

**FOCUS ON
LABOUR
EXPLOITATION**



GUIDE TO LEGAL REMEDIES FOR VICTIMS OF TRAFFICKING FOR LABOUR EXPLOITATION

November 2014

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Focus on Labour Exploitation (FLEX) works towards effective responses to trafficking for labour exploitation that prioritise the needs and voice of victims and their human rights. FLEX seeks to achieve this vision through research and analysis that promotes greater accountability and a stronger focus on victims' voiced needs.

FLEX is an international organisation based in London, UK.

For more information, please visit our website: <http://www.labourexploitation.org>

Acronyms and Abbreviations

ACAS	Advisory, Conciliation and Arbitration Services
CICA	Criminal Injuries Compensation Authority
FLEX	Focus on Labour Exploitation
GLA	Gangmasters Licensing Authority
ECHR	European Convention on Human Rights
EEA	European Economic Area
EU Trafficking Directive	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims
European Trafficking Convention	Council of Europe Convention on Action Against Trafficking in Human Beings
NCA	National Crime Agency
NMW	National Minimum Wage
NRM	National Referral Mechanism
OISC	Office of the Immigration Services Commissioner
UKHTC	UK Human Trafficking Centre
UKVI	UK Home Office Visas and Immigration

Introduction

Access to justice for victims of human trafficking is fundamental to their rehabilitation, the prevention of their re-trafficking, and contributes to the punishment of their traffickers. Once they have escaped their exploitative circumstances, victims of trafficking for labour exploitation will be primarily concerned with their security and immigration status, as well as access to support. However they may also want to seek justice against their traffickers for the human rights and labour abuses they have endured, and to seek financial compensation for the damage they have suffered. Unfortunately, often those assisting or advising victims of trafficking are unaware of the legal options available to them.

This Guide recognises that access to legal remedies for victims of human trafficking is about more than compensation, and that access to justice relies on access to legal assistance and support. Accordingly, the Guide first briefly address preliminary issues concerning the National Referral Mechanism and historic victims; before also outlining some non-financial remedies, including prosecution of traffickers, legal aid, non-criminalisation of victims, and immigration remedies. The Guide then goes on to consider in more detail the routes to accessing compensation, in light of the very low numbers of victims accessing compensation in the UK. The aim of the Guide is to provide practical information that can assist service providers in informing victims about their legal options and directing them towards legal advice.

In the UK, there are currently four possibilities for compensation available to victims of trafficking. These four remedies are:

1. Compensation order following criminal proceedings;
2. Civil claims (County Court or High Court);
3. Employment claims in the Employment Tribunal; and
4. Criminal Injuries Compensation Authority (CICA) claims.

Each of these remedies has its benefits, limitations and obstacles. In an effort to assist service providers in helping the potential victims they may meet in their work, this Guide seeks to answer some of the key questions relating to compensation for victims of human trafficking, including:

- A. What are the options for compensation?
- B. What kind of loss or damage can be compensated?
- C. How do I apply for compensation?
- D. What are the legal requirements?
- E. Is there a time limit?
- F. Is legal aid available?
- G. How much does it cost?
- H. What other barriers exist?

For ease of reference, we have also provided a comprehensive chart summarizing and comparing the considerations of each avenue to compensation at the end of this Guide. We conclude by providing a list of contacts who can provide support to victims as First Responders in the NRM process and those who can offer advice and legal assistance.

Table of Contents

List of Acronyms and Abbreviations	i
Introduction	ii
Human Trafficking, Slavery, Forced Labour, and UK Labour Laws	1
Human Trafficking	1
Slavery and Forced Labour	1
UK Labour Laws.....	2
Working with victims	3
Preliminary Issues: Victims’ Status	4
A. The National Referral Mechanism (NRM).....	4
B. Historic Victims	4
Non-Financial Legal Remedies	5
A. Investigation and Prosecution of Traffickers	5
B. Legal Aid.....	5
C. Non-criminalisation of Victims	5
D. Immigration Remedies	6
Compensation	7
A. What are the options for victim compensation?	7
B. What kinds of damage or loss can be compensated?	7
C. How do I apply for compensation?.....	9
D. What are the legal requirements?	9
E. Is there a time limit?.....	10
F. Is legal aid available?	10
G. How much does it cost?	11
H. What other barriers exist?.....	11
Comparison Chart of Compensation Avenues	13
Contacts for Legal Assistance	14
First Responders & Support Providers	15
Others / Child Specific Services	18

Human Trafficking, Slavery, Forced Labour, and UK Labour Laws

To understand the rights and remedies available to victims, it is useful to be aware of the laws prohibiting trafficking, forced labour, and slavery as well as the laws establishing fundamental employment rights.

