



FLEX
POLICY
PAPER

**IMPROVING ACCESS TO
COMPENSATION FOR VICTIMS
OF TRAFFICKING FOR LABOUR
EXPLOITATION IN THE UK**

September 2016
FLEX

Summary

Victims of human trafficking and modern slavery are subjected to a range of physical, psychological and economic abuses, including threats, intimidation, assaults, and work in degrading and unsafe conditions. Access to compensation can play an important role in the recovery of survivors of trafficking. Receiving a fair compensation award can provide victims with a sense of justice and closure, as well as with the financial means to stay safe and rebuild their lives. It can break the cycle of exploitation and reduce victims' vulnerability to re-trafficking, thus making anti-trafficking responses more sustainable in the long term. The effective enforcement of compensation also serves a punitive purpose, making human trafficking a riskier, less profitable crime. However, FLEX research shows that **in the UK victims of human trafficking rarely obtain compensation**.¹

Speaking before the UN General Assembly in September 2016, Prime Minister Theresa May made strong commitments to eradicate modern slavery and announced the creation of a new taskforce aimed at bringing perpetrators to justice.² This paper **calls on the UK Government to keep victims at the centre by ensuring access to compensation for victims of trafficking is a central component of the UK anti-trafficking response**, and by adequately supporting victims to access their rights.

The UK Government has recognised the vital importance of access to compensation, setting out to ensure “that there are avenues for victims to receive reparation and compensation” as one of the key objectives of its Modern Slavery Strategy.³ However, evidence shows that in practice victims of trafficking for labour exploitation are often being left without justice or compensation.⁴ This paper highlights the concerning position that, one year on from the passage of the Modern Slavery Act, UK law does not ensure access to compensation for victims of human trafficking. It directly addresses 4 key barriers to victims' access to compensation in the UK, and proposes a set of recommendations to ensure all victims of human trafficking can obtain redress for the abuses committed against them.

1 The Pro-Act Project, 2015 Identification and Support of Victims of Trafficking for Labour Exploitation in the Netherlands, the UK and Romania, available at: www.labourexploitation.org/sites/default/files/publications/FINALREPORT.pdf.

2 See www.gov.uk/government/news/pm-calls-for-global-action-to-stamp-out-modern-slavery.

3 UK Modern Slavery Strategy. Available at:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf.

4 FLEX, 2016. Working Paper: Access to Compensation for Victims of Human Trafficking. Available at: www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf.

Recommendations

1 Develop effective avenues to compensation for all victims of human trafficking:

- Develop a **specific civil remedy** for victims of modern slavery.
- Create a **dedicated compensation fund**, funded in part by fines and assets of perpetrators.
- Include a **modern slavery tariff award under the CICA scheme**, and ensure that victims of trafficking are not penalised for previous convictions or for insufficient cooperation with the police.
- **Remove the 2-year backstop** on national minimum wage (NMW) claims.
- Encourage the early financial investigation, freezing and confiscation of assets from perpetrators.

2 Ensure all victims of human trafficking can access free legal advice and assistance for the purpose of claiming compensation:

- **Award specific legal aid contract** for victims of human trafficking.
- **Include CICA applications** under legal aid provision.

3 Improve victim support and information:

- **Fund practical support** to victims beyond the reflection period, including for legal matters.
- **Provide accessible information** on labour rights and legal remedies in relevant languages.
- **Provide training and information** on compensation and other legal options for victims of trafficking to lawyers, prosecutors, judges, service providers and frontline staff.

4 Improve understanding and monitor victims' access to compensation:

- **Conduct a cross-government review of access to compensation**, which investigates barriers to access and how these might be overcome.
- **Collect and monitor data** on access to compensation for victims of human trafficking.
- **Develop bespoke guidance** for the key agencies (HMRC, Employment Tribunals, CICA).
- **Increase awareness and enforcement** of the right to compensation among responsible agencies.

Background: Key Barriers to Compensation

Under European and international law, victims of human trafficking have a right to receive free legal advice⁵ and compensation for the abuses committed against them. The European Convention on Action against Trafficking requires Member States to guarantee trafficking victims' right to obtain compensation, both from the perpetrators and from the State.⁶ The EU Trafficking Directive⁷ further requires that trafficking victims have access to existing compensation schemes available to other victims of violent crimes.

While European and national legislation introduced in the UK in recent years has sought to improve trafficking victims' access to compensation, significant barriers still remain. **This paper addresses 4 key gaps** in the current framework that hinder trafficking victims' ability to obtain compensation.

