual Report 2019-2020, p. 14.

<sup>168</sup> Independent Anti-Slavery Commissioner (2019), letter to Victoria Atkins MP. Available at: <http://www.antislaverycommissioner.co.uk/media/1368/iasc-letter-to-victoria-atkins-mp-october-2019.pdf>.

<sup>169</sup> <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019>

underlying work was legitimate and properly performed. The Court stated that “it would be wholly wrong to rule out potential exceptions. This may particularly be so in, albeit not limited to, the sensitive area of employment where the individual has no lawful right to work at all because of his immigration status [...] the more so where, perhaps the employer may have been entirely indifferent as to the employee’s status. At all events, these sorts of considerations, in our opinion, should properly be left to determination on the particular facts of the particular case, and on a case-by-case basis”.<sup>170</sup> Further, the CPS explained that they would not pursue a confiscation case against an undocumented worker where he/she acquires the right to remain in the UK. In the case of *R v Mouhid* (2014) EWCA Crim 2417, the CPS consented to an appeal against confiscation made by the appellant, who was an undocumented worker, after she received the right to remain in the UK.

263. GRETA notes that the above-mentioned case law represents an important step in ensuring that victims of trafficking, who are irregular migrants, are identified as victims instead of being considered as criminals. However, GRETA is concerned that this case law, in itself, cannot cancel the negative impact of the Immigration Act 2016 offence of illegal work on the identification and protection of victims of trafficking.

264. The obstacles in the identification of victims of trafficking who are irregular migrants are compounded by the absence of secure reporting and complaints mechanisms for migrants with insecure or undocumented immigration status. According to civil society, government agencies are encouraged to report migrants working without required authorisation to immigration enforcement. Poor training and a focus on immigration offences mean that victims are being sent to immigration detention despite having raised trafficking indicators to First Responders. The data-mapping project After Exploitation and Women for Refugee Women shows that 4,102 people who were detained under immigration powers between January 2019 and September 2020 were referred to the NRM before, during or after their detention. Of these, 2,914 were granted a positive reasonable grounds decision and 194 received a positive conclusive grounds decision.<sup>171</sup> GRETA notes that in December 2018, the NPCC issued a guidance stating that anyone reporting a crime in the UK would be treated first, and foremost, as a victim. GRETA also was informed that the Home Office is undertaking a review into the legal framework and policy underpinning data sharing between the Police and the Home Office in respect of victims of crime with irregular immigration status, following a complaint lodged in 2018 by civil society organisations asserting that data sharing prevents such victims from reporting offences. The conclusions of the review will inform future activity within the Home Office and seek to encourage safer reporting of crime by migrant victims with irregular immigration status.

265. The IASC has begun to work with the Ministry of Defence and Her Majesty’s Prison and Probation Service to improve the identification of victims of modern slavery and human trafficking. The number of referrals to the NRM from prisons has increased (17 referrals in 2017-2019), but prison officers are not First Responders and they need clear guidance and training in this respect.

266. On 21 March 2021, the Home Office issued a press release alleging an “alarming rise in people abusing the modern slavery system by posing as victims in order to prevent their removal” from the UK.<sup>172</sup> Civil society actors raised concerns that the allegations that the NRM is being abused by criminals risks preventing exploited people from coming forward for help. One Pump Court Chambers lodged a formal complaint the Home Office concerning the press release, with support from Garden Court Chambers, a number of immigration teams within other barristers’ chambers, and high-profile individual barristers who specialise in immigration cases. According to the complaint, the Home Office allegations are not supported by evidence, and the data which is available “suggests that the overwhelming majority of claims legitimately warranted further investigation”.<sup>173</sup>

<sup>170</sup> *R v Andrewes* (2020) EWCA Crim 1055, paragraph 95.

<sup>171</sup> [Thousands of potential trafficking victims detained in immigration removal centres, figures show | The Independent](#)

<sup>172</sup> [Alarming rise of abuse within modern slavery system - GOV.UK \(www.gov.uk\)](#)

<sup>173</sup> [One Pump Court’s response to press release by the Home Office and Home Secretary headed ‘Alarming rise of abuse within modern slavery system’, 21 March 2021 – One Pump Court](#)

267. GRETA notes the steps taken by the UK authorities' efforts to improve the identification of victims of THB, through the setting-up of the Single Competent Authority and independent multi-disciplinary panels. The number of referrals to the NRM have doubled between 2017 and 2020. However, GRETA is concerned by the excessive length of the procedure for granting victim status, which leaves victims in a state of uncertainty for lengthy periods of time, and the obstacles in the identification of victims of trafficking who are irregular migrants. GRETA stresses the need to continue improving the decision-making process under the NRM, for instance by increasing decision-making at local level, which would make it more efficient. Further, GRETA notes with concern that an important number of rejected human trafficking claims are overturned by courts,<sup>174</sup> which is suggestive of inadequate decision-making and may be detrimental to investigations.

**268. GRETA urges the UK authorities to take further steps to improve the identification of victims of THB, including by:**

- **ensuring that the identification process has a reasonable duration, by providing appropriate funding for the recruitment of new staff and making the process more efficient;**
- **continuing to monitor the implication of the Immigration Act 2016 offence of illegal work for the identification and protection of victims of trafficking, and adopting necessary measures for ensuring that victims of trafficking who are undocumented migrants are identified as victims instead of being considered as criminals.**

**269. Further, GRETA considers that the UK authorities should:**

- **provide systematic training to First Responders, law enforcement, social workers, medical and other staff working at facilities for asylum seekers and detained people, on the identification of victims of trafficking and the procedures to be followed;**
- **monitor the effectiveness of the identification system and its accessibility, in practice, to non-national victims of trafficking.**

### **3. Assistance to victims**

270. During the reporting period, there have been a number of positive changes to the system for providing assistance to victims of human trafficking already described in GRETA's second report.<sup>175</sup>

271. In **England and Wales**, victims support is provided through the Modern Slavery Victim Care Contract (MSVCC), which since 2011 has been periodically awarded to the Salvation Army. As of February 2019, the Government increased support for confirmed victims in England and Wales from 45 days to a minimum of 90 days through the MSVCC or other services. According to the Statutory Guidance,<sup>176</sup> following a positive Reasonable Grounds decision, adult victims will be provided with a recovery period of at least 45 days. A period of move-on support follows a conclusive determination by the SCA. Those recognised as victims receive a guaranteed minimum of 45 calendar days of move-on support from receipt of their positive Conclusive Grounds decision to help them transition out of MSVSS support. Those not recognised as victims receive nine working days of move-on support following their negative Conclusive Grounds decision. On 4 January 2021, a new five-year MSVCC was launched, offering improved victim support.<sup>177</sup> It introduced new services, such as personalised support which keeps track of the victim's recovery progress and details how they will be supported to move towards independence outside of the

<sup>174</sup> <https://www.theguardian.com/uk-news/2021/jul/02/four-out-of-five-rejected-trafficking-claims-overturned-uk-last-year>

<sup>175</sup> See 2nd GRETA report on the UK, paragraph 168 and following.

<sup>176</sup> <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>

<sup>177</sup> [2020 Modern Slavery Victim Care Contract - Contracts Finder.](#)

MSVCC. Once a confirmed victim exits the main service, they will be able to access assistance through the new reach-in service, a post-NRM service that offers transitional support. The Home Office indicated that it will be able to monitor the effectiveness and quality of the support provided through an independent inspection regime based on the Human Trafficking Foundation's updated Slavery and Trafficking Survivor Care Standards. Survivors will be given the opportunity to provide feedback on the quality of the support services they receive whilst living in safehouse accommodation and/or in receipt of outreach support. The supplier's performance is monitored through a contract management regime, including key performance indicators to monitor progress. It is managed by a dedicated contract management team in the SCA.

272. In September 2019, the Government introduced a Recovery Needs Assessment (RNA) for confirmed victims to ensure that any ongoing recovery needs arising from their trafficking experiences are identified and supported through the MSVCC or other services. The RNA allows the MSVCC support package to be tailored to the individual victim's recovery needs. The aim of the RNA is to establish longer-term stability by helping confirmed victims transition out of MSVCC support and back into a community. This needs-based approach aims at reducing the risk of confirmed victims being re-trafficked or becoming destitute. It builds on the six local authority pilot projects which were established as part of the reform of NRM to test best practice in supporting victims to transition out of central Government-funded care. However, survivors of trafficking informed GRETA that their RNA decisions have been put on hold with no prior warning whilst legislation was being amended as a result of the COVID-19 pandemic.

273. Civil society highlighted that the increasing of support has not been accompanied by additional funding outside the MSVCC, and there is still a limited understanding of how best to transition individuals out of the NRM and into mainstream support. The Home Office is looking at the challenges of providing accommodation for victims and supporting those with complex needs through the NRM Transformation Programme.

274. GRETA was informed on a project in the West Midlands, involving seven local authorities, which provides pre-NRM support for up to 10 days in a safe house. This new project is reportedly now very well known among First Responders.

275. In **Northern Ireland**, section 18(9) of the Human Trafficking and Exploitation Act (Northern Ireland) 2015 provides a further discretionary power for Department of Justice to extend support and assistance beyond the standard 45-day recovery and reflection period in cases where it considers it necessary to do so. Support providers work with individuals referred to them, from the point of entry to the service, to identify longer-term stable plans for when they exit support. Individual needs and plans are assessed and developed on a case-by-case basis. Where appropriate, contracted support providers can also put in place arrangements for individuals exiting support to access ongoing non-statutory support or contact with other NGOs. The Department of Justice works closely with a number of NGOs which provide ongoing support for individuals either beyond the statutory support or for those individuals who do not wish to avail of the statutory provision.

276. In **Scotland**, regulations came into force in April 2018 setting the period of support for victims to be the earlier of 90 days or until such times as a Conclusive Grounds decision is reached. The NGOs TARA and Migrant Help continue to receive Scottish government funding to provide services to potential victims of trafficking. Following the statutory review of Scotland's Trafficking and Exploitation Strategy, increased funding of more than £1.6 million has been announced for support services working with victims of human trafficking. TARA has been awarded £580,800 (26% increase) while Migrant Help will receive £903,806 (40% increase). This funding reflects the growing number of referrals through the NRM (between 2013 and 2019, the number of potential trafficking victims identified per year in Scotland rose from 99 to 512), and also the increases in the minimum period of support and the provision for victims of slavery, servitude and forced or compulsory labour. Both Migrant Help and TARA work with NGOs across Europe to provide continued support and transitional integration for those clients who wish to return home. This helps to ensure survivors are supported on their return and reduces their risk of being re-trafficked. In April 2018, TARA undertook a visit to Romania with Police Scotland to strengthen these links. NHS Greater Glasgow

and Clyde has also been awarded over £186,000 to continue providing a national psychological trauma support service to adult trafficking victims (see paragraph 97).

277. Civil society indicated significant gaps in the scope and the length of the protection and support provided to victims of trafficking. The current support for people who have exited the NRM following a Conclusive Grounds decision is considered as insufficient to allow persons to rebuild their lives. On the other hand, move-on support is considered insufficient for those who have received a negative Conclusive Grounds decision and that represents an important barrier to launching judicial review or reconsideration process. The lack of long-term support exposes victims to the risk of re-exploitation and prevents them from access to justice and effective remedy. Victims who do not have secure immigration status are particularly exposed since they are not entitled for many forms of welfare support.

278. The question concerning the length of time possible victims of trafficking are entitled to state support has been recently examined by the Court of Appeal of England and Wales in the case of *Regina (MN) v Secretary of State for the Home Department, Regina (IXU) v Same* [2020] EWCA Civ 1746.<sup>178</sup> The appellants in this case submitted that they were entitled to continue to receive support and protection for as long as there were "reasonable grounds to believe" that they were victims of trafficking, and support should only be terminated by the results of further investigation or consideration if those results justify the conclusion that there are no longer such reasonable grounds. An adverse Conclusive Grounds decision, taken on the basis of the balance of probabilities standard of proof, is not enough to discontinue support, in the appellants' view, taking into account the positive obligation of the state to provide victims with support and assistance of the kind provided for by Chapter III of the Council of Europe Anti-Trafficking Convention for as long as it is needed. The Court of Appeal concluded that the provision in the Guidance that the right to support is terminated by an adverse Conclusive Grounds decision is not inconsistent with the Anti-Trafficking Convention. According to the Court of Appeal's interpretation, Article 10 of the Anti-Trafficking Convention provides for a single identification process leading to a definitive decision which then attracts the substantive rights provided for in Chapter III. The purpose of the first stage is simply to ensure that persons who may in due course be identified as victims of trafficking are not removed, and are assisted with their essential needs, pending that decision. In support of its argument, the Court refers to paragraphs 132 and 135 of the Explanatory Report of the Convention.