Human Trafficking

Human trafficking is an internationally recognised human rights violation and crime. The international prohibition on trafficking is found in the UN Human Trafficking Protocol and states:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹

Human trafficking is fundamentally about the exploitation of a person’s body or freedom for the profit of another (financial or otherwise). Trafficking for purposes of exploitation is often divided into two categories - trafficking for sexual exploitation and trafficking for labour exploitation. The term ‘labour exploitation’ refers to exploitation of a person’s labour in industries other than the sex industry, including construction, agriculture and domestic work.

While the UK is a party to the UN Human Trafficking Protocol, and uses the international definition to identify victims under the National Referral Mechanism (NRM),² its current criminal law on trafficking differs from the Protocol, and focuses on the ‘movement’ aspect of trafficking. It prohibits: *‘the arrangement or facilitation of travel’* into, within, or out of the UK with the intention to exploit. Exploitation under this provision includes slavery, forced labour, removal of organs, or *‘force, threats or deception designed to induce’* the provision of services or benefits of any kind.³

Slavery and Forced Labour

Slavery and forced labour are forms of labour exploitation that are included in the definition of trafficking, and are also crimes in their own right. The UK has made slavery, servitude and forced labour a crime under Section 71 of the *Coroners and Justice Act 2009*.⁴

Slavery is defined in the UN Slavery Convention of 1926 as: *The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.*⁵ This is not restricted to the ‘legal’ ownership of a person but includes all situations where a person is treated as if they are owned e.g. being bought, sold, and forced to work without pay.

Forced labour is defined in the International Labour Organisation’s Forced Labour Convention of 1930 as: *All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*⁶ The ‘menace of any penalty’ can include physical and psychological

1 Article 3, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000) www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx. The two primary European prohibitions on trafficking, *Council of Europe Convention on Action Against Trafficking in Human Beings* (European Trafficking Convention) and *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims* (EU Trafficking Directive), also follow the UN prohibition almost word-for-word.

2 See UK Home Office, *Victims of human trafficking – competent authority guidance*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298421/traffickingcompetent.pdf

3 *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*, Section 4.

4 *Coroners and Justice Act 2009*, Section 71 <http://www.legislation.gov.uk/ukpga/2009/25/section/71>. Under European law, the European Convention on Human Rights under Article 4 also prohibits the holding of anyone in slavery or servitude or requiring a person to perform forced or compulsory labour.

5 *UN Slavery Convention 1926* www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx.

6 *ILO Forced Labour Convention, 1930* (No. 29) www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174:NO

abuse, threats of abuse, threats to report to authorities, and non-payment of substantial wages owed, and “relates to the freedom of the worker to leave the abusive employment”.⁷ The fact that a person willingly entered work initially does not prevent it from becoming forced labour if the worker is subsequently unable to leave.

UK Labour Laws

In UK law, there are various laws and regulations that set out the rights of workers. The most fundamental is the *Employment Rights Act* 1996 which establishes the rights of employees, including the rights to have a statement of their working conditions, not to have unauthorised deductions of their wages, and to bring claims in the Employment Tribunal.⁸ In addition to this Act, the *National Minimum Wage Act* 1998 establishes that a person is entitled to the national minimum wage if they are a worker, who works or ordinarily works in the UK, and is above compulsory school age.⁹ *The Working Time Regulations* 1998 create a number of specific rights regarding working hours and days off, which are enforceable by all workers.¹⁰ The *Health and Safety at Work etc. Act* 1974 establishes that employers have a duty to provide their employees with a safe working environment, appropriate job safety training, and protective equipment, where necessary.¹¹ The *Equality Act* 2010 establishes that workers and employees cannot be subjected to unlawful discrimination in recruitment or during the course of employment.¹²

These laws provide a number of rights that victims of trafficking for labour exploitation may seek to enforce against their traffickers, either in civil courts or in an employment tribunal.

