

ATLEU Submission to the UN Human Rights Committee on Human Rights.
Examination of the eighth periodic report of the United Kingdom.
Trafficking and modern slavery, and access to justice.

February 2024

I. INTRODUCTION

About ATLEU (Anti Trafficking and Labour Exploitation Unit):

ATLEU is the only UK charity providing legal advice and representation to survivors of trafficking and modern slavery. Based in London and Sheffield, our specialist multidisciplinary legal team assists survivors to escape, recover and rebuild their lives: securing safe and appropriate housing, regularising immigration status, obtaining trafficking identification, subsistence and support, and recovering compensation from their traffickers or the state. In 2023 alone, ATLEU supported 285 survivors of trafficking and slavery - 98% of whom were refugees or migrants, 67% female; and 12% children or young people. Rooted in the practical knowledge we gain from our direct legal casework, we maximise our impact by pursuing systems change at a national level through strategic litigation, our training and advice service, and policy and campaigning work including the participation and activism of our clients.

Issues addressed in this submission:

This submission to the UN Human Rights Committee (hereafter the Committee) provides ATLEU's evidence on the following themes and questions in the *List of issues prior to submission of the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland* (Adopted by the Committee at its 128th session, 2–27 March 2020):

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8, 24 and 26)

In response to Question 17 of the List of Issues this submission covers:

- The drastic regression in the legal and policy framework on trafficking and modern slavery since the Committee adopted the List in March 2020.
- Additionally, as ATLEU has endorsed the joint submission of the Anti Trafficking Monitoring Group (ATMG) and Anti-Slavery International, we focus on two priority areas: access to legal advice and access to compensation.

Access to justice, independence of the judiciary, and fair trials (arts. 2 and 14)

In our response to Question 22 of the List of Issues this submission covers:

- The impact of LASPO and the crisis in civil legal aid.
- The crisis in availability of timely and specialist legal advice to survivors of trafficking and modern slavery in specific.

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II. EXECUTIVE SUMMARY

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8, 24 and 26)

1. A drastic regression in the legal and policy landscape on trafficking and modern slavery

There has been a drastic and rapid regression in the legal and policy framework on trafficking and modern slavery since the Committee adopted the List of Issues in May 2020. The Nationality and Borders Act (2022) and changes to the Modern Slavery Statutory Guidance have made it substantially more difficult for survivors of trafficking and modern slavery access to access identification, support, justice and remedy. The Illegal Migration Act (not yet in force) will be catastrophic; thousands of survivors of trafficking and modern slavery will be disqualified from access to safety and support under the National Referral Mechanism (NRM) and instead face detention, removal, or a life in limbo. Survivors of trafficking and modern slavery, and their legal representatives, have been this government's scapegoats; caught up in political battles against 'small boats' and 'illegal migration'. The government has used unevidenced claims and dangerous hostile rhetoric against survivors to build support for the passage of draconian and regressive legislation.

Suggested recommendation to the State Party:

- Repeal legislation that is not in line with the UK's obligations under international law, including the Council of European Convention on Action against Trafficking (ECAT) and Article 4 of the European Convention on Human Rights (ECHR).

2. A legal advice crisis for victims and survivors of trafficking and modern slavery

Access to legal advice and representation is critical for survivors of trafficking and modern slavery to secure identification, support, and justice. However, there is a legal advice crisis for survivors, many of whom are not able to access timely and specialist legally aided advice and representation when they need it due to an overwhelming gulf in availability. The primary cause is the legal aid funding system: standard legal aid fixed fees are inappropriate given the length and complexity of trafficking and modern slavery cases, deterring providers from taking them; key areas of advice are out of scope for legal aid; and the Legal Aid Means Test is causing barriers in access to legal aid.