279. GRETA recalls that Article 12, paragraphs 1 and 2 of the Convention, set out the assistance measures which State Parties must provide to persons for whom there are "reasonable grounds to believe" that they are victims of trafficking, i.e. before the victim identification process has been concluded. The aim of the measures is to "assist victims in their physical, psychological and social recovery". In its 8th General Report, GRETA recalled that timely and effective support to trafficked persons is important to ensure their recovery and reintegration, but also to encourage them to break away from the traffickers.<sup>179</sup> GRETA notes that the interruption of support by a negative Conclusive Grounds decision is not in itself in breach of the Convention. However, a more cautious approach is required when significant gaps are found in the identification process and when, on the basis of an individual assessment, reasonable doubts remain to believe that the person is a victim of trafficking.

280. In March 2018, the weekly allowance paid to asylum seeking potential victims of trafficking in the NRM was cut by 42%, from £65 to £37.75. This decision was challenged in the case of *K & AM v SSHD* [2018] EWHC 2951 (Admin), where the Court was satisfied that, in making the contract change in March, the Secretary of State failed to comply with its obligations under the Convention and under the Equality Act 2010. The finding was reached on the basis that the financial support rate was insufficient to meet the needs of potential victims of trafficking, as it was no more than the minimum sum needed to stave off destitution. After the ruling on 8 November 2018, the Home Office reinstated the top-up paid to potential victims of modern slavery receiving asylum support, so that they receive a total of £65 per week. The IASC observed, in her annual report, that despite this case law, there are still individuals who are not receiving the subsistence to which they are entitled and individuals receiving deductions from other means-

<sup>178</sup> <https://www.bailii.org/ew/cases/EWCA/Civ/2020/1746.html>.

<sup>179</sup> <https://rm.coe.int/assistance-victims-thematic-chapter-8th-general-report-en/16809ce2e9> p. 9.

tested benefits as a result of NRM subsistence. It appears from the IASC annual report that the Department for Work and Pensions (DWP) gave assurance that NRM subsistence would not be considered un-earned income in relation to Universal Credit. A survivor of human trafficking informed GRETA that in September 2020, she received a partial back payment but was ordered to return that payment within 24 hours of receipt and was given no explanation why. Other survivors indicated that they had been informed that they could contact the Home Office by email and request backdated payments for the subsistence that they were entitled to, but they had not received a reply to their requests or had received only a partial repayment.

281. A private members' Modern Slavery (Victim Support) Bill was introduced to the House of Lords by Lord Mc Coll in 2017. It proposes to amend and strengthen the MSA by requiring the Secretary of State to provide a much longer period of assistance and support to those going through the NRM process. Victims would be entitled to support services for the entire duration of their wait for Reasonable or Conclusive Grounds decisions. The assistance and support would include accommodation, financial assistance, medical treatment, counselling, a support worker, translation and interpretation services, legal advice and representation, and help with repatriation. Following a positive Conclusive Grounds decision, a victim would be entitled to 12 months' support or longer, depending on their circumstances. The Victim Support Bill also seeks to amend the Children Act 1989 to require local authorities to protect children in care who have been trafficked from the risk of re-trafficking, including by ensuring the child has accommodation that is suitable to their particular needs. The Victim Support Bill would further entitle any person who is receiving 12 months' support following a positive Conclusive Grounds decision to leave to remain in the UK for the duration of that support period. Exceptions may apply to sexual or violent offenders and individuals posing a genuine, present and serious risk to the public. In October 2020, a letter was signed by dozens of NGOs, calling for increased protection for trafficking victims, particularly those at risk of deportation. In March 2021, the Home Office Minister for Safeguarding reportedly rejected plans for extra support to victims of trafficking.<sup>180</sup>

**282. While welcoming the measures taken for improve victim assistance, GRETA considers that the UK authorities should take additional steps to ensure that all assistance measures provided for in the Convention are guaranteed in practice, in particular by:**

- **ensuring that victims of trafficking are provided with adequate support and assistance, according to their individual needs, for as long as required, with a view to facilitating their reintegration and recovery, guaranteeing their protection, and ensuring that they are not criminalised for offences they were compelled to commit;**
- **ensuring appropriate oversight over the delivery of services to victims under the Modern Slavery Victim Care Contract by the main contractor and the subgrantees;**
- **involving survivor organisations in the design and delivery of assistance to victims of trafficking;**
- **in the context of the COVID-19 pandemic, ensuring that appropriate support and assistance, including access to health care, are available to all victims of THB.**

<sup>180</sup> <https://www.theguardian.com/politics/2021/jan/11/home-office-minister-rejects-plans-for-extra-support-for-trafficking-victims>

#### 4. Identification of, and assistance to, child victims of trafficking

283. As noted in paragraph 15, child trafficking in the UK is reaching alarming levels. In 2020, 4,946 children were referred into the NRM, representing 46.6% of all referrals. In the last quarter of 2019, 644 children were referred into the NRM for being exploited in criminal activities, the majority as a result of "County Lines" activity. During the first two quarters of 2020 referrals have remained high, with a total of 1,250 referrals for child criminal exploitation alone and 79.2% being British national children.<sup>181</sup>

284. If the increase in child referrals demonstrates increased awareness and understanding of the different forms of exploitation, notes that there remain several problematic aspects in the identification and assistance of child victims.

285. Since 2017, reforms to the NRM, including aiming at making it "child-friendly", have been undertaken by the Home Office.<sup>182</sup> However, according to the IASC, the identification system still presents multiple issues, including gaps in knowledge among professionals about the NRM, inefficient processes for information sharing and considerable disconnect between the NRM and local child protection processes. According to the IASC, despite pockets of good practice in safeguarding trafficked children, the general situation shows that there is a need for radical reform of the system, and the IASC has asked the Home Office to devolve NRM decision making, insofar as children are concerned, to local authorities.<sup>183</sup> A pilot scheme to test this approach is being established (see paragraph 26). NGOs consulted by GRETA unanimously consider that the NRM does not work well for children.

286. As for adults, the excessive length of the procedure constitutes an obstacle in terms of identification for children. By the end of 2019, 76% of all child referrals into the NRM were still waiting for a Conclusive Grounds decision.<sup>184</sup>

287. As mentioned in paragraph 33, in **England and Wales**, the Independent Child Trafficking Guardian service was launched on 30 January 2017. It is operated by Bernardo's charity and is currently operational in two third of local authorities in England and Wales. The service provides ICTG direct workers for children for whom there is no one with parental responsibility in the UK, and ICTG regional coordinators whose role is to focus on children for whom there is someone with parental responsibility in the UK. At present, only those children explicitly identified, and only those who are within the local authority areas where the service is provided, can benefit from a guardian.

288. **Northern Ireland's** model of guardianship, which became operational in 2018, covers all unaccompanied children and children who may have been trafficked. The Northern Ireland Commissioner for Children and Young People's (NICCY) advised on the draft Modern Slavery Strategy 2018-2019 to measure long-term outcomes for children who have access to a guardian (and not simply numbers of children), including immigration outcomes and outcomes for young people supported in aftercare.

<sup>181</sup> ECPAT UK (2020), *Child Trafficking in the UK 2020, A snapshot*.

<sup>182</sup> Home Office (2017), *Modern Slavery Taskforce agrees new measures to support victims*. Available at: <https://www.gov.uk/government/news/modern-slavery-taskforce-agrees-new-measures-to-support-victims>; Home Office (2017), *Modern slavery victims to receive longer period of support*. Available at: <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

<sup>183</sup> Independent Anti-Slavery Commissioner Annual Report 2019-2020, p. 17.

<sup>184</sup> ECPAT UK (2020), *Child Trafficking in the UK 2020, A snapshot*.



289. In **Scotland**, the Scottish Guardianship Service, introduced in 2010, is run in partnership with the Scottish Refugee Council and Aberlour Child Care Trust, supporting children who are victims of trafficking and unaccompanied asylum-seeking children. Since 2018, the Scottish Government has been developing the Independent Child Trafficking Guardian (ICTG) service to help provide national support for child victims, and those at risk of trafficking. ICTGs in Scotland were the subject of a consultation between August and November 2019. The new service will put the role of the ICTG on statutory footing with other support services. It is anticipated the new service will be implemented in 2021.<sup>185</sup> GRETA was informed that there are currently 12 guardians working across Scotland.

290. In England and Wales, ICTGs are expected to provide support for 18 months or until the child reaches the age of 18, while the Scottish Guardianship Service works with young people beyond the age of 18 and the Northern Ireland Scheme can support young people until the age of 21. The UK authorities informed GRETA that, as part of the NRM Transformation Programme, the upcoming phase of the ICTG rollout will undertake targeted testing of three of the remaining recommendations made by the Independent Review of the Modern Slavery Act 2015: removing the 18-month limit for ICTG support; enabling those children who need it to continue to receive ICTG support following their 18th birthday; allowing children who have a figure of parental responsibility for them in the UK to access one-to-one support where there is an exceptional need. GRETA welcomes this commitment which may reduce the risks related to the transition of into majority and fill the gaps in support children after they exit the service. Specialised NGOs observed that many children go missing at this point as a result of such heightened vulnerability. Transition to adulthood is particularly problematic for child victims with irregular immigration status because of the risk of being returned to their country of origin. Research has shown that unaccompanied young people disengaging from services may transition into precarity and destitution. Young people will seek community and support networks which may lead to exploitation. According to specialised NGOs, extending the guardianship schemes to cover this critical transition point, and ideally in line with leaving care services (up until the age of 25), would be of significant benefit for these children and act as a broader trafficking prevention measure.

291. Civil society underlined that while some progress has been made over the last years, especially in Scotland and Northern Ireland, there continue to be major concerns that the NRM does not provide clear, additional benefits to the children identified as victims of trafficking. In particular, where the Independent Child Trafficking Guardian scheme does not apply, a positive NRM decision does not lead to any material benefit for the child in regard to care, immigration status or criminal justice experience.

292. The UK Government has committed to the full rollout of the ICTG service and has indicated that it will publish a further update to Parliament as well as extending the service to young people up to 21 or 25 years of age.<sup>186</sup>

293. **GRETA welcomes the authorities' commitment to fully roll out the ICTGs service and the removal of limits for ICTG support, and stresses that targeted support is crucial when victims, especially children, who find themselves in a situation of increased vulnerability, putting them at risk of re-victimisation. The transition to adulthood and the exit from social care services exposes young adults to the risk of being re-trafficked and requires an adequate response from the authorities to reduce this risk.**

<sup>185</sup> See Independent Anti-Slavery Commissioner Annual Report 2019-2020, p. 17.

<sup>186</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803406/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf), p. 50.

294. In its second report, GRETA urged the UK authorities to address the problem of children going missing from local authority care. The authorities have taken steps to address this problem, including by issuing the statutory guidance "Working Together to Safeguard Children 2018", Department for Education statutory guidance on what to do when children go missing from statutory care in **England and Wales**, and the "Safeguarding Strategy – unaccompanied asylum seeking and refugee children", published in November 2017. The latter committed to delivering 1,000 training places to foster carers and support workers. It also included a commitment to pilot a standardised process when the police first encounter an unaccompanied child. Further, the statutory guidance for local authorities ("Care for unaccompanied migrant children and child victims of modern slavery") has been updated.<sup>187</sup>

295. In **Northern Ireland**, protocols on missing children from care are currently being reviewed and internal guidance is being progressed to ensure that there is co-operation between the police, the Health and Social Care Trust and the Social Services in respect of all separated children referred to Social Services. Further, a regional recruitment strategy is currently being progressed to recruit and train foster carers specifically for separated children, including victims of trafficking.

296. In **Scotland**, the support and safeguarding arrangements around unaccompanied asylum-seeking children, set out in 2017, still apply. In addition, each of Scotland's 32 local authorities are covered by a Police Scotland divisional missing persons co-ordinator and missing persons multi-agency partnership groups have been developed in 28 local authorities. A Looked After Children pilot protocol, aiming to develop understanding, improve risk assessment and build communication between care homes and Police Scotland to safeguard child in care.

297. GRETA is concerned by the findings of the research conducted by ECPAT UK and Missing People, according to which high numbers of trafficked and unaccompanied children continue to go missing from care in the UK.<sup>188</sup> In 2017, 244 (27%) of all identified or suspected victims of trafficking and 742 (15%) of all unaccompanied children went missing from care at least once, while almost 20% (169) of the total number of trafficked and unaccompanied children who were reported missing had not been found.