7 Skrivankova, K. (2010), *Between decent work and forced labour: Examining the continuum of exploitation*, Joseph Rowtree Foundation, p. 6 available at <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>

8 Employment Rights Act 1996, <http://www.legislation.gov.uk/ukpga/1996/18/contents>.

9 National Minimum Wage Act 1998, Section 1 <http://www.legislation.gov.uk/ukpga/1998/39/section/1>.

10 Working Time Regulations 1998, <http://www.legislation.gov.uk/uksi/1998/1833/contents/made>.

11 Health and Safety at Work etc. Act 1974, <http://www.legislation.gov.uk/ukpga/1974/37>.

12 Equality Act 2010, <http://www.legislation.gov.uk/ukpga/2010/15/contents>

Working with Victims

Working with victims of human trafficking requires both an understanding of their experience and a commitment to the protection of their individual rights and personal safety. Victims of trafficking have usually suffered serious physical and psychological trauma, sometimes over a significant period of time. Some victims may still be at significant risk of harm from their traffickers, and their safety and confidentiality is paramount. At the time that they exit the situation of exploitation, victims will also likely have no money, no accommodation, unclear immigration status, and may be suffering a variety of physical and mental health problems. Their needs are accordingly both pressing and complex, and require a comprehensive and coordinated response by service providers and responsible agencies. At the heart of any response must be a commitment to promoting and protecting the rights and agency of victims, and restoring their dignity and sense of autonomy and self-worth.

The first part of this Guide addresses some of the immediate issues facing potential victims, including referral to the National Referral Mechanism and available immigration remedies, which may need to be addressed before victims are able to consider their rights to compensation. In all matters, the advice of trusted experts and legal professionals should be sought where appropriate. At the end of this Guide you will also find a list of relevant support organisations and agencies, which may provide assistance in meeting the physical, psychological, and legal needs of victims.



Preliminary Issues: Victims' Status

A. The National Referral Mechanism (NRM)

The National Referral Mechanism (NRM) was introduced in 2009 to identify and support victims of trafficking in the UK. The NRM is a structured process that centres on the Home Office and the UK Human Trafficking Centre (UKHTC) as the 'competent authorities' that formally decide whether a person is a victim of trafficking. Potential victims are referred to the 'competent authorities' by designated 'first responders', including police, local authorities, and specified NGOs (see list below). It is very important to remember that adult potential victims must have the referral process and its consequences explained to them, and give their *informed consent* prior to referral.

If the competent authority considers that there are 'reasonable grounds' to believe that the person is a victim of trafficking, then the potential victim will be granted a 45-day 'reflection and recovery period'. During this period they are provided with accommodated or outreach support by the Salvation Army and its subcontractors. This support should include assisting victims to access legal assistance regarding both their immigration status and their options for compensation.

During the 'reflection and recovery' period the competent authority makes a more detailed assessment of the potential victim's case, and finally makes a 'conclusive decision' as to whether the person meets the definition of a victim of human trafficking.

Figure 1 outlines the basic process of an NRM referral.