Suggested recommendations to the State Party:

- Immigration legal aid for trafficking and modern slavery cases should be paid on an hourly basis with rates of remuneration raised to a sustainable level and an efficient, streamlined process for opening, reporting and billing legal aid matters introduced.
- The following areas of law should be brought into scope of legal aid: pre NRM immigration advice for all survivors; advice on identification as a victim of trafficking and modern slavery; and advice on the Criminal Injuries Compensation Scheme.
- Survivors of trafficking and modern slavery should receive non-means tested legal aid.

3. Access to compensation

Compensation for survivors of trafficking and modern slavery is crucial to ensure recovery and justice. Compensation paid by traffickers is a powerful tool of punishment and deterrence. Despite this, the number of survivors who are able to obtain compensation is minimal. There is no civil remedy for trafficking and modern slavery. To recover compensation, survivors have to patch together several different claims which encompass the many wrongs done to them. This is challenging, costly, and impractical. Obtaining compensation from the state is similarly fraught with challenge. The Criminal

Injuries Compensation Scheme is not fit for purpose and many survivors are denied compensation despite the serious harms suffered. The complexity of the work and the funding deficiencies deters most lawyers from taking on trafficking and modern slavery compensation cases.

Suggested recommendations to the State Party:

- Introduce into law a civil remedy of trafficking and modern slavery
- Establish a trafficking and modern slavery compensation claim contract and bring advice on applications to the Criminal Injuries Compensation Scheme within the scope of legal aid.

Access to justice, independence of the judiciary, and fair trials (arts. 2 and 14)

1. A legal aid sector on the brink of collapse

The legal aid sector is on the brink of collapse as a result of the impact of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), together with other legal aid cuts, the year on year depreciation in fees, and austerity. There is substantial legal aid 'deserts' (areas where there are no legal aid providers) and legal aid 'droughts' (areas where there appears to be a supply of providers but they have no capacity to take on new cases) across the UK. The government has announced a review of civil legal aid intended to 'improve the sustainability of the system', but urgent changes are needed now to address the crisis before the sector collapses.

Suggested recommendations to the State Party:

- Immigration legal aid should be remunerated on an hourly basis with rates of remuneration for civil legal aid raised to a sustainable level and reviewed annually.
- An efficient, streamlined process for opening, reporting and billing legal aid matters should be introduced to replace the overly complex, burdensome bureaucracy that deters so many legal aid providers.

2. A legal advice crisis for survivors of trafficking and modern slavery

Survivors of trafficking and modern slavery are not able to access specialist legally aided advice and representation when they need it due to a huge gulf in availability. This occurs in the broader crisis in civil legal aid, yet the primary cause is the way in which trafficking and modern slavery cases are funded. They are uniquely complex, long-running and costly: ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out. The legal aid billing process for immigration cases is the most complex in civil legal aid at controlled work level and deters providers. Key areas of advice are out of scope for legal aid in England and Wales for the vast majority of survivors. The Exceptional Case Funding regime is ineffective, time consuming, frustrating, and not an acceptable way to fund crucial areas of advice. The Legal Aid Means Test excludes many survivors from legal aid, despite their inability to afford legal advice otherwise.

Suggested recommendations to the State Party:

- Immigration legal aid for trafficking and modern slavery cases should be paid on an hourly basis with rates of remuneration raised to a sustainable level.
- The following areas of law should be brought into scope of legal aid for all survivors: pre NRM immigration advice; advice on identification as a victim of trafficking and modern slavery; and advice on the Criminal Injuries Compensation Scheme.
- Survivors of trafficking and modern slavery should receive non-means tested legal aid.

III. DETAILED INFORMATION ON KEY AREAS

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8, 24 and 26)

17. Please provide information on the new procedure to identify potential victims of trafficking, the national referral mechanism, and provide information on the two-stage approach established to identify whether a person is a victim of trafficking, including of sexual exploitation of children and modern slavery. Please comment on information received that the two-stage approach requires a standard of proof that hinders the identification of victims. Please provide information on measures taken to prosecute and punish those responsible for trafficking and to provide effective remedies to victims.