1 Existing avenues to compensation for victims of trafficking are not fit for purpose: develop effective avenues

During the passage of the Modern Slavery Act, it was recognised that victims of trafficking needed improved avenues to compensation. However, amendments seeking to introduce a civil remedy for trafficking were rejected by the Government as unnecessary.⁸ One year on from the passage of the Act, FLEX research shows that existing routes to compensation still do not guarantee trafficking victims' access to compensation.⁹

- **Compensation & reparation orders:** following the conviction of the perpetrators of a modern slavery offence, the courts are required to consider making a reparation order, as introduced by the Modern Slavery Act.¹⁰ Similarly, if a trafficker is convicted of other criminal offences, a compensation order might be made against them.¹¹ However, the criminal evidence threshold is high, and therefore this route is only available to a small proportion of trafficking victims in a reduced number of cases in which a conviction — for modern slavery or other crimes committed against the victim— is possible.
- **Civil route:** there is no specific civil remedy for human trafficking in UK law. Currently victims of trafficking have to resort to bringing civil claims based on other civil law actions, such as fraud, false imprisonment, assault, intimidation or breach of contract.

These actions are not always appropriate. Existing civil remedies were not created for the purpose of providing compensation to trafficking victims, and are therefore inadequate to address the complex nature of trafficking and to reflect the extent of the abuses suffered. This makes civil litigation on behalf of trafficking victims extremely long and complicated, and some victims might not have a clear case under any existing civil remedy. Cost can also be a significant barrier to access in civil cases, due to the complexity of these cases and limited availability of legal aid.

5 Article 12(2) of the European Trafficking Directive; article 15(2) of the European Convention Against Trafficking.

6 Article 15 of the Council of Europe Convention on Action against Trafficking in Human Beings.

7 Article 17 of Directive 2011/36/EU. At the time of writing the UK was still a member of the European Union and bound by the terms of the Directive.

8 HL Deb 23 Feb 2015, vol 759, cols 1465-1466. Available at: <https://hansard.parliament.uk/lords/2015-02-23/debates/15022332000694/ModernSlaveryBill>.

9 FLEX, 2016. Working Paper: Access to Compensation for Victims of Human Trafficking.

10 S. 8, UK Modern Slavery Act 2015.

11 S. 130 of the Powers of the Criminal Courts (Sentencing) Act 2000.

FOCUS ON LABOUR EXPLOITATION

- **Employment tribunal:** victims of trafficking may pursue claims for employment related abuses such as discrimination, unlawful deductions or failure to pay the national minimum wage. However, with the entry into force of the Deduction from Wages (Limitation) Regulations in July 2014, victims of trafficking—as well as all other workers—are prevented from claiming more than two years of wages owed to them. This limitation does not only restrict victims’ ability to recover their wages, but also makes exploiting workers more profitable, since any benefit obtained by exploiters from the non-payment of wages cannot be recovered beyond this two-year limit.

The recent Supreme Court decision in the case of *Taiwo v Olaigbe & Onu v Akwivu*¹² has further restricted access to the Employment Tribunal for undocumented victims. This ruling determined that victims of trafficking who are exploited through abuse of their immigration status are not protected by race discrimination provisions. Because undocumented workers are also unable to make claims for non-payment of wages,¹³ this leaves undocumented victims of trafficking without access to a remedy at the Employment Tribunal. The Supreme Court urged Parliament to consider amending the Modern Slavery Act to provide effective access to justice to such victims:

“Parliament may well wish to address its mind to whether the remedy provided by section 8 of the Modern Slavery Act 2015 is too restrictive in its scope and whether an employment tribunal should have jurisdiction to grant some recompense for the ill-treatment meted out to workers such as these”

- **Civil route:** victims of human trafficking may make an application to the Criminal Injuries Compensation Authority (CICA), a government funded compensation scheme for victims of violent crimes. However, access to this scheme is limited to victims of violent crimes committed in England, Scotland or Wales. Many victims of forced labour and trafficking for labour exploitation are not subjected to physical violence but rather to psychological control, deception or debt bondage. As a result, victims who might have been severely exploited for long periods of time are considered ineligible for this form of compensation.

In order to receive this form of compensation, victims are also required to have cooperated sufficiently with the police, and must have reported the crime within two years of the incident.¹⁴ However, this is something not all victims might be prepared or able to do. Many victims live in fear of reprisals from their traffickers. Others are unable to provide sufficient information to the authorities due to mental health concerns or to their own lack of knowledge or understanding of the crime committed against them.

Moreover, legal aid is not available to victims for the purpose of making CICA claims, and victims face significant barriers to completing such claims themselves—i.e. language barriers, short time limits and difficulties identifying and proving mental injuries. The long wait to obtain a CICA decision—1 to 3 years in most cases—is also problematic for victims who are at times in desperate situations, waiting to receive much needed compensation.

¹² *Taiwo v Olaigbe & Anor* [2014] EWCA Civ 279. Available at: www.supremecourt.uk/cases/docs/uksc-2014-0105-judgment.pdf

¹³ See *Hounga v Allen* [2014] UKSC 47.

¹⁴ Service providers and lawyers assisting victims of trafficking told FLEX that a significant proportion of CICA claims made by victims of trafficking are initially rejected because they are considered not to have collaborated sufficiently with the police.