298. As noted in the section on the non-punishment provision, the criminalisation of trafficked children is an issue in the UK. ECPAT has drawn attention to the fact that former child victims of criminal exploitation are facing immigration detention, deportation or long, protracted immigration battles as adults, on the basis of having been forced to commit crimes by traffickers when they were children. Migrant children risk to lose the opportunity to remain in the UK long term, which has profoundly negative consequences. Attention was drawn to this issue when efforts were made to stop a deportation flight to Jamaica containing a number of potential victims of child exploitation.<sup>189</sup>

299. NGOs also pointed out deficiencies in the care system and its failure in find a durable solution for child victims of trafficking. Children who have been identified as trafficked and assessed under section 17 of the Children Act 1989 by the relevant local authority as being in need of support and accommodation can be accommodated under section 20 of the Children Act 1989. After having been accommodated for 24 hours, they are considered "looked after" and will be entitled to the same support as any other looked after children, irrespective of their immigration status. There is no specific central funding for child victims of trafficking and funding for their care and protection is down to individual local authority children's services budgets, with care of unaccompanied children seeking asylum being funded centrally by the Home Office, thus creating a two-tier system of localised support. Funding to children's services has continued to fall over the past few years. In May 2019, the Housing, Communities and Local Government Committee stated that constricted funding but increasing demand had left children's services in England at "breaking point" and called for immediate increases in funding. In late 2019, £1 billion was allocated to local counties for social care for adults and children in 2020-2021, on top of the continuation of the £410 million social

<sup>187</sup> <https://safeguarding.wales/>

<sup>188</sup> ECPAT UK (2018), *Still in Harm's Way*. Available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=96016be0-cc60-48e0-ab9c-635b742f5b7f>.

<sup>189</sup> ECPAT UK (2020), *Child Trafficking in the UK 2020, A snapshot*, p. 12.

care grant in 2020-2021. Since the beginning of the COVID-19 pandemic, emergency funding has been pledged although sector leaders have claimed it is not sufficient.

300. The pandemic has increased the risks of child trafficking, particularly in relation to sexual exploitation online. Moreover, data shows that child criminal exploitation in drugs trafficking has not stopped. The UK Government adopted the Adoption and Children (Coronavirus) (Amendment) Regulation 2020 (SI/445/2020). The measures were said to be introduced to provide child protection workers, local authorities, providers, agencies and partners with the flexibility to meet their statutory duties to children in care amid national lockdown measures. However, civil society observed that this regulation had led to loss of support and increased isolation for children. According to ECPAT UK and other organisations, young people have been going missing from statutory support agencies during the pandemic, following long periods without contact with support workers or severe delay to subsistence payments.

**301. GRETA notes that significant commitments remain unmet and considers that the UK authorities should take further steps to improve child victims' identification and assistance, and in particular:**

- **ensure that the NRM process is in line with trafficked children specific needs, by providing specific training among professionals about the NRM, ensuring information sharing and adequate co-ordination between the NRM and local child protection processes;**
- **ensure that the identification process has a reasonable duration, including by providing appropriate funding for the recruitment of new staff and for making the process more efficient;**
- **make the Independent Child Trafficking Guardianship (ICTG) scheme operational across the whole territory in England and Wales;**
- **ensure that long-term support and adequate assistance are provided to children in the transition to adulthood, in order to reduce the risk of re-victimisation and to ensure their effective access to justice and facilitate their social reintegration and recovery;**
- **continue to take actions for reducing the risk of children going missing from care and to set up a system for tracking re-trafficked children, in order to understand the extent of this issue and react adequately;**
- **provide training to all professionals working with child victims of trafficking, by paying particular attention to children who are potential victims of criminal exploitation and online sexual exploitation, and ensure that child victims are not prosecuted for their involvement in crimes committed as a result of their exploitation;**
- **ensure that sufficient long-term funding is provided to enable local authorities to carry out their work and to face the emergency related to the COVID-19 pandemic.**

## **5. Residence permit**

302. As described in GRETA's previous evaluation reports, persons conclusively found to be victims of trafficking are not automatically entitled to resident permits, but may be eligible for a "Discretionary Leave (DL) to remain" if their individual circumstances warrant them remaining in the UK or if they are co-operating with the authorities in a criminal investigation or if leave is necessary to pursue compensation. A person with a positive Conclusive Grounds decision who has claimed asylum will also receive consideration for discretionary leave, if they are not granted asylum or humanitarian protection or leave on the basis of their family or private life.

303. As part of the new Plan for Immigration (see paragraph 48), announced in March 2021, the UK Government intends to make clear in legislation that confirmed victims (both adults and children) with long-term recovery needs linked to their exploitation will be considered for a grant of temporary leave to remain to assist their recovery. The intention is for the legislation to provide clarity on the circumstances in which a confirmed victim may qualify for a grant of temporary, modern slavery-specific, leave to remain. Leave will continue to be granted pursuant to detailed considerations provided for in guidance or within the Immigration Rules. Temporary leave to remain will specifically be available to confirmed victims with long-term recovery needs that need to be met in the UK, or where the victim is assisting the police to prosecute their exploiter or is seeking compensation. GRETA stresses that the implementation of the new Plan for Immigration must be done in compliance with the obligations arising from Article 14 of the Convention.

304. In the previously mentioned case of *R (JP and BS) v Secretary of State for the Home Department* [2020] 1 WLR 918, the England and Wales High Court found unlawful the policy, under which no decision would be made on leave to remain under Article 14(1) of the Council of Europe Convention on Action against Trafficking in Human Beings until a person's entitlement to any other form of leave, including asylum, had been determined. The Court held that, although it may be administratively efficient to always consider an asylum claim before determining leave to remain as a victim of trafficking, where there is, in practice, likely to be a significant delay after a positive Conclusive Grounds decision has been made before an asylum decision is made, there is a material risk that victims will be reduced to insufficient support for a considerable period of time. Following this decision, asylum seekers are now entitled to apply for a DL on the same conditions and same delays of THB victims who are not asylum seekers.

305. Where DL is granted for medical treatment it should normally be for up to 30 months. When the initial leave expires, a further period of leave may be granted on application. A grant of DL to assist in police enquiries or for the purposes of pursuing a compensation claim should be for the time considered necessary depending on the circumstances, up to a maximum of 12 months in the first instance. For a longer period of DL to be granted there must be sufficient evidence to demonstrate that the individual circumstances of the case can be distinguished to a high degree from other cases.

306. In cases involving children, the Home Office "Discretionary leave considerations for victims of modern slavery" guidance states that "the best interest of the child is regarded as a primary consideration" and that can affect the duration of leave granted.<sup>190</sup> Moreover, consideration should be given to factors such as the length of residence in the UK, where the child was born, and the strength of the evidence to suggest that the child's life would be adversely affected by a grant of limited leave rather than indefinite leave to remain (ILR). This does not alter the expectation that in most cases a standard period of up to 30 months DL will be appropriate.

307. According to civil society, the guidance is still too restrictive and resident permits are rarely granted both for adults and children. Some survivors of human trafficking with whom GRETA held consultations indicated that they were granted DL for one year, which puts them in limbo, not knowing what support they are entitled to.

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<sup>190</sup> See "Discretionary leave considerations for victims of modern slavery" guidance, p. 14, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf).

308. The IASC recently expressed concerns about the length of the procedure for obtaining a decision about whether a victim of trafficking will be able to remain in the UK. While waiting for the decision, victims are left in a situation of uncertainty which increase their vulnerability. She also stressed that the overall number of survivors granted discretionary leave remains very low: in 2015, 123 survivors with positive Conclusive Grounds were granted discretionary leave, in 2019 the number was 70, and in the first three months of 2020, it was only eight.<sup>191</sup> Without DL to remain, victims who are not claiming asylum or who have not been granted EU settled status, are not entitled to accommodation and have limited access to benefits.

309. There are no available statistics on the number of residence permits granted to victims of human trafficking. According to figures obtained under the Freedom of Information Act, in 2016-2019, of the 4,695 victims with a positive Conclusive Grounds decision subject to immigration control, the Home Office granted a total of 549 applications for DL to remain to both adults and children (i.e. 11.7% of applications). Of these, only 28 grants were issued to child victims. The length of the DL period granted for these 28 children is not stated. The data indicates the time period for adults and children combined: for 74% of all victims of trafficking granted DL, the leave lasted between seven and 12 months; 7.8% were granted leave of up to six months; 9.1 % were granted leave of 13 to 24 months; and 8.3% for more than 25 months.

310. The Home Office accepted only 16 out of 326 applications for DL to remain for child victims from April 2017 and the end of 2018, and 136 out of 201 asylum claims made by child victims of trafficking were refused. A young person will need to have accumulated 10 years of leave to remain before being eligible to apply for indefinite leave to remain, a very long time to be living with such insecurity and a significant barrier to recovery.

311. The UK authorities have pointed out that DL is not always the most appropriate form of leave to remain for a victim of modern slavery and often victims will receive other more advantageous forms of leave such as asylum. In the period of 2016-2019, the Home Office granted asylum to 2,139 confirmed victims of trafficking. Of these, only 443 were children. Only 174 confirmed victims of trafficking were granted humanitarian protection. Of these, 51 were children. It is unknown how many asylum refusals for child victims were overturned on appeal by the Immigration and Asylum Tribunal.

312. As an example of system failures, ECPAT referred to the case of a boy who had been brought to London by his parents at the age of five. He was taken into the care of social services for years and was recruited into selling drugs during his final year of primary school, being exploited for several years. He was arrested for various offences he committed as a result of his exploitation. The local authority took no steps to regularise his immigration status when he was in their care. Shortly before his 18th birthday, he was finally identified as a victim of trafficking whilst serving a custodial sentence at a young offender's institution. Shortly before his release, he was served with removal directions to Ghana, a country he has no memory of. One year on from his release, while he was still in immigration limbo, was reported missing from his placement and his support worker suspects he's being exploited again.

313. GRETA is concerned that DL is granted only in a small number of cases and for a short period, which does not ensure the needed stability and does not provide victims of trafficking, especially children, with a durable solution. Concerning children, GRETA recalls that Article 14, paragraph 2, of the Convention provides that residence permits for child victims are to be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions. **GRETA considers that the UK authorities should collect data on the number of residence permits granted to both adults and child victims of trafficking and investigate the reasons for the low number of residence permits granted.**

<sup>191</sup> [Independent Anti-Slavery Commissioner - IASC commentary: Supporting survivors to regain independence.](#)

**314. Recalling the recommendations made in its second report, GRETA urges the UK authorities to:**

- **ensure that all victims of human trafficking who have received a positive Conclusive Grounds decision and whose immigration status requires it are issued a renewable residence permit when their personal situation warrants it or when they are cooperating with the authorities in criminal investigations or proceedings and their presence in the UK is required for this purpose, in accordance with Article 14(1) of the Convention;**
- **ensure that all child victims are issued such residence permits, in accordance with the best interests of the child, pursuant to Article 14(2) of the Convention.**

## **6. Repatriation and return of victims**

315. The Home Office Voluntary Returns Service (VRS) allows a person who is leaving in the UK without leave or has been refused leave to enter or stay in the UK to apply for a voluntary return. The Home Office will organise and fund the flight, but will expect the person to arrange their own documentation. While the VRS is not a specialised scheme for victims of trafficking, it provides return assistance to victims of trafficking who have received a positive Conclusive Grounds decision through the NRM. The authorities have specified that the VRS may include help with travel documents, medical assistance and reintegration support (in the form of funds given directly to the applicant). Applicants to the VRS who are confirmed victims of trafficking are entitled to receive from £1500 to £3000 depending on their personal circumstances and the country of return. In the case of children who are confirmed victims of trafficking, the Salvation Army are contracted to ensure that the applicant is risk assessed both in the UK and on return. However, the authorities have specified that it is very rare that an unaccompanied child contacts the VRS.

316. Support providers should refer to and work with Assisted Voluntary Returns and Reintegration (AVRR) providers to identify, assess and manage risks before facilitating the return process of victims of trafficking. As the majority of risk factors are based around the situation in the place of return, co-ordination with in-country offices or partners is essential to ensure that there is sufficient knowledge available. The Home Office Immigration Enforcement provides support via the Voluntary Returns Scheme Additional Assistance programme to certified victims of trafficking. International co-operation measures have been adopted for ensuring safe return of THB victims to their country of origin.

317. Civil society expressed concerns about the use of informal avenues to return trafficking survivors and the lack of access to the VRS. NGOs also highlighted that often potential THB victims who wish to return to their countries are not addressed to the NRM, intended as a procedure for people who want to remain in the UK only.

318. The VRS webpage<sup>192</sup> does not provide detailed information about how victims of trafficking are supported after their return. In most cases, victims of trafficking receive a cash-card containing a pre-loaded value of £1000 (for EU/EEA nationals) or £2000 (for non-EU/EEA nationals). If the victim returns to a country covered by the European Return and Reintegration Network (ERRIN), reintegration assistance may be provided through an in-country partner, however, it is unclear what kind of assistance is provided and if any monitoring takes place. The ERRIN programme does not provide assistance in any of the countries of origin of the top five most referred nationalities in the NRM in 2018 (excluding the UK), namely Albania, Vietnam, China, Romania and Sudan.<sup>193</sup> Furthermore, it is not clear whether the UK will continue to be part of ERRIN once it exits from the EU.