1. A drastic regression in the legal and policy landscape on trafficking and modern slavery

Since the entry into force of the Nationality and Borders Act (2022), and corresponding changes to the Modern Slavery Statutory Guidance, it has become substantially more difficult for survivors of trafficking and modern slavery access to access identification. It is difficult for many survivors to access the support they need and leave to remain for recovery purposes (now called Temporary Permission to Stay for Victims of Human Trafficking or Slavery (VTS)). The Public Order Disqualification as introduced by the Nationality and Borders Act and as implemented by the Modern Slavery Statutory Guidance, is a significant departure from the UK's obligations under the Council of Europe Convention against Trafficking (ECAT), removing survivors from protection and support.

ATLEU endorses the detailed joint submission of the Anti-Trafficking Monitoring Group (ATMG) and Anti-Slavery International on these issues. In addition, we urge the Committee to raise the catastrophic impact that the Illegal Migration Act will have on survivors of trafficking and modern slavery. ATLEU believes that thousands of victims and survivors of trafficking and modern slavery will be denied access to safety and support under the National Referral Mechanism (NRM) and face detention and removal. This is primarily because so many will fall within the Clause 2 definition. Many victims of trafficking come to the UK by irregular routes, under force, fraud or threat and the abuse of their vulnerability. More still will be disqualified due to a prison sentence served, even if this was for a minor offence or they were prosecuted despite the offence being connected to their trafficking experience. On the basis of the information available, we estimate that at least half of victims and survivors who accessed identification, support and protection under the NRM between January and March 2023, would be denied this under the Act.¹ Instead of the support and protection they can currently receive, they will face detention, removal, or a life in limbo.

The Illegal Migration Act is a gift to human traffickers. It will enshrine in law the threats traffickers so often make about illegality, detention and removal should victims seek help. Those who escape their traffickers will be forced underground, avoiding contact with authorities or institutions that might

¹This is based on the fact that 75% of referrals into the NRM in January to March 2023 were foreign nationals. Some two thirds of foreign nationals (50% of all referrals) are likely to have entered irregularly and will be disqualified. Of the remaining foreign nationals, it is likely that half (an additional 13%) will also be disqualified either because they committed a criminal offence as part of being trafficked and spent some time in prison and/or had their claim classed as a "bad faith" application. The victims and survivors of trafficking and modern slavery who would continue to be able to access the NRM in the usual way would largely be those who have flown directly to the UK from their country of origin or a country where they have resided, including those where the trafficker has obtained their visa, or where they arrive legally but are then trafficked within the UK, and those who entered the UK before the 7 March 2023, and British nationals.

have previously been able to assist them. Other victims will feel forced to remain in exploitation due to the fear of detention and removal. It is for these reasons that 34 expert organisations joined together in July 2023 to declare the then-Bill “a charter for exploitation, trafficking and modern slavery.”²

2. A legal advice crisis for victims and survivors of trafficking and modern slavery

Legal advice and representation is key to the ability of survivors of trafficking and modern slavery to access formal identification, safe housing, financial support, secure immigration status (for non-UK nationals), and access justice and remedy. Yet, the Government is failing to ensure that survivors of trafficking and modern slavery are able to access timely, specialist and free legal advice and representation when they need it.

There is a legal advice crisis for survivors of trafficking and modern slavery, with a huge gulf between the demand for legal advice and available supply. ATLEU’s 2022 report, *It has destroyed me: A legal advice system on the brink*, found that a staggering 90% of support workers had struggled to find a legal aid immigration lawyer for a survivor in the past year. Survivors are facing lengthy delays just to get an initial appointment. 76% reported significant delays, of up to three months or longer, in finding an immigration legal aid lawyer for a potential or confirmed victim of trafficking or modern slavery. 43% of respondents reported serious delays of up to six months or longer.³ Queries to ATLEU’s advice service suggests that this problem worsened in 2023, with support workers routinely unable to secure a legal aid solicitor for a service user.