2 Victims cannot exercise their rights without legal assistance: ensure all victims of trafficking have access to free legal advice

Through the Modern Slavery Act, Parliament sought to protect the right of trafficking victims to free legal assistance for the purpose of claiming compensation.¹⁵ However, **due to the way that the Legal Aid Agency (LAA) has implemented this provision, in practice victims of trafficking cannot exercise this right.** Despite the clear provision for trafficking victims' right to legal aid in the Modern Slavery Act, the LAA has not issued a specific contract for human trafficking cases. Instead, trafficking cases have been included under a general "miscellaneous" category, together with some 20 other types of cases. Since 2013, the contracts issued by the LAA have only provided solicitors with funding to start 5 miscellaneous cases per year. This severely limits solicitors' ability to take on cases on behalf of victims of human trafficking. The limited funding available for these cases also discourages solicitors from specialising in bringing these complex claims on behalf of victims of trafficking and developing much needed expertise in this area. Many legal advisors are not even aware that victims can access legal aid for cases involving modern slavery.

Moreover, significant delays in considering requests by the LAA currently result in delays of 12-18 months for many victims of trafficking who are often highly vulnerable and in urgent need of compensation. At the time of writing this report, the Government was conducting a review of legal aid for trafficking and modern slavery compensation claims, although the timescales for this are unclear.¹⁶

3 Victims are not receiving enough support: improve victim support and information

Due to their highly vulnerable situation, victims of human trafficking face significant practical barriers to accessing compensation, including language and literacy barriers, fear, or mental health issues. **Trafficking victims often need help to navigate the legal process, complete forms, respond to letters, write applications, speak to solicitors or collect official documents and other evidence. However, the support available for this purpose is very limited.**

In the UK, victims of human trafficking are entitled to 45 days of support through the UK National Referral Mechanism (NRM). However, **support workers in the NRM are not funded to attend legal meetings or provide other legal assistance.** A high number of frontline workers interviewed by FLEX **reported having little knowledge or experience of the legal routes available to victims of trafficking seeking compensation, and rarely informing victims of their right to compensation.**¹⁷ As a result, victims are often unaware of their right to compensation and of the benefits of making a claim.

¹⁵ Under s. 47 of the Modern Slavery Act, victims of trafficking are entitled to legal aid for applications for leave to remain in the UK, compensation claims under employment law and claims for damages. This provision does not cover CICA applications.

¹⁶ Read the final consent order for the review for more information:

www.gardencourtchambers.co.uk/wp-content/uploads/2016/03/Final-signed-consent-order-ATLEU_-LAA.pdf.

¹⁷ FLEX, 2015. Identification and Support of Victims of Trafficking for Labour Exploitation in the Netherlands, the UK and Romania. p. 35.

In addition to this, while legal claims can take months or even years to be completed, NRM support is only available to victims for 45 days.¹⁸ **After 45 days victims are left without support, and their applications for compensation might fail due to their inability to follow up and complete the legal process on their own** and without support. Moreover, during the supported 45-day period, victims are often too worried about their immediate future to think about compensation. The competing and urgent needs of victims during this short recovery period, such as resolving their immigration status and finding safe work or accommodation, are often prioritised over initiating a compensation claim, both by victims and service providers.



There is a lack of data and knowledge: improve understanding and monitoring

At present, **the UK Government does not collect comprehensive official data on the award of compensation for victims of human trafficking**, including data regarding CICA claims, Employment Tribunal and civil claims brought by victims of human trafficking. However, evidence suggests that **victims of human trafficking are rarely accessing compensation in the UK**,¹⁹ and amongst the support organisations interviewed by FLEX, very few knew of successful compensation claims.

The introduction of specific avenues to compensation for victims of human trafficking would allow the Government to better monitor the extent to which victims of trafficking are receiving compensation for the abuses committed against them. While the Government has argued that existing remedies are sufficient to ensure victims' access to compensation and comply with the UK's international and European obligations, the evidence does not support this claim. Victims of human trafficking are still facing severe barriers to obtaining compensation in the UK. In order to guarantee trafficking victims' right to compensation, as enshrined in international law, **the Government should comprehensively review the effective access of victims of human trafficking.**

¹⁸ Support may be extended on application. However, the range of support available for longer periods is limited and does not usually include assistance with legal matters.

¹⁹ FLEX, 2016. Working Paper: Access to Compensation for Victims of Human Trafficking.

FOCUS ON LABOUR EXPLOITATION

POLICY PAPER: IMPROVING ACCESS TO COMPENSATION FOR VICTIMS OF TRAFFICKING FOR LABOUR EXPLOITATION IN THE UK

Report published in September 2016 by Focus on Labour Exploitation (FLEX).

Copyright 2016 Focus on Labour Exploitation All rights reserved
Printed in the United Kingdom FLEX Charity number 1159611

The conclusions and recommendations presented in this paper are the result of the Pro-Act project (Pro-active Identification and Support of Victims of Trafficking for Labour Exploitation in the EU), a 2-year project combining both extensive research and practical experience components. The Pro-Act project, initiated by FairWork (The Netherlands), Focus on Labour Exploitation (FLEX, UK) and ADPARE (Romania), seeks to improve responses to trafficking for labour exploitation throughout the European Union.

Co-funded by the Prevention of and Fight against Crime Programme of the European Union.

This publication reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