<sup>192</sup> <https://www.gov.uk/return-home-voluntarily>

<sup>193</sup> In November 2019, the ERRIN countries were Afghanistan, Armenia, Bangladesh, Brazil, Ethiopia, Gambia, Ghana, India, Iraq, Morocco, Nepal, Nigeria, Pakistan, Russian Federation, Sri Lanka and Ukraine.

319. The UK authorities informed GRETA that the number of people subject to an Enforcement or Voluntary return in England and Wales was respectively 13 in 2016, 20 in 2017, 22 in 2018 and 13 in 2019. None of them was a child. In Scotland, a total of 24 people were subject to an Enforcement or Voluntary return in 2015-2019, and in Northern Ireland, 31 people.

320. Immigration Enforcement does not publish information about the number of victims of trafficking who return via the VRS and which countries they return to, neither does it provide any details of outcomes for victims after they leave the UK, making it difficult to track their wellbeing, and potential cases of re-trafficking.

321. In September 2018 IOM and the Human Trafficking Foundation (HTF) conducted a survey about voluntary return arrangements for victims of trafficking in the UK. It was addressed to 30 respondents, including organisations supporting survivors under the MSVCC and the police. Amongst respondents who had been involved in supporting returns, 87% reported concerns about the victims' safety on return. Of the organisations involved in supporting the return of victims through referrals to the VRS, only 62% said they carry out some form of pre-return risk assessment. Six respondents reported that victims they had supported to return had been re-trafficked and had re-entered a UK support service. Organisations explained that when they refer a case to the VRS, the responsibility to complete a risk assessment falls on them and there are no consistent standards that they are required to follow. Different care providers described the challenges they have with this process, given that they are UK organisations with no international operations or links in countries of return. This makes it extremely difficult for them to assess risk on return, put in place a mitigation plan or refer victims to possible in-country support services.<sup>194</sup>

**322. GRETA urges the UK authorities to review the victim return and repatriation policies in order to ensure compliance in law and practice with Article 16 of the Convention, including by:**

- **ensuring that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies working with relevant partners in countries of return; such assessments should also ensure effective enjoyment of the child's right to education and measures to secure adequate care or receipt by the family or appropriate care structures in countries of return (Article 16 (5) of the Convention).**
- **ensuring that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of non-refoulement. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection;<sup>195</sup>**
- **carrying out a comprehensive risk assessment prior to the return of victims, including through enhancing international co-operation, in order to ensure compliance with the *non-refoulement* principle, as well as enabling the effective reintegration and protection of victims of THB returned to other countries.**

<sup>194</sup> IOM and HTF have produced a paper summarising the findings and making recommendations, available at: <https://www.humantraffickingfoundation.org/news/2019/6/assisted-voluntary-return-and-reintegration-for-survivors-of-modern-slavery>

<sup>195</sup> <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>

**323. GRETA also considers that the UK authorities should include the aspect of safe and preferably voluntary return in the training provided to law enforcement agencies, and collect and publish information about the number of victims of trafficking who return via the VRS and which countries they return to.**



## **Appendix 1 - List of GRETA's conclusions and proposals for action**

The position of the proposals for action in the text of the report is shown in parentheses.

### **Topics related to the third evaluation round of the Convention**

#### ***Right to information***

- While welcoming the steps taken to provide information to victims of THB, GRETA considers that the UK authorities should strengthen the systematic provision of information to potential victims of trafficking (adults and children) regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. First Responders, law enforcement officers, social workers and local authorities should be trained and instructed on how to properly explain to victims of THB their rights, taking into account their cognitive skills and psychological state, and apply the NRM to systematically refer them to specialised services which enable victims to exercise their rights (paragraph 72);
- GRETA also considers that the UK authorities should take additional steps to ensure the availability in practice and at all stages of the identification and criminal proceedings of interpreters/translators, including by providing adequate funding to ensure adequate quality of interpreting and translation services (paragraph 73);
- As regards child victims, GRETA considers that the legal guardianship system should continue to be rolled out across England and Wales in order to ensure that trafficked children are systematically and adequately informed of their rights (paragraph 74).

#### ***Legal assistance and free legal aid***

- Noting that access to legal assistance and free legal aid is essential for victims' access to justice, GRETA urges the UK authorities to take further steps to ensure that:
  - victims, and in particular children, receive legal assistance during the identification process and are properly informed of their rights and options before entering the NRM;
  - access to free legal aid is ensured across the UK and is granted in a timely manner;
  - the assistance of a lawyer is ensured for state compensation proceedings, by making the Exceptional Case Funding scheme accessible in practice to victims seeking compensation before the Criminal Injuries Compensation Authority (paragraph 92);
- GRETA also invites the UK authorities to raise awareness among Bar Associations of the need to encourage training and specialisation of lawyers, and ensure that trafficking victims are assisted by specialised lawyers (paragraph 93).

#### ***Psychological assistance***

- While welcoming the commitment made to improving mental health support to victims after exiting the NRM, GRETA considers that the UK authorities should guarantee timely access of victims of trafficking to psychological assistance and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion (paragraph 100);

### ***Access to work, vocational training and education***

- GRETA considers that the UK authorities should make further efforts to support victims of THB in their economic and social inclusion through the provision of education, vocational training and job placement. This should involve raising awareness amongst different employers and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking (paragraph 107);
- GRETA also considers that the UK authorities should ensure that identified victims of trafficking who are also asylum seeker, are not discriminated against on account of their status, and can access to the labour market on the same conditions as other identified victims of trafficking (paragraph 108).

### ***Compensation***

- GRETA urges the UK authorities to make additional efforts to guarantee effective access to compensation for victims of trafficking, in line with Article 15 of the Convention, including by:
  - enabling all victims of trafficking, including undocumented migrants, to exercise their right to compensation, and carrying out a review of the "illegality defence", aimed at enabling victims of trafficking who are irregular migrants to seek unpaid salaries before employments tribunal;
  - ensuring that the Family Worker Exemption and the "live in domestic workers exemption" do not prevent domestic workers who are victims of trafficking from accessing compensation;
  - ensuring that victims of labour exploitation have accessible remedies for obtaining more than two years owed in National Minimum Wage;
  - making full use of the legislation on the freezing and forfeiture of assets and international co-operation to secure compensation to victims of THB;
  - improving training programmes on compensation for legal practitioners, prosecutors and the judiciary, and encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB;
  - enabling victims of trafficking to effectively exercise their right to state compensation within reasonable time, by ensuring their access to legal aid when submitting applications to the CICS as well as to experts who can assess psychological injuries, and providing appropriate guidance to CICA;
  - ensuring that the amount of compensation from the Northern Ireland Criminal Injuries Compensation Authority is not made dependent on the victim's co-operation with the authorities or prior convictions (paragraph 132);
- GRETA reiterates its recommendation from the second evaluation round and invites the UK authorities to develop a system for recording claims for compensation by victims of trafficking, as well as compensation awarded to victims of trafficking (paragraph 133).

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### ***Investigations, prosecutions, sanctions and measures***

- GRETA considers that UK authorities should take further steps to ensure that THB cases are investigated proactively, prosecuted successfully, and lead to effective, proportionate and dissuasive sanctions. In this context, the authorities should:
  - strengthen the conduct of financial investigations in THB cases with a view to securing confiscations and compensation of victims;
  - continue providing training to police officers, prosecutors and judges and sensitising them to the rights of victims of THB;
  - ensure that the length of court proceedings in cases of trafficking of human beings is reasonable, in line with the case-law of the European Court of Human Rights (Article 6, paragraph 1 of the ECHR) and the standards set by the European Commission for the Efficiency of Justice (CEPEJ) (paragraph 158).

### ***Non-punishment provision***

- Recalling the recommendations made in its second report, GRETA urges the UK authorities to:
  - ensure that the non-punishment provision is capable of being applied to all offences that victims of trafficking were compelled to commit, by ensuring that victims are promptly identified as such and receive adequate support from their first contact with law enforcement agencies;
  - ensure that the allocation of the burden of proof does not substantially hinder the application of the non-punishment provision;
  - remove the requirement to apply the “reasonable person” test in the framework of the statutory defence of child victims pursuant to section 45 of the MSA;
  - strengthen their efforts to ensure the compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, by further developing the existing guidance and promoting it through training of police staff, prosecutors and judges, including staff working in prisons and immigration detention centres, as well as social workers and all First Responders (paragraph 177).

### ***Protection of victims and witnesses***

- GRETA invites the UK authorities to ensure that the available protection measures are effectively applied to protect victims and witnesses of THB and to prevent intimidation during the investigation, as well as during and after the court proceedings (paragraph 189).

### ***Specialised authorities and co-ordinating bodies***

- GRETA welcomes the UK authorities’ efforts to establish specialised anti-trafficking bodies and considers that they should ensure that effective co-ordination and information exchange exists among the different actors (paragraph 200).

### ***International co-operation***

- GRETA welcomes the UK authorities' active participation in multilateral and bilateral international co-operation in the fight against trafficking in human beings, and invites them to continue and maintain their efforts in this area after the UK's exit from the EU (paragraph 210).

### ***Child-sensitive procedures for obtaining access to justice and remedies***

- GRETA welcomes the Child House pilot and considers that the UK authorities should further develop this good example of child-friendly justice which can enhance the protection of child victims of trafficking (paragraph 223);
- GRETA invites the authorities to ensure that the NRM process is child-friendly and adapted to the specific needs and vulnerability of children (paragraph 226).

### ***Role of businesses***

- GRETA welcomes the UK authorities' commitment in preventing and eradicating human trafficking from businesses and supply chains, including in the public sector, and considers that the authorities should continue their efforts, making full use of the existing legislation and further developing it, by introducing mandatory sanctions for companies which fail to comply with their due diligence obligations under the MSA (paragraph 234).

### ***Measures to prevent and detect corruption***

- GRETA endorses GRECO recommendations and invites the UK authorities to pursue their efforts in prevent and detect corruption and to include measures against corruption in a THB context in the next national anti-corruption strategy (paragraph 241);
- Further, GRETA invites the authorities to proactively detect and investigate cases THB in diplomatic households, ensuring victims' protection and access to justice (paragraph 242).

## **Follow-up topics specific to the United Kingdom**

### ***Developments in the legal, institutional and policy framework for action against human trafficking***

- Recalling the recommendation made in paragraph 31 of its second report on the UK, GRETA stresses once again that on the key features of National Rapporteurs' mechanisms according to Article 29, paragraph 4, of the Convention should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and to that end to maintain a constant exchange with civil society, the research community and other relevant stakeholders (paragraph 24).

### ***Measures to prevent and combat trafficking for the purpose of labour exploitation***

- GRETA stresses the importance of endowing this new Single Enforcement Body with a remit and resources which would enable it to effectively prevent and combat human trafficking for the purpose of labour exploitation (paragraph 245);

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- GRETA considers that the UK authorities should step up their efforts to prevent human trafficking for the purpose of labour exploitation, including by:
    - further strengthening the remit and capacity of labour market inspectorates and ensuring that ongoing training is provided to all inspectorate staff to enable proactive identification and referral of victims of human trafficking for the purpose of labour exploitation;
    - taking measures to reduce labour exploitation among overseas domestic workers, by implementing the recommendations of the Ewins Review, introducing information and awareness sessions, and monitoring the issuing of ODW visas;
    - continuing to tackle labour exploitation in car washes and raise awareness among users and workers;
    - strengthening the provision of information to presumed victims of THB on their rights and the possibilities to receive assistance;
    - continuing to monitor the impact of Brexit and the COVID-19 pandemic on labour exploitation, and ensuring that victims of trafficking receive adequate information and support for being registered for the EU Settlement Scheme (paragraph 253).

### ***Identification of victims of trafficking***

- GRETA urges the UK authorities to take further steps to improve the identification of victims of THB, including by:
  - ensuring that the identification process has a reasonable duration, by providing appropriate funding for the recruitment of new staff and making the process more efficient;
  - continuing to monitor the implication of the Immigration Act 2016 offence of illegal work for the identification and protection of victims of trafficking, and adopting necessary measures for ensuring that victims of trafficking who are undocumented migrants are identified as victims instead of being considered as criminals (paragraph 268);
- GRETA considers that the UK authorities should:
  - provide systematic training to First Responders, law enforcement, social workers, medical and other staff working at facilities for asylum seekers and detained people, on the identification of victims of trafficking and the procedures to be followed;
  - monitor the effectiveness of the identification system and its accessibility, in practice, to non-national victims of trafficking (paragraph 269).