ATLEU’s 2022 report demonstrates the devastating impact of the lack of timely access to legal advice on survivors of trafficking and modern slavery. 55% of respondents said it had left survivors they supported destitute or unable to access appropriate accommodation or support. An overwhelming 97% said it caused stress, anxiety or contributed to poor mental health including suicidal thoughts. It led to survivors missing important deadlines which can have serious long-term consequences, such as deadlines with the Competent Authorities in their trafficking identification case or with the Home Office in an immigration or asylum case. 29% of respondents said the inability to access legal advice had left survivors in a situation of exploitation. Finally, survivors not able to access quality legal advice within a reasonable timeframe have been detained and put at risk of removal.⁴

The hours of time spent on trying to find a solicitor with capacity is detracting from the ability of front line workers to focus on core support services and promoting the recovery of survivors. 94% of support workers responding to ATLEU’s survey said that it was causing them additional work. The inability to find a legal aid solicitor with capacity is leading some support workers to try to help with a task that should be undertaken by an accredited adviser or lawyer, with 68% saying that they had done this.⁵ This is an ongoing trend. From calls to ATLEU’s advice line and emails to our referrals portal in 2023, we are aware that increasingly support workers are feeling they need to perform legal tasks such as complete witness statements for survivors in the NRM, even though those people may

² *Anti trafficking sector joint briefing on the Illegal Migration Bill*, July 2023, available at https://drive.google.com/file/d/1O8t50vU5aZRJ6ie_wQmcsCfzNdHW2i_S/view

³ ATLEU, (October 2022), *‘It has destroyed me’*. Available at: <https://atleu.org.uk/news/2022/10/17/it-has-destroyed-me-new-report>

⁴ Ibid

⁵ Ibid

be eligible for legal aid and the support worker has no legal training or immigration accreditation. This can have negative outcomes for survivors if mistakes are made, despite the best of intentions.

Legal advice has always been critical, but is increasingly so in a context where law and policy on trafficking and modern slavery has regressed dramatically in the past two years. The law is more complex and the consequences for survivors who are not able to access protections and rights are life-changing. Legal advice is therefore all the more important to secure safety and rights, but yet currently unavailable for many survivors.

This legal advice crisis is the direct result of the Government's failure to adequately fund the legal aid system. The funding arrangements for trafficking and modern slavery cases, a 'fixed fee' payment system, is flawed given the length and complexity of trafficking and modern slavery cases and is deterring legal aid providers from taking them on. The legal aid billing process for immigration cases is the most complex in civil legal aid at controlled work level. Key areas of advice on trafficking and modern slavery (early advice prior to an NRM entry, advice on trafficking identification, advice on the Criminal Injuries Compensation Scheme) is out of scope of legal aid in England and Wales for the vast majority of survivors.⁶ Additionally, the Legal Aid Means Test continues to exclude many survivors from legal aid, despite their inability to afford legal advice otherwise.

Please see response to List of Issues question 22 for a more detailed explanation of the causes of the legal advice crisis for survivors of trafficking and modern slavery.

3. Access to compensation

Access to compensation for survivors of trafficking and modern slavery is crucial to ensure justice, redress and recovery. At the same time, compensation paid by traffickers is a powerful tool of punishment and deterrence. Despite this, the number of survivors who are able to obtain compensation is minimal. While there are different mechanisms in place to compensate survivors: some to obtain compensation from a trafficker, and some to obtain compensation from the State, all are failing survivors in practice.

Recovery of compensation from a trafficker

The figures that are available for the recovery of compensation from a trafficker are shameful: In April 2022, the Independent Anti-Slavery Commissioner reported that only 41 compensation orders and 8 Slavery and Trafficking reparation orders had been made in the seven years since 2015.⁷ Yet in the same period, 53,164 survivors were referred into the NRM. The government is not collecting data on the numbers of survivors who obtain compensation from the other avenues.

The existing avenues to recover compensation from a trafficker are fraught with challenge, complexity and confusion. They were not drafted with trafficking and modern slavery in mind, and the decision makers for these often do not understand that the crimes fit. There is no civil remedy

⁶ Pre-NRM immigration advice has been proposed under the Nationality and Borders Act to become available for a very limited group of survivors who are already accessing advice on certain in scope immigration matters or about judicial review or possibly for those applying for "exceptional case funding" (discretionary legal aid) if their removal from the UK might be unlawful under the Human Rights Act. However, the relevant provisions have not yet been brought into force.

⁷ Independent Anti-Slavery Commissioner, (2022), IASC policy paper: Access to compensation and reparation for survivors of trafficking. Available at: <https://www.antislaverycommissioner.co.uk/media/1771/iasc-policy-paper-access-to-compensation-and-reparation-for-survivors-of-trafficking-april-2022-final.pdf>

for trafficking and modern slavery in UK law. Without such a civil remedy, survivors and their legal representatives are forced to try to access compensation through a multitude of existing laws, patching together several different claims which encompass the many wrongs done to them. It is complex, confusing, lengthy, and costly.

Slavery and Trafficking reparation orders under the Modern Slavery Act require a criminal conviction of the perpetrator under the Act and for a confiscation order to be made. As prosecution and conviction rates under the Act remain very low, this avenue is only available to a very limited number of victims who have seen their traffickers convicted. Compensation Orders under the Powers of Criminal Courts (Sentencing) Act 2000 also requires a criminal conviction of the perpetrator, restricting access. Even when compensation orders are made, they are often for very low amounts of money which does not reflect the gravity of the crime committed.

An Employment Tribunal claim for employment-related matters such as unfair dismissal or unlawful deduction of wages is a very lengthy process, often a minimum of 18 months. Survivors, particularly those with irregular immigration status, are in practice often excluded from bringing a claim. The strict deadline to lodge a complaint of 3 months less a day since the employment abuse occurred is entirely unrealistic for many survivors. The Deduction from Wages (Limitation) Regulations 2014 significantly reduced the utility of this option as it is now not possible to claim more than two years of unpaid wages

Obtaining compensation from the state

Obtaining compensation from the state is similarly fraught with challenge. While the Criminal Injuries Compensation Scheme (CICS) was amended in 2012 to explicitly include survivors of trafficking, few survivors are able to access it and fewer still are able to obtain an award. At present it is not fit for purpose for survivors of trafficking and modern slavery due to reasons including the scope and time limit of the scheme and the 'unspent conviction rule'.

Trafficking and modern slavery are crimes of violence under section 6 of the Modern Slavery Act 2015. Yet they are not defined as 'crimes of violence' under the Scheme rules. The definition of a 'crime of violence' is interpreted so narrowly by the Criminal Injuries Compensation Authority (CICA) that it does not encompass the experience of a victim of trafficking and slavery.

An application to CICA must be made within two years of the criminal injury suffered. Many survivors will make an application outside of this time limit due to trauma, a lack of knowledge about the scheme, the lack of assistance available to help submit an application, fear of repercussions from a trafficker, and also a survivor's hierarchy of needs.

The unspent conviction rule has a discriminatory and exclusionary impact on survivors of trafficking, many of whom are compelled to commit criminal offences as part of their exploitation. There is currently no discretion for CICA to look at the circumstances of the conviction.

CICA is able to withhold awards of compensation where an applicant has 'failed to cooperate so far as is reasonably practicable in bringing the assailant to justice.' and regularly does so.

The length of time from application to award of compensation is normally lengthy and requires extensive correspondence and submissions being made. The lack of readily available legal assistance

can mean that survivors become disillusioned and disengaged from the process. Sadly, the length of time needed to obtain funding and an initial decision from CICA has seen five ATLEU clients die before the conclusion of their application.