## ***Assistance to victims***

- While welcoming the measures taken to improve victim assistance, GRETA considers that the UK authorities should take additional steps to ensure that all assistance measures provided for in the Convention are guaranteed in practice, in particular by:
  - ensuring that victims of trafficking are provided with adequate support and assistance, according to their individual needs, for as long as required, with a view to facilitating their reintegration and recovery, guaranteeing their protection, and ensuring that they are not criminalised for offences they were compelled to commit;
  - ensuring appropriate oversight over the delivery of services to victims under the Modern Slavery Victim Care Contract by the main contractor and the subgrantees;
  - involving survivor organisations in the design and delivery of assistance to victims of trafficking;
  - in the context of the COVID-19 pandemic, ensuring that appropriate support and assistance, including access to health care, are available to all victims of THB (paragraph 282).

## ***Identification of, and assistance to, child victims of trafficking***

- GRETA welcomes the authorities' commitment to fully roll out the ICTGs service and the removal of limits for ICTG support, and stresses that targeted support is crucial when victims, especially children, who find themselves in a situation of increased vulnerability, putting them at risk of re-victimisation. The transition to adulthood and the exit from social care services exposes young adults to the risk of being re-trafficked and requires an adequate response from the authorities to reduce this risk (paragraph 293);
- GRETA notes that significant commitments remain unmet and considers that the UK authorities should take further steps to improve child victims' identification and assistance, and in particular:
  - ensure that the NRM process is in line with trafficked children specific needs, by providing specific training among professionals about the NRM, ensuring information sharing and adequate co-ordination between the NRM and local child protection processes;
  - ensure that the identification process has a reasonable duration, including by providing appropriate funding for the recruitment of new staff and for making the process more efficient;
  - make the Independent Child Trafficking Guardianship (ICTG) scheme operational across the whole territory in England and Wales;
  - ensure that long-term support and adequate assistance are provided to children in the transition to adulthood, in order to reduce the risk of re-victimisation and to ensure their effective access to justice and facilitate their social reintegration and recovery;
  - continue to take actions for reducing the risk of children going missing from care and to set up a system for tracking re-trafficked children, in order to understand the extent of this issue and react adequately;
  - provide training to all professionals working with child victims of trafficking, by paying particular attention to children who are potential victims of criminal exploitation and online

sexual exploitation, and ensure that child victims are not prosecuted for their involvement in crimes committed as a result of their exploitation;

- ensure that sufficient long-term funding is provided to enable local authorities to carry out their work and to face the emergency related to the COVID-19 pandemic (paragraph 301).

### ***Residence permit***

- GRETA considers that the UK authorities should collect data on the number of residence permits granted to both adults and child victims of trafficking and investigate the reasons for the low number of residence permits granted (paragraph 313);
- Recalling the recommendations made in its second report, GRETA urges the UK authorities to:
  - ensure that all victims of human trafficking who have received a positive Conclusive Grounds decision and whose immigration status requires it are issued a renewable residence permit when their personal situation warrants it or when they are co-operating with the authorities in criminal investigations or proceedings and their presence in the UK is required for this purpose, in accordance with Article 14(1) of the Convention;
  - ensure that all child victims are issued such residence permits, in accordance with the best interests of the child, pursuant to Article 14(2) of the Convention (paragraph 314).

### ***Repatriation and return of victims***

- GRETA urges the UK authorities to review the victim return and repatriation policies in order to ensure compliance in law and practice with Article 16 of the Convention, including by:
  - ensuring that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies working with relevant partners in countries of return; such assessments should also ensure effective enjoyment of the child's right to education and measures to secure adequate care or receipt by the family or appropriate care structures in countries of return (Article 16 (5) of the Convention).
  - ensuring that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of non-refoulement. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection;
  - carrying out a comprehensive risk assessment prior to the return of victims, including through enhancing international co-operation, in order to ensure compliance with the *non-refoulement* principle, as well as enabling the effective reintegration and protection of victims of THB returned to other countries (paragraph 322);
- GRETA also considers that the UK authorities should include the aspect of safe and preferably voluntary return in the training provided to law enforcement agencies, and collect and publish information about the number of victims of trafficking who return via the VRS and which countries they return to (paragraph 323).

## **Appendix 2**

### **List of public bodies, intergovernmental organisations, non-governmental organisations and civil society actors with which GRETA held online consultations**

#### **Public bodies**

- Home Office, Modern Slavery Unit
- Home Office, Single Competent Authority (SCA)
- Foreign, Commonwealth and Development Office
- National Police Chiefs' Council Lead for Modern Slavery
- National Crime Agency (NCA)
- Crown Prosecution Service (CPS)
- Gangmasters Labour Abuse Authority (GLAA)
- Criminal Injuries Compensation Authority (CICA)
- Independent Anti-Slavery Commissioner, Dame Sarah Thornton
- Local Government Association
- Independent Child Trafficking Guardians (ICTG)

#### **Northern Ireland**

- Minister of Justice, Ms Naomi Long
- Department of Justice
- Police Service Northern Ireland (PSNI)
- Public Prosecution Service (PPS)
- Gangmasters Labour Abuse Authority (GLAA)
- Department of Health
- Health and Social Care Board
- Legal Services Agency
- Northern Ireland Commissioner for Children and Young People, Ms Koulla Yiasouma
- Northern Ireland Human Rights Commission (NIHRC)

#### **Scotland**

- Scottish Government
  - Human Trafficking Team
- Crown Office and Procurator Fiscal Service (COPFS)
- Police Scotland
- Scottish Legal Aid Board
- Convention of Scottish Local Authorities (COSLA)



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- Scottish Guardianship Service
  - Scottish Parliament Cross Party Group on Human Trafficking
  - Scottish Human Rights Commission

### Wales

- Welsh Government's Anti-Slavery Co-ordinator (at the time of the evaluation), Mr Stephen Chapman
- Wales Anti-Slavery Leadership Group
- Wales Anti-Slavery Operational Delivery Group

### **NGOs and other civil society organisations**

- AFRUCA
- Anti-Slavery International
- Anti-Trafficking Monitoring Group (ATMG)
- ATLEU
- Barnardo's
- Basnet
- BAWSO
- Children's society
- ECPAT UK
- Focus on Labour Exploitation (FLEX)
- JustRight Scotland
- Hope for Justice
- Human Trafficking Foundation
- Law Centre Northern Ireland
- Space
- St Giles Trust
- TARA
- Barristers and Solicitors specialised in THB cases

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in the United Kingdom**

GRETA engaged in a dialogue with the UK authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the UK authorities on 28 July 2021 and invited them to submit any final comments. The comments of the authorities, submitted on 17 September 2021, are reproduced hereafter.

### **Comments from the UK on GRETA Third Round Report**

This table details the UK Government's comments which remain outstanding following the Council of Europe's Group of Experts on Action against Trafficking in Human Beings third round evaluation report of the United Kingdom on 'Access to justice and effective remedies for victims of trafficking in human beings. These comments were made to provide further information, correct inaccuracies and suggest amendments. All previous comments which have now been incorporated into the report at previous stages of review have been removed.

Each comment relates to a highlighted section in the item box above it, where there is more than one highlighted section of a paragraph the comments have been numbered and, where there is no highlight in an item box, the corresponding comment below relates to the paragraph as a whole.

**Item 20:** While most of the provisions of the MSA apply in England and Wales only, some provisions also concern Northern Ireland and Scotland (in particular those related to the Independent Anti-Slavery Commissioner, transparency in supply chains and maritime powers).<sup>196</sup> It should be recalled that the Act established two offences: in section 1, slavery, servitude and forced or compulsory labour, and in section 2, human trafficking. Victims of both offences are included in the NRM protection framework. Further, it increases the maximum sentence for these offences to life imprisonment, makes it easier to confiscate the assets of traffickers and use them to compensate victims, and introduces provisions for slavery and trafficking prevention orders. It classified slavery offences as "criminal lifestyle offences", to ensure they are subject to the toughest asset recovery regime under the Proceeds of Crime Act 2002 (POCA). The Act also introduced several measures focussed on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings. Most of the provisions of the MSA came into force on 31 July 2015, **but the entry into force of some provisions was postponed.**

**Comments, corrections, suggestions** (in relation to the highlighted section)

Suggestion for this be contextualised in the legislation commencement landscape. For example, was the delay as a result of certain provision required additional work before they could be brought into force?

**Item 70:** Moreover, NGOs have pointed out that it is not always clear how the obligation to provide translation and interpretations services is met at different stages by different agencies. **There is no funding for First Responders in England and Wales to provide translation and interpretation services, and the quality of interpretation/translation services is inconsistent.** In 2018, a research for the IASC by the Anti-Trafficking Monitoring Group and the NGO AFRUCA found that it was very difficult to find interpreters to assist in meetings between survivors and their legal advisors, especially in the North East of England. In the framework of legal assistance, the Ministry of Justice sets a maximum rate that they will pay for interpreting services and where the language is not common it can be very difficult (if not impossible) to pay an interpreter. According to the UK authorities, the Legal Aid Agency has published guidance<sup>197</sup> that allows higher rates to be payable where it is not possible to otherwise find an interpreter. The Legal Aid Agency provides written translation only in some cases, rather than as

<sup>196</sup> See 2nd GRETA report on the UK, paragraph 21 and following.

<sup>197</sup> Legal Aid Agency [guidance on the Remuneration of Expert Witnesses in Family Cases](#).

a rule. However, the complexity of issues and the trauma suffered makes it more important that matters are recorded in writing and that the victim can read correspondence.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

Whilst First Responders are not given funding to translate they provide their services according to their ability to perform the role and so many should have access to translation services.

**Item 78:** In recent years all jurisdictions within the UK have passed new legislation amending the criteria of the legal aid schemes and the eligibility of individuals applying for civil legal aid. The biggest changes have occurred in **England and Wales**, where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) made significant changes to the operation of the civil legal aid scheme, requiring a capital means test to everyone and increased contributions. **LASPO allows victims of trafficking with positive reasonable grounds decisions to access legal aid regardless of their immigration status or type of exploitation.** Legal aid is available through providers who have a contract with the Legal Aid Agency (LAA). According to LASPO, anyone can apply for legal aid in relation to any of the civil legal services that are in scope (including asylum, housing, some family matters or judicial review). Additionally, sections 32 and 32A of Schedule 1 of LASPO set out civil legal services specifically for victims of trafficking and slavery, servitude and forced or compulsory labour: an application for leave to enter or to remain in UK, a claim under employment law arising in connection with the exploitation, and a claim for damages arising in connection with the trafficking or exploitation. Potential victims, both adults and children, may apply for legal aid in relation to asylum claim at any time, regardless to the NRM decision making process. Where a civil legal service is not listed within Schedule 1 of LASPO, a person can apply for Exceptional Case Funding (ECF) where failure to provide legal aid would risk breaching his/her human rights, and subject to a means and merits test (see paragraph 89).

**Comments, corrections, suggestions** (in relation to the highlighted sections)

This is only true for sections 32 and 32A – having a positive reasonable grounds decision is a condition of receiving services under that section.

There are no conditions like that for any of the other services – i.e. whether or not someone is a victim of trafficking (even if they have not entered the NRM yet) when applying for asylum or for housing help does not matter. The only thing that matters is that they have an asylum or housing issue, and can pass the means and merits tests.

**It would therefore be more accurate to remove this sentence** because it contradicts the sentence towards the end of the paragraph – “potential victims may apply for legal aid in relation to asylum claims at any time, regardless of the NRM decision making process” – which **is** accurate.

**Item 80:** Under sections 32 and 32A of LASPO, **trafficked children cannot obtain legal aid before receiving a positive Reasonable Ground Decision.** In 2019, Part 1 of Schedule 1 to LASPO was amended so as to bring legal services relating to applications for leave to remain in the UK **under the Immigration Rules** within scope for all separated migrant children. Where a child has access to an ICTG, the latter may obtain legal advice or instruct a legal representative to act on the child's behalf.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. 'Trafficked children...' - This is not strictly accurate – this only applies to sections 32 and 32A as in the comment on item 78 above. Trafficked children, whether in the NRM or not, can apply for legal aid for *any* of the services listed in Schedule 1. Whether they are trafficked or not does not matter.
2. 'Under the immigration rules...' - *And outside of the immigration rules* – see below (we have emphasised relevant sections):  
31A.(1) Civil legal services provided in relation to a relevant application where the services are provided to an individual who, at the time of applying for those services, is a separated child.

A relevant application is

- (a) an application made by the separated child or another person under the immigration rules for the grant of entry clearance, leave to enter or leave to remain in the United Kingdom (*whether under or outside of the immigration rules*)
- (b) an application made by the separated child *outside of the immigration rules* for the grant of leave to remain in the United Kingdom.

**Item 85:** ... In Scotland, all firms doing human trafficking related legal aid work appear to be based in **Glasgow (with a very small number based in Edinburgh or Aberdeen)**. Immigration cases with a trafficking element are considered financially unviable by many legal aid providers due to their length and the lack of clarity around whether the work will be funded. As a result, many providers are deterred from undertaking this work, which leaves victims and support workers struggling to secure lawyers.<sup>198</sup> The UN Committee on Rights of the Child found that the reduction in legal aid in UK had a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them.<sup>199</sup> GRETA highlights the importance of providing trafficked children with legal assistance in order to ensure their identification and effective access to justice.

**Comments, corrections, suggestions** (in relation to the highlighted section)

To note: Human trafficking support provision is also based in Glasgow but provides a national service across Scotland. However, as a number of victims will access support provider accommodation in the Glasgow area, it follows that the majority of legal aid work will take place in the same area.

<sup>198</sup> Available at: <https://www.antislavery.org/wp-content/uploads/2019/04/ASI-ATLEU-ATMG-HTF-Kalayaan-submission-to-CEDAW-UK-Jan-2019.pdf>

<sup>199</sup> Concluding Observation on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, 3 June 2016, paragraph 29(b).

**Item 86:** In England and Wales, there are a number of legal aid providers who can provide specialist civil legal services in all categories for victims of trafficking. In Scotland, while there are not specialist lawyers to represent victims in court, there are specialised anti-trafficking NGOs funded by the Scottish Government **which provide specialist legal advice.**

TARA and JustRight Scotland (JRS) are also funded by the Government to provide weekly legal clinic to potential victims of trafficking. This enables legal intervention for victims early on in their recovery, allows a wider range of legal advice to be accessed beyond immigration issues, including applying for Criminal Injuries Compensation. In Northern Ireland, the Department of Justice is not aware of specific specialisms across legal professionals. However, the Law Centre NI's casework includes representing victims of modern slavery to secure their rights, including regularising immigration status where relevant.

**Comments, corrections, suggestions** (in relation to the highlighted section)

The NGOs provide support and assistance, part of which includes accessing legal advice for clients – they don't provide legal advice themselves.

**Item 89:** Free legal aid is not available for victims of trafficking seeking state compensation before the Criminal Injuries Compensation Authority (CICA) in England and Wales. Exceptional Case Funding (ECF) is technically available where the case is not on the scope of legal aid and human rights would be breached if the person does not get funding for a lawyer, however, according to lawyers and civil society representatives consulted by GRETA, access to ECF is very difficult in practice and the great majority of requests are rejected. By way of example, in England, between April 2014 and April 2018, ATLEU made 30 applications for ECF in relation to CICA matters and all 30 were refused. The UK authorities informed GRETA that in May 2020, CICA launched its new Apply service for adult victims of sexual violence and in January 2021, this service was extended to adult victims of physical violence. The service can now be accessed by over 60% of applicants and work has begun to enable children and those with appointed representatives to use the service. The LAA maintains that an application to CICA does not require legal advice and assistance as it is merely a form filling exercise. **However, the state compensation procedure is quite complex, and victims must prove that they have suffered a physical injury or a diagnosable psychiatric injury as a direct result of a crime of violence in order to receive an award.**

**Comments, corrections, suggestions** (in relation to the highlighted sections)

Additional context and detail that may be useful here -

CICA is committed to making the application process as straightforward as possible and has continued to develop more accessible and supportive services, sensitive to the needs of victims, resulting in a 94% customer satisfaction rating in 2020/21.

The service design is informed by extensive user research and usability testing and removes as many possible triggers for re-traumatisation as possible, while ensuring that CICA has sufficient information to process applications. It uses Gov.uk design patterns which meet accessibility guidelines and will also accept paper applications.

CICA also provides upfront and in-service guidance and assistance, and can complete applications on behalf of the applicant, if required. CICA has also been looking to expand the ways in which it communicates and piloted a new Live Chat service in 2020. Improved call routing, live wait times, a call back service and extended use of email for enquiries and information gathering have also been introduced.

**Item 95:** In **England and Wales**, potential and confirmed victims of trafficking have access to mainstream mental health support through the NHS. The MSVCC covers support to access medical care and counselling. The initial needs-based assessment covers emotional and mental wellbeing (level of trauma, risk of self-harm suicide, etc). Subsequently, the VCC will conduct a detailed needs-based assessment, which covers psychological and emotional needs as well as cultural and spiritual needs. In addition, since 2019, a Recovery Needs Assessment (RNA) is undertaken for all confirmed victims of modern slavery (see paragraph 272). **All needs assessment should be conducted in a language understood by the victim.**<sup>200</sup> Victims who exit the main service on or after 4 January 2021 with a positive Conclusive Grounds decision are eligible for reach-in support from MSVCC Prime Contractor (i.e. the Salvation Army). The aim of this support is to help a smooth and sustainable transition after exit from the NRM. The assistance includes medical treatment, mental health services and substance dependency (detoxification) services.<sup>201</sup>

**Comments, corrections, suggestions** (in relation to the highlighted sections)

The RNA enables support workers to consider whether a victim has ongoing recovery needs arising from their modern slavery experiences, to inform a tailored transition plan according to individual need for any or all of the three pillars of MSVCC support – accommodation, financial support, and support worker contact.”

**Item 102:** In the UK, right to work depends on immigration status. **Victims from outside the EEA who are irregular migrants are unable to work whilst they are in the NRM process**, until such time as they receive a positive Conclusive Grounds Decision which may entitle them to a residence permit (discretionary leave to remain). This has been identified as one of the greatest concerns of survivors consulted by GRETA. Restrictions on the right to work prevent victims from recovering their autonomy and their dignity, and it affects their decision on whether enter or not the NRM. The delays in the issuance of NRM decisions exacerbates this situation, especially in England and Wales, where some victims have waited for over two years for their Conclusive Grounds decision.<sup>202</sup>

**Comments, corrections, suggestions** (in relation to the highlighted section)

Further information regarding this point to help clarify:

- Adult victims with the right to work (dependent on their immigration status) are eligible to work while in the NRM.
- Following a positive conclusive grounds decision, victims without immigration status may be granted discretionary leave to remain if they are assisting the police, a grant of leave is necessary to allow them to pursue compensation from the perpetrator(s) of their exploitation , or because it is necessary due to their personal circumstances. Victims who are foreign nationals are automatically considered for discretionary leave to remain following a positive conclusive grounds decision.

<sup>200</sup> Home Office, Recovery Needs Assessment Guidance, August 2020, <https://www.gov.uk/government/publications/recovery-needs-assessment-rna-process-guidance>

<sup>201</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/950690/January\\_2021\\_-\\_Modern\\_Slavery\\_Statutory\\_Guidance\\_E\\_W\\_Non-Statutory\\_Guidance\\_S\\_NI\\_v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950690/January_2021_-_Modern_Slavery_Statutory_Guidance_E_W_Non-Statutory_Guidance_S_NI_v2.pdf)

<sup>202</sup> See the Independent Anti-Slavery Commissioner Annual Report 2019-2020, p. 14.

**Item 107: GRETA considers that the UK authorities should make further efforts to support victims of THB in their economic and social inclusion through the provision of education, vocational training and job placement.** This should involve raising awareness amongst different employers and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking.

**Comments, corrections, suggestions** (in relation to the highlighted section)

Please note that: NRM and MSVCC already includes provision of support to access education, training and employment opportunities.

**Item 115: In England and Wales,** under the Sentencing Act 2020, a compensation order is available to the criminal courts. Compensation orders may be imposed by the criminal courts on conviction, as well as, or instead of, dealing with the offender in any other way (i.e. another type of sentence such as a community order or prison sentence). **To receive compensation via the criminal justice process, a victim needs to provide a witness statement. In deciding the amount of the compensation order, the court must have sufficient evidence. In practice this may include victim impact assessments and detailed psychiatric evidence for this group (or evidence of physical harm).**

**Difficulties arise from the fact that compensation via the criminal process takes into account the financial means of the offender,** and it is limited to situations where the calculation of damages is straightforward. The confiscation of criminal assets is regulated by the Proceeds of Crime Act (POCA) 2002. A court can award a compensation immediately following conviction where there are no confiscation proceedings or following the latter (see paragraph 144). The number of compensation orders is reportedly low, and despite the fact that the amount of compensation is unlimited by statute (when the offender is over the age of 18),<sup>203</sup> sometimes the sums received by victims **are nominal, e.g. £200.** The UK authorities have specified that, in determining whether to make a compensation order, and the amount to be paid under such an order, the court must take into account the financial circumstances of the offender, striking a balance between seeking reparation and not imposing debts that are unrealistic or unenforceable.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. It would be accurate to replace these statements with the following text- **“In deciding the amount of the compensation order, the court must have sufficient evidence. In practice this may include victim impact assessments and detailed psychiatric evidence for this group (or evidence of physical harm.)”**
2. “Difficulties arise from...” - This is not accurate. Assets do not need to be frozen for a court to impose a compensation order. In addition, ‘financial investigations’ is not really the correct term – it is simply that the court must take into account the financial means of the offender, details of which are provided by the offender. See s135 of the Sentencing Act 2020 about ‘Making a compensation order’. Therefore suggest this text should be deleted.
3. Suggestion to replace “...are nominal, e.g. £200” with– **“may not reflect the suffering they feel from any personal injury, loss or damage and can be dependent on the circumstances.”**

<sup>203</sup>

If an offender is under 18, there are limits to what can be awarded for an individual offence, up to a maximum of £5,000 as defined in section 139 of the Sentencing Code.



**Item 116:** The Slavery and Trafficking Reparation Order, under section 8 of the MSA, enables courts to order a person convicted of a modern slavery offence to pay reparation to the victims for the exploitation and degradation they have suffered.<sup>204</sup> There needs to be a Confiscation Order for the Reparation Order to be made. The amount awarded to victims under Reparation Orders cannot exceed the Confiscation Order's amount, which in turn cannot exceed the criminal benefit of a defendant. The difficulty in obtaining compensation through this method arises from the fact that Reparation Orders can only be considered if the defendants' assets are realisable. Reparation Orders are made as part of a community sentence, and are not broken down by crime type, the UK authorities were unable to pull out the number of Reparation Orders under the MSA, but GRETA's interlocutors were not aware of any victims of THB having received a Reparation Order. According to the UK authorities, the 2018 independent review of the MSA recommended that compensation should be at the forefront of the court's mind. In October 2020, the Sentencing Council was consulted on draft sentencing guidelines for offences under the MSA, and it is anticipated that definitive versions of the guidelines will be published later in 2021.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. See also the Explanatory Notes at [Modern Slavery Act 2015 - Explanatory Notes \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2015/31/explanatory-notes)
2. Reparation Orders are made as part of a community sentence – and they are not broken down by crime type- so we are unable to pull out the number of reparation orders made under the MSA– **but that does not mean that no orders have been made under the MSA**

**Item 125:** The authorities informed GRETA that CICA does not collect comprehensive data concerning the status, or the eligibility to receive compensation, of victims of modern slavery and human trafficking because they are not "crimes of violence" as defined by the CICS. **However, it is possible to assume that an applicant is a victim of trafficking if they reply affirmatively to the question in the application form, asking if they have been identified as a victim of human trafficking by the competent authorities.** In the period from 1 December 2016 to 30 September 2020, 212 applicants answered positively to that question. Of those 212 applications, five applications have been deferred to obtain confirmation of the applicant's status as a victim of human trafficking or as a person granted temporary protection, asylum, or humanitarian protection, 95 are under consideration, 82 were not offered a compensation award, and 30 were offered awards with a combined total of £411,187.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

This is an assumption which may not be accurate, and we cannot say this conclusively. We would therefore suggest this sentence be removed.

**Item 126:** Civil society noted that victims experience multiple obstacles in obtaining state compensation. An application must be made within **two years of the criminal injury suffered**. This is not realistic for many victims, due to trauma, lack of knowledge and assistance, and most do not realise that they need to do this on top of being referred into the NRM. There is normally no legal aid available for victims of trafficking to apply to the CICA or to challenge their decisions. Some victims are able to get pro bono legal representation, but this is not available for everyone. **The CICA is able to withhold awards of compensation to an applicant "unless you co-operate fully with the investigation into the crime and any prosecution that follows" and, according to civil society, routinely does so without**

<sup>204</sup>

See the explanatory notes to section 8 of MSA.