Advice on compensation the most difficult to obtain

Compensation is the most challenging area for survivors to access information and legal advice on. The complexity of work, and funding deficiencies including the lack of a trafficking and modern slavery compensation claim contract, deters providers from undertaking this work. Advice on applications to the CICS is expressly out of scope for legal aid in England and Wales and LAA decision making on case funding is poor, inconsistent, and lengthy.

Access to justice, independence of the judiciary, and fair trials (arts. 2 and 14)

22. In light of the Committee's previous concluding observations (para. 22), please provide information on measures taken to improve access to the legal aid system and indicate if the State party intends to reform the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In particular, please comment on information received that the application process for the exceptional case funding is onerous and complex and that the changes to the financial eligibility criteria for legal aid create obstacles for many individuals applying for the legal aid scheme.

1. A legal aid sector on the brink of collapse

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has had a devastating impact on the legal aid sector. It removed many social welfare matters from the scope of legal aid, thus delaying access for many other matters until crisis point. The change in the type of cases covered by legal aid forced services to move away from holistic advice that also enabled organisations providing legal aid services to be financially sustainable from the balance of work carried out. Within immigration work, as most non-asylum immigration matters were removed from the scope of legal aid, providers had to diversify income streams out of necessity, reducing capacity for legal aid work. Experienced lawyers left legal aid work, many practices reduced the amount of legal aid work they undertook, and capacity has shrunk across the sector.

The impact of LASPO, together with other legal aid cuts, the year on year depreciation in fees, and the impact of austerity, has had a catastrophic impact on the legal aid sector. Since LASPO's introduction, half of all law centres and not-for-profit legal advice services in England and Wales have closed, according to government figures. In 2013-14 there were 94 local areas with law centres or agencies offering free legal services. By 2019-20, the number had fallen to just 47. There is a recruitment and retention crisis in the legal aid sector across all areas of law, across all levels, and across the country.

Data published by Dr Jo Wilding in June 2023, which combined publicly available data with legal aid provision figures from the Legal Aid Agency, covering September 2021 to August 2022, demonstrates that the legal aid sector is collapsing. There was a 20% reduction in the number of housing legal aid providers in the 18 months to March 2023. The same period saw a 21% loss of legal aid providers for

mental health, and a 27% loss in welfare benefits. In immigration and asylum, over 30% of the providers given contracts in September 2018 had stopped doing legal aid work by March 2023.⁸

There is legal aid 'deserts' (areas where there are no legal aid providers) and 'droughts' (areas where there appears to be a supply of providers but they have no capacity to take on new cases) across the UK. The government is aware of the crisis in civil legal aid and is undertaking a review intended to 'improve the sustainability of the system'. Yet, the legal aid sector is collapsing now, and the consequences are that many individuals with legal issues are unable to find a legal aid lawyer with capacity to advise and represent them. Urgent action and systemic changes are needed.

2. A legal advice crisis for survivors of trafficking and modern slavery

The legal advice crisis for survivors of trafficking and modern slavery is a direct result of government law and policy decisions. It occurs within the broader crisis in civil legal aid, but the primary cause is the way in which trafficking and modern slavery cases are funded. Trafficking and modern slavery cases are uniquely complex, long-running and costly: ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out.

The average length of a trafficking and modern slavery case is significantly longer than other immigration cases due to the factors related to the presentation of the client and other issues that need addressing in the case before representations can be made to the Home Office, for example, waiting on medico legal evidence or phased disclosure by clients as they establish trust with their representative. In our experience, securing a positive reasonable grounds decision and obtaining discretionary leave to remain, can regularly take over five times the amount of hours covered by the fixed fee. There are also long delays that come from the NRM system. In ATLEU's experience, a positive conclusive grounds decision can take at least two years and sometimes more than three years. The long running nature of the cases and investment required means that taking on trafficking and modern slavery cases is not viable or sustainable for many legal aid providers.