**any consideration of the applicant's reasons or circumstances.** When compensation is paid, this is **usually after years of waiting** and is frequently considered by victims of slavery to be insultingly low, not taking into account the psychological injuries from trafficking and modern slavery. In this connection, the UK authorities have specified that the CICA provides its staff with guidance on the circumstances which may lead applicants to delay reporting incidents to the police, which includes recognition of the particular circumstances of victims of trafficking. The CICA has also continued to invest in its work with specialist agencies, such as the Trafficking Awareness Raising Alliance support service, to build a trauma-informed workforce through increased awareness and training to support victims of human trafficking to support applicants through the compensation process.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. "...two years of the criminal injury suffered..." - As per the comment on item 123 above, the CICA has discretion to extend this time limit in exceptional circumstances, and different rules apply if the victim was under 18 years of age on the date of the incident.
2. "The CICA is able to withhold..." - This is inaccurate – the applicant must co-operate "as far as reasonably practicable in bringing their assailant to justice" (see paragraph 23 of the Scheme) and in making that assessment the CICA has a wide range of factors which will be considered. It is inaccurate for the report to conclude that the CICA regularly makes these decisions without consideration of the applicant's reasons or circumstances. This is against CICA's guidance which makes clear that the full circumstances of every case should be considered. We would instead suggest this is replaced with the following text – **"The CICA will withhold awards of compensation if applicants do not cooperate as far as reasonably practicable in bringing the assailant to justice. In making this assessment, the CICA will consider the full circumstances of each case"**.
3. "...usually after years..." - Not quite accurate to state "usually after years of waiting". The CICA aims to assess claims as quickly as possible and the majority are assessed within 12 months. However, compensation from the Scheme is not intended to meet immediate need. Each case must be considered on its own merits and determined based on the evidence available to support the application. It will often be necessary for the CICA to obtain information from a number of third parties, usually including the police and relevant medical authorities, to help inform its assessment of an application. Decision making performance data from 2020/21 shows that 70% of new applications were decided within 12 months and 43% in 6 months.

**Item 141: In England and Wales**, according to the MSHTU's database, there were a total of 5,435 'live' police operations from December 2016 to October 2019. The CPS can only provide data on numbers of defendants convicted on offences that were investigated as THB but were prosecuted for offences under different legislation (MSA, Sexual Offences Act, Asylum and Immigration (Treatment of Claimants, etc.) Act, Coroners and Justice Act). This is usually in circumstances where law enforcement have not been able to provide evidence to support a MSA offence. According to this data, the total number of human trafficking offences charged and reaching a first hearing was as follows: 370 in 2015/2016 (of which 14 under the MSA); 312 in 2016/2017 (of which 98 under the MSA); 340 in 2017/2018 (of which 248 under the MSA); and 455 in 2018/2019 (of which 335 under the MSA). The number of convicted perpetrators of trafficking and modern slavery offences was, respectively, 31 in 2015, 55 in 2016, 48 in 2017 and 20 in 2018. Further, in 2019, 67 convictions were reportedly secured under the MSA.

**Comments, corrections, suggestions** (in relation to the section as a whole)

We invite you to revisit the data provided in a previous response from the Crown Prosecution service in 2019 as these figures seem to have been confused with others. There is also data mentioned above (137,138) collected by the Modern Slavery and Organised Immigration Crime Unit (MSOIC) which covers a more recent time period.

## Information provided previously:

- The CPS does not collect data on the number of convictions for THB, with an indication of the form of exploitation, whether the victim was adult or child, the type and duration of the penalties, and whether they were effectively enforced or suspended.

**COMPLETED PROSECUTIONS BY OUTCOME \*these are flagged defendants**

	2015 - 16		2016 - 17		2017 - 18		2018 - 19	
	Vol	%	Vol	%	Vol	%	Vol	%
Convictions	192	65.1%	181	61.4%	185	65.1%	219	68.0%
Unsuccessful	103	34.9%	114	38.6%	99	34.9%	103	32.0%
<b>Total</b>	<b>295</b>		<b>295</b>		<b>284</b>		<b>322</b>	

**HUMAN TRAFFICKING OFFENCES CHARGED AND REACHING A FIRST HEARING**

	2015-2016	2016-2017	2017-2018	2018-2019
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 { 4 }	68	29	14	25
Coroners and Justice Act 2009 { 71 }	40	23	17	11
Modern Slavery Act 2015 { 1 }	9	23	85	121
Modern Slavery Act 2015 { 2 }	5	73	163	204
Modern Slavery Act 2015 { 4 }	0	2	0	10
Sexual Offences Act 2003 { 57 }	70	17	6	3
Sexual Offences Act 2003 { 58 }	72	105	32	64
Sexual Offences Act 2003 { 59 }	9	5	11	4
Sexual Offences Act 2003 { 59A }	97	35	12	13
<b>TOTAL HUMAN TRAFFICKING OFFENCES</b>	<b>370</b>	<b>312</b>	<b>340</b>	<b>455</b>

**VICTIMS AND WITNESSES PER CASE**

	Year Ending June 15	Year Ending June 16	Year Ending June 17	Year Ending June 18	Year Ending June 19
No. Vic & Witness	656	1,358	1,053	1,111	946
Count Case	69	136	115	100	82
Victims & Witnesses per Case	9.5	10.0	9.2	11.1	11.5

**Item 144:** The purpose of confiscation proceedings under Part 2 of the Proceeds of Crime Act (POCA) 2002 **is to recover the financial benefit that the offender has obtained from the criminal conduct.** The MSA amended Schedule 2 POCA 2002 so that slavery and trafficking were listed as “criminal lifestyle” offences, which allows investigators to deny offenders the full benefit of their criminal activities without the need to link every penny to a specific offence. Following confiscation, the prosecution can request the court to make a Reparation Order for all or part of the confiscated amount, to be paid to the victim. Section 6 of the POCA 2002 makes confiscation discretionary when civil proceedings are commenced or anticipated, so that compensation (through the civil proceedings) takes priority. Section 13 (5)-(6) of the POCA 2002 ensures that where a defendant cannot pay both confiscation and compensation orders, compensation is paid out of sums recovered under the confiscation order. Therefore, there is a priority for victims in all cases whether they provide witness statement evidence in criminal proceedings or if there are civil proceedings brought by them. Where compensation is payable out of confiscation, which is usual in human trafficking or modern slavery cases, the powers of the POCA 2002 to enforce the confiscation order are very strong. They include prison sentences of up to 14 years **with no early release for non-payment**, the appointment of receivers, ordering banks to transfer monies, restraint (freezing) orders, and attachment of earnings. Where there is unusually just a compensation order, the order is enforced as if it is a court fine, non-payment of which can mean a sentence of imprisonment and with all the above powers with the exception of freezing orders.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. Please see Waya [2012] UKSC 51 at para 21 and the Explanatory Notes. It is also intended to send out a strong deterrent message to that effect, see Waya at para 2.
2. Further information regarding this point to help clarify: No early release only applies to orders of £10m or more. There is release after 50% for sums under £10m. So e.g. a 10 year default sentence for £1m will result in 5 years being served for non-payment, which is consecutive to the substantive criminal sentence for the offence.

**Item 150:** In **Scotland**, the number of prosecutions for human trafficking offences in the period 2016-2020 was 14, including four in 2017 (two for sexual and two for labour exploitation), five in 2018 (three for sexual and two for labour exploitation), four in 2019 (one for sexual exploitation and three for labour exploitation) and one in 2020 (for sexual exploitation). **GRETA was informed that the number of convicted perpetrators was nine: seven in 2017 (six sentenced to imprisonment and one sentenced to Community Payback Order), one in 2018 (sentenced to Community Payback Order and Compensation Order), one in 2019 (sentenced to imprisonment) and none in 2020.**

**Comments, corrections, suggestions** (in relation to the highlighted sections)

"The number of convicted perpetrators...." not clear where GRETA accessed this information – suggestion to remove as unable to check accuracy.

**Item 160:** As noted in GRETA's second report on United Kingdom, section 45 of the MSA 2015 provides for a statutory defence, i.e. legislative protection from prosecution, for victims of modern slavery and human trafficking. The defence applies to adults who were compelled to carry out criminal offences as a result of their exploitation, and to children who committed the offence as a direct consequence of being victims of trafficking or slavery.<sup>205</sup> Schedule 4 of the MSA contains a list of more than 100 offences of various degrees of seriousness where the statutory defence cannot be used. GRETA noted that section 45 excludes the possibility of withdrawing prosecution and punishment for this wide list of offences and was concerned that this gave a rather narrow interpretation of the non-punishment principle. There was no **case law** to illustrate how this provision was applied in practice as the MSA had been adopted very recently, but GRETA considered that the UK authorities should ensure that the non-punishment provision was capable of being applied to all offences that victims of THB were compelled to commit.

**Comments, corrections, suggestions** (in relation to the highlighted section)

*R v A [2020] EWCA Crim 1408 (Prosecution of trafficking victim not an abuse of process - UK Human Rights Blog)*; The Court found that there was no conflict between the Schedule 4 exclusions and the UK's international obligations under the Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT") or the EU Directive 2011/36/EU. Neither is directly applicable in domestic law and it was for Parliament to decide how to give effect to those international obligations. In any event, neither article 26 of ECAT nor article 8 of the Directive require member states to provide blanket immunity from prosecution for victims of trafficking who commit criminal offences and neither require that a statutory defence be available in all cases.

<sup>205</sup>

See 2nd GRETA report on the UK, paragraph 287 and following.

**Item 162:** As regards children, according to section 45 of the MSA, it has to be established that their action was a direct consequence of their exploitation and that a reasonable person in the same circumstances and with the same characteristics would do this act. In its second report on the UK, **GRETA noted the “reasonable person” test indirectly introduces an element of compulsion that should not have to be proven in children’s cases. GRETA was informed of a number of cases where child victims of trafficking were criminalised.** A UNICEF report found that there is a very low level of awareness among prosecutors, police, and defence solicitors of the non-punishment provision for children, as well as little monitoring of the use of the presumption against prosecution or the statutory defence across the UK.<sup>206</sup>

**Comments, corrections, suggestions** (in relation to the highlighted section)

This is seen to be inaccurate; the reasonable person test – considers whether a child in the same situation and having the same relevant characteristics (including their age) would have committed the offence. The core part of the test is the lack of the test of compulsion. The lower threshold for meeting the reasonable person test is in recognition of the unique vulnerabilities of children. This is set out para 163

**Item 167: GRETA notes that section 45 of the Modern Slavery Act is silent in respect of the burden of proof required to establish the defence.**<sup>207</sup> The ruling in *R v MK [2018]*<sup>208</sup> clarified that the burden of proof is on the prosecution to prove that an individual is not a victim of modern slavery, once the defence is raised by that individual. However, if the prosecution fails to prove that the defendant cannot be considered as a victim of trafficking, the burden of proof in respect of the other elements of the statutory defence falls on the defendant. The defendant is called upon to prove, on the balance of probabilities, that: in the case of an adult, he/she was compelled to commit the offence; the compulsion was a direct consequence of him/her being or having been a victim of slavery or relevant exploitation; a reasonable person in the same situation and having his/her relevant characteristics would have no realistic alternative to doing the act which constitutes the offence.<sup>209</sup> The more serious the offence, the greater the dominant force needed to extinguish the criminality.<sup>210</sup> GRETA is concerned that such an allocation of the burden of proof could make it particularly difficult to apply the non-punishment provision in practice.

**Comments, corrections, suggestions** (in relation to the highlighted section)

“GRETA notes...”\_The burden of proof is on the prosecution – and to the criminal standard i.e beyond reasonable doubt.

**Item 168:** The CPS guidance states that, where the vulnerable children or adults may be prosecuted, prosecutors should consider applying the statutory defence or the CPS policy on the non-prosecution of suspects who may be victims of trafficking. However, according to the guidance, “prosecutors should also be alive to the fact that, if a person, by joining an illegal organisation or a similar group of people with criminal objectives and coercive methods, voluntarily exposes and submits himself to illegal compulsion, he cannot rely on the duress to which he has voluntarily exposed himself as an excuse either in respect of the crimes he commits against his will or in respect of his continued but

<sup>206</sup> UNICEF UK. (2017). *Victim not criminal: trafficked children and the non-punishment principle in the UK*. Available at: [https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing\\_Victim-Not-Criminal\\_2017.pdf](https://downloads.unicef.org.uk/wp-content/uploads/2017/05/Unicef-UK-Briefing_Victim-Not-Criminal_2017.pdf)

<sup>207</sup> Ibidem.

<sup>208</sup> <https://www.bailii.org/ew/cases/EWCA/Crim/2018/667.html>

<sup>209</sup> *MK and Persida Gega v SSHD [2018] EWCA Crim 667*, decided on 28/03/2018.

<sup>210</sup> *R v VSJ Ors (2017) EWCA Crim 36*.

unwilling association with those capable of exercising upon him the duress which he calls in aid (R v Fitzpatrick [1977] N.I.L.R. 20)."<sup>211</sup> GRETA is concerned by this interpretation, which may significantly reduce the scope of application of the **non-punishment provision**.