The current payment structure results in very few providers developing trafficking expertise or being able to afford to run a trafficking case with the investment of time and disbursements it needs. This is also leading to poor quality advice, where providers fail to run important trafficking arguments, or don't spend the time to explain a victim's case properly or take the time necessary to present the right supporting evidence.

The existing legal aid regime is unnecessarily complex and bureaucratic and places a heavy burden on both legal aid providers and the state. The legal aid billing process for immigration cases is the most complex in civil legal aid at controlled work level and hugely burdensome for providers.

The Legal Aid Means Test excludes many survivors from accessing legal advice despite their inability to afford it otherwise. The income test does not reflect the complex, diverse and often fluctuating financial reality of many survivors. They are often in unstable forms of work where their income will fluctuate. Those who work as part of their recovery are effectively penalised. Following a consultation, in May 2023 the government announced that there would be a discretionary disregard of Modern Slavery Victim Care Contract (MSVCC) financial support payments from the income assessment, but this has not yet been implemented. We are concerned this proposed change is

⁸ <https://theconversation.com/the-legal-aid-sector-is-collapsing-and-millions-more-may-soon-be-without-access-to-justice-new-data-207045>

discretionary rather than mandatory, because of the lack of clarity that it gives survivors, and with the delay in implementing this change. The capital test remains excessively burdensome, such as the requirement to provide evidence that assets abroad should not be considered.

Finally, in England and Wales, three important areas of advice are excluded from the scope of legal aid for the vast majority of survivors: pre-NRM immigration advice; advice about trafficking identification; and advice on the Criminal Injuries Compensation Scheme.

The deficiencies of the Exceptional Case Funding regime

ATLEU has substantial experience in applying for Exceptional Case Funding (ECF) for victims and survivors of trafficking and modern slavery on some of the issues they face which fall outside of the scope of legal aid, including immigration advice, pre-NRM advice, or CICS advice. We have found the scheme ineffective, time consuming, and frustrating. Applications are very slow, communication is poor, and there is no emergency application process. Crucially, ECF applications in trafficking and modern slavery cases are frequently refused by the Legal Aid Agency and they are administratively burdensome and complex. For these reasons, ECF applications for trafficking and modern slavery cases are viewed as an unacceptable risk by most legal aid providers.

The Legal Aid Agency does not accept that an application to the Criminal Injuries Compensation Authority (CICA) involves the determination of Convention or EU rights and so routinely refuse applications. ATLEU conducted a survey on ECF in 2020 which demonstrated that 93% of applications made to the LAA for ECF funding to prepare and submit a CICS application were refused. Between April 2014 and April 2018, ATLEU made 30 applications for Exceptional Case Funding in relation to CICA matters. All 30 were refused following the initial ECF application on the basis that the clients did not require legal advice and assistance to successfully access compensation through the CICA scheme.⁹

The Nationality and Borders Act 2022 also introduced a presumption that Exceptional Case Funding would be granted for advice on referral into the NRM in relation to a claim that removing them would be unlawful under the Human Rights Act 1998. ATLEU has experience of two applications for Exceptional Case Funding for pre NRM immigration advice, one initially made in August 2020 and one in January 2021. These finally received grants in October 2022 (22 months later) and September 2022 (18 months later) respectively after making representations in relation to the changes coming in with the Nationality and Borders Act to assist the decision making process.

Based on the low grant rate of ECF, the delays, the unnecessary time and cost to process cases, and the need to conduct satellite litigation in order to get decisions and funding, ATLEU firmly believes that areas of work should be brought back into the scope of legal aid instead. This includes pre-NRM advice, advice on trafficking identification and advice on all matters related to applications to the Criminal Injuries Compensation Scheme.

⁹ Anti Trafficking and Labour Exploitation Unit (ATLEU), (17 November 2020), *Survivors of trafficking and the Criminal Injuries Compensation Scheme*. Available at: <https://atleu.org.uk/news/2020/11/16/survivors-of-slavery-die-waiting-for-their-compensation-claims-to-be-awarded>