**Comments, corrections, suggestions** (in relation to the highlighted section)

This applies only to Non-Punishment Provision (NPP) for duress; section 45 MSA and prosecutorial discretion can still be applied in such circumstances.

**Item 229:** Following the previously mentioned review of the MSA, in July 2019 the UK Government committed to strengthening section 54 of the MSA, in particular by making the content of statements mandatory and imposing sanctions on non-compliant companies,<sup>212</sup> as well as creating an online central reporting service for businesses' modern slavery statements, to make it easier for consumers, NGOs and investors to scrutinise the action that businesses are taking to prevent modern slavery in their supply chains. **The registry for modern slavery statements was launched in March 2021.**

**Comments, corrections, suggestions** (in relation to the highlighted sections)

Suggestion to add a line after this that says "**The registry for modern slavery statements launched in March 2021, and as of 31 August, over 5,650 statements have been submitted covering over 18,820 organisations.**"

**Item 256:** Independent multi-agency assurance panels of experts have been set up to review **all negative Conclusive Grounds decisions**, adding a further level of scrutiny of such cases. These independent panels can recommend to the Home Office to reconsider any case where they do not agree with the decision that was made by the casework team. All panel chairs have been appointed via a public appointment process and are paid. Panel members have been drawn from a selection of professionals, including law enforcement, local authorities and NGOs, **in non-paid (voluntary) capacity**. GRETA was informed that the review process was made difficult by the lack of good-quality information about victims and the occasional poor quality of the SCA decisions. **There is reportedly a backlog of cases pending before panels.**

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. "...all negative Conclusive Grounds decisions..." - This is on cases referred to the SCA, not on cases referred pre-SCA.
2. "...in non-paid (voluntary capacity)" - A payment is made to the organisation they represent, to compensate for the time taken away from their day job
3. "There is reportedly a backlog of cases pending before panels." – request that reference for a backlog is removed – the increase in cases and overarching work in progress is what has led to delays, the build up of cases awaiting checking is a short term operational pressure that is currently being resolved.

<sup>211</sup> [Defences - Duress and Necessity | The Crown Prosecution Service \(cps.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf)

<sup>212</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf)

**Item 258: According to the SCA guidance,** a person may request reconsideration of a negative Reasonable Grounds or Conclusive Grounds decision if additional evidence becomes available or there are specific concerns that a decision made is not in line with **the SCA guidance, which states that a request for reconsideration can be made only by First Responders or support providers involved in the case.** The latter are not obliged to consider a victim request nor to provide reasons for not making a reconsideration request. If a legal representative or NGO outside the NRM requests a reconsideration, they should be notified that the SCA cannot reconsider the NRM decision because they are not entitled to make a reconsideration request under the guidance. This policy has been deemed unlawful in the case of *R (DS) v SSHD [2019] EWHC 3046 (Admin)*, decided on 15 November 2019, due to rigidity and lack of admission of exceptions, as “however strong the merits of a case for reconsideration, the identity of the requesting person may determine whether the request is considered or ignored.”<sup>213</sup>

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. Unclear of what SCA guidance this is.
2. “the SCA guidance... update- the guidance does not state this. It was updated following the case of DS.

**Item 262:** In its second report, GRETA asked the UK authorities to monitor the implication of the Immigration Act 2016 offence of illegal work for the identification and protection of victims of trafficking. The Immigration Act 2016 made it a criminal offence to work in the UK without required documentation and made it legal for the government to seize wages from undocumented workers as “proceeds of crime”. The CPS informed GRETA about the recent case of *R v Andrewes (2020) EWCA Crim 1055*, where the Court of Appeal found that it would be disproportionate to confiscate the value of wages where the underlying work was legitimate and properly performed. The Court stated that “it would be wholly wrong to rule out potential exceptions. This may particularly be so in, albeit not limited to, the sensitive area of employment where the individual has no lawful right to work at all because of his immigration status [...] the more so where, perhaps the employer may have been entirely indifferent as to the employee’s status. At all events, these sorts of considerations, in our opinion, should properly be left to determination on the particular facts of the particular case, and on a case by case basis”.<sup>214</sup> Further, the CPS explained that they **would not pursue a confiscation case against an undocumented worker** where he/she acquires the right to remain in the UK. In the case of *R v Mouhid (2014) EWCA Crim 2417*, the CPS consented to an appeal against confiscation made by the appellant, who was an undocumented worker, after he received the right to remain in the UK.

**Comments, corrections, suggestions** (in relation to the highlighted sections)

1. Further information to clarify this point: In the amount of their wages from otherwise legitimate work...there may be other criminality identified.
2. In addition; we also note that the conduct of “illegal working” was clarified by new explicit offences in the Immigration Act 2016 (section 34 to 38).

<sup>213</sup> R (DS) v SSHD [2019] EWHC 3046 (Admin), paragraph 83.

<sup>214</sup> R v Andrewes (2020) EWCA Crim 1055, pagagraph 95.



**Item 272:** In September 2019, the Government introduced a Recovery Needs Assessment (RNA) for confirmed victims to ensure that any ongoing recovery needs arising from their trafficking experiences are identified and supported through the VCC or other services. The RNA allows the VCC support package to be tailored to the individual victim's recovery needs. The aim of the RNA is to establish longer-term stability by helping confirmed victims transition out of VCC support and back into a community. This needs-based approach aims at reducing the risk of confirmed victims being re-trafficked or becoming destitute. It builds on the six local authority pilot projects which were established as part of the reform of NRM to test best practice in supporting victims to transition out of central Government-funded care. **However, survivors of trafficking informed GRETA that their RNA decisions have been put on hold with no prior warning whilst legislation was being amended as a result of the COVID-19 pandemic.**

**Comments, corrections, suggestions** (in relation to the highlighted section)

Statement is incorrect, further information to clarify point: RNA decisions were not put on hold during the pandemic. Rather, support workers and decision makers considered the impact of the pandemic on access to alternative services and impacts on the victim's ability to move on from MSVCC services, during the RNA process. During the pandemic RNA decisions have been made without any delays throughout. No decisions were put on hold or delayed.

**Item 277:** Civil society indicated significant gaps in the scope and the length of the protection and support provided to victims of trafficking. **The current support for people who have exited the NRM following a Conclusive Grounds decision is considered as insufficient to allow persons to rebuild their lives.** On the other hand, move-on support is considered insufficient for those who have received a negative Conclusive Grounds decision and that represents an important barrier to launching judicial review or reconsideration process. The lack of long-term support exposes victims to the risk of re-exploitation and prevents them from access to justice and effective remedy. Victims who do not have secure immigration status are particularly exposed since they are not entitled for many forms of welfare support.

**Comments, corrections, suggestions** (in relation to the highlighted section)

Request that this acknowledges that support is needs-based not time-based- there is an implication of length of support.

**Item 280:** In March 2018, the weekly allowance paid to asylum seeking potential victims of trafficking in the NRM was cut by 42%, from £65 to £37.75. This decision was challenged in the case of *K & AM v SSHD [2018] EWHC 2951 (Admin)*, where the Court was satisfied that, in making the contract change in March, the Secretary of State failed to comply with its obligations under the Convention and under the Equality Act 2010. **The finding was reached on the basis that the financial support rate was insufficient to meet the needs of potential victims of trafficking, as it was no more than the minimum sum needed to stave off destitution.** After the ruling on 8 November 2018, the Home Office reinstated the top-up paid to potential victims of modern slavery receiving asylum support, so that they receive a total of £65 per week.

The IASC observed, in her annual report, that despite this case law, there are still individuals who are not receiving the subsistence to which they are entitled and individuals receiving deductions from other means-tested benefits as a result of NRM subsistence. It appears from the IASC annual report that the Department for Work and Pensions (DWP) gave assurance that NRM subsistence would not be considered unearned income in relation to Universal Credit. **A survivor of human trafficking informed GRETA that in September 2020, she received a partial back payment but was ordered to return that payment within 24 hours of receipt and was given no explanation why.**

Other survivors indicated that they had been informed that they could contact the Home Office by email and request backdated payments for the subsistence that they were entitled to, but they had not received a reply to their requests or had received only a partial repayment.

**Comments, corrections, suggestions** (in relation to the highlighted section)

1. Suggestion to amend the section with the following with changes shown in bold to fully reflect the correct information "The finding was reached on the basis **the enhanced needs of the victims of trafficking who are asylum-seekers, we had already been rectified in a new contract change that took effect in November 2018.**"
2. Would like to highlight that as the details of the case have not been provided to us we are unable to comment on this particular case and the specific details.

**Item 282: While welcoming the measures taken for improve victim assistance, GRETA considers that the UK authorities should take additional steps to ensure that all assistance measures provided for in the Convention are guaranteed in practice, in particular by:**

- **ensuring that victims of trafficking are provided with adequate support and assistance, according to their individual needs, for as long as required, with a view to facilitating their reintegration and recovery, guaranteeing their protection, and ensuring that they are not criminalised for offences they were compelled to commit;**
- **ensuring appropriate oversight over the delivery of services to victims under the Modern Slavery Victim Care Contract by the main contractor and the subgrantees;**
- **involving survivor organisations in the design and delivery of assistance to victims of trafficking;**
- **in the context of the COVID-19 pandemic, ensuring that appropriate support and assistance, including access to health care, are available to all victims of THB.**

**Comments, corrections, suggestions** (we would like to provide further information with regards to these bullet points)

1. "ensuring that victims of trafficking are provided..." - The support length and type for victims of modern slavery is according to need; facilitating recovery and reintegration into wider society. All confirmed victims of modern slavery that are receiving support through the MSVCC receive a Recovery Needs Assessment. The RNA process ensures that support is personalised to the victims' individual recovery needs and informs a tailored move-on plan to help them transition out of MSVCC support and back into a community, as appropriate. This process aims to ensure that MSVCC support continues, in part or in full, until other services are able to meet any ongoing recovery needs arising from modern slavery exploitation.
2. "ensuring appropriate oversight..." - We already provide a high quality oversight of the delivery of services to victims under the MSVCC. The MSVCC is categorised as 'Gold', triggering a recognised and demonstrable level of governance. The Supplier's performance will be monitored through a robust contract management regime, including a new suite of KPI's and Performance Indicators to monitor progress. It will be managed by a dedicated contract management team in the SCA, supported by a defined governance and escalation framework. There is also an increase in the number of Measurement Indicators to continuously review the quality of service delivery and

performance. We have recently appointed the Care Quality Commission to conduct independent inspections of the services provided through the MSVCC, providing a tool to assess progress and the effectiveness of support

3. "involving survivor organisations in the design..." – We already include survivor voice and are committed to embedding survivors in future policy. We recognise the vital role survivors have in tackling modern slavery. We work with the Care Quality Commission to deliver an independent inspection regime across the MSVCC. As part of this work, survivors are given the opportunity to provide feedback on the quality of the support services they receive. Additionally we have recently undertaken a piece of work to engage with survivors directly to better understand their recovery needs and experiences of the NRM.
4. "in the context of COVID-19..." – We have taken a number of steps to ensure our support service has adapted during the pandemic:
  - as part of our move-on process, support workers and decision makers are take into account the wider impacts on services during the pandemic, such as capacity pressures and waiting times for wider mainstream services, so that move-on from our support service happens only where it is safe to do so;
  - we have utilised payment cards as a means for disseminating financial support, allowing pre-paid and more remote use of subsistence monies, instead of delivering cash payments through support workers;
  - we have utilised payment cards as a means for disseminating financial support, allowing pre-paid and more remote use of subsistence monies, instead of delivering cash payments through support workers;
  - we have provided remote access to outreach support and wider third-party support services where possible;
  - we have introduced enhanced cleaning and PPE equipment for Safehouse accommodation;
  - improved accommodation capacity projection;
  - an additional transport provider to be used in cases of moving symptomatic victims has been successfully sub-contracted and;
  - the wider impact on support services during the pandemic such as capacity pressures and waiting times for services are part of the consideration by decision makers and support workers so that the transition out of MSVCC support only happens where it is safe to do so.

**Item 289:** In **Scotland**, the Scottish Guardianship Service, introduced in 2010, is run in partnership with the Scottish Refugee Council and Aberlour Child Care Trust, supporting children who are victims of trafficking and unaccompanied asylum-seeking children. Since 2018, the Scottish Government has been developing the Independent Child Trafficking Guardian (ICTG) service to help provide national support for child victims, and those at risk of trafficking. ICTGs in Scotland were the subject of a consultation between August and November 2019. The new service will put the role of the ICTG on statutory footing with other support services. **It is anticipated the new service will be implemented in 2021.**<sup>215</sup> GRETA was informed that there are currently 12 guardians working across Scotland.

**Comments, corrections, suggestions** (in relation to the highlighted section)

Request for this line to be removed.

<sup>215</sup>

See Independent Anti-Slavery Commissioner Annual Report 2019-2020, p. 17.