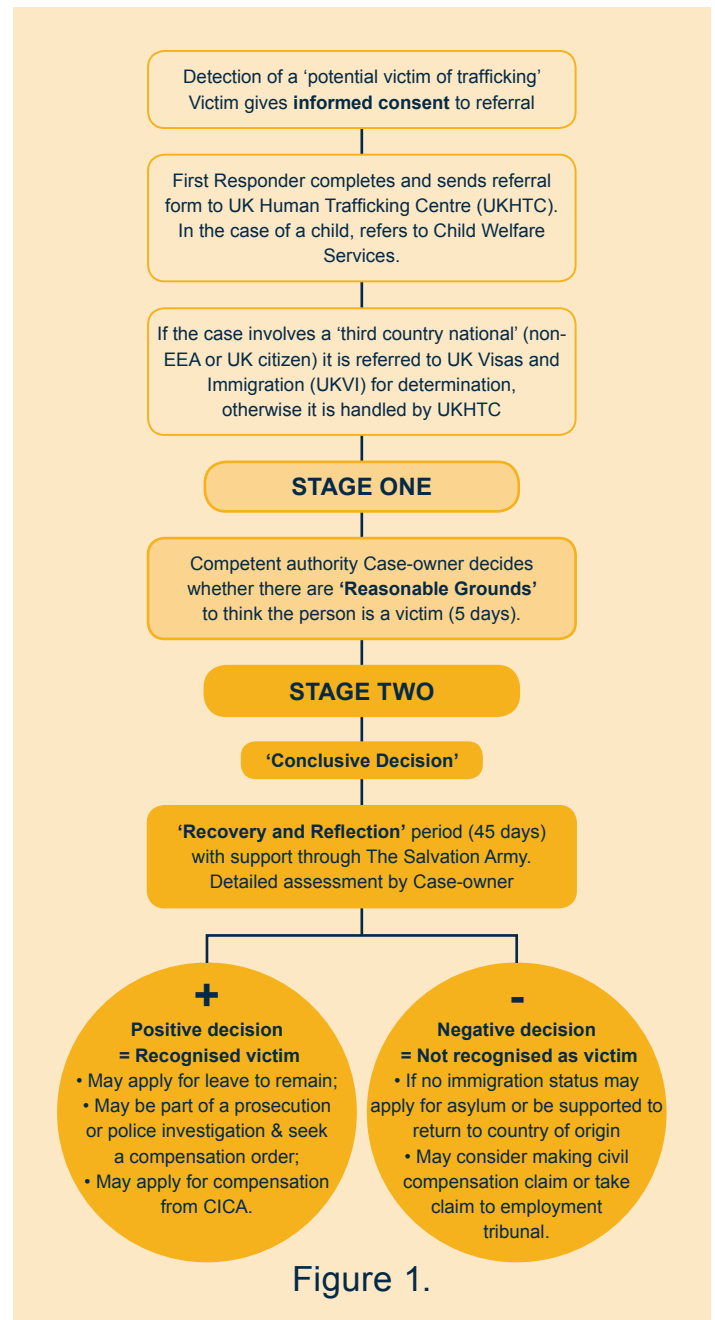


Figure 1.

B. Historic Victims

There is no time limitation on when victims of trafficking for labour exploitation may be referred into the NRM process to have their victim status acknowledged and their assistance needs assessed. In the past, Home Office guidance allowed the competent authorities to give negative decisions in "historic" cases, which did not deny that someone may have been a victim in the past, but excluded them from being treated as victims and entitled to appropriate assistance.¹³ However in 2013, this guidance was found to be wrong,¹⁴ and the decision as to an individual's victim status and their assistance needs must now be separate determinations. While a historic victim must be recognised as a victim by the NRM process, the level of assistance and support offered to them will depend on their current needs.

¹³ The Anti-Monitoring Group, (2013) *Hidden in Plain Sight*, p. 30.

¹⁴ *Atamewan, R (on the application of) v SSHD* [2013] EWHC 2727. See judgment at <http://www.bailii.org/ew/cases/EWHC/Admin/2013/2727.html>.

Non-Financial Legal Remedies

A. Investigation and Prosecution of Traffickers

The UK authorities have a duty to investigate and prosecute potential cases of human trafficking, slavery or forced labour, in accordance with Article 4 of the European Convention on Human Rights (ECHR). In particular, the police have a duty to carry out a prompt and effective investigation of human trafficking once a credible case had been brought to their attention, whether or not the complaint was made by the victim.¹⁵ Where other agencies, such as the Home Office, receive a credible allegation of trafficking, they are likewise under a duty to trigger a police investigation.¹⁶

The Metropolitan Police have a Trafficking and Kidnap Unit that specialises in human trafficking investigations and provides support to investigations at the London borough level. The National Crime Agency (NCA) also hosts the UKHTC which provides tactical advice and support to police and NGOs (see below contact list for details). These specialist agencies should be contacted for advice in cases where the victim wishes to report his or her exploitation. In cases involving the agriculture, horticulture, and food packaging or processing industries, the Gangmaster's Licensing Authority (GLA) may also be notified and carry out investigations.

B. Legal Aid

While recent funding cuts have removed immigration matters from legal aid, an exception has been made for victims of trafficking, and victims are entitled to legal aid for applications for leave to remain and asylum. However a victim is only entitled to legal aid once she or he has been referred into the NRM process and received a positive decision (reasonable grounds or conclusive). This means that a victim generally cannot obtain legal aid for advice prior to, and about the referral itself, despite its potential consequences and complexity. There can be exceptions however, and in one recent case the court decided that the particular vulnerability of a potential victim required that legal aid be provided prior to referral.¹⁷

C. Non-criminalisation of Victims

As a matter of international law, victims of human trafficking should not be detained, prosecuted or punished for crimes they are forced to commit as a result of being trafficked.¹⁸ UK courts have confirmed that where the victim has committed a criminal act as a direct consequence of being trafficked, no prosecution or imposition of penalties should occur.¹⁹

Where victims have been forced to commit crimes, and a prosecution has commenced, the prosecution should in most cases be discontinued.²⁰ Where victims have not been identified until after they have been prosecuted

Case Study: Overturning the conviction of a child victim of trafficking

T, a Vietnamese citizen, was a child when he arrested for cannabis cultivation during a raid on a grow house. During his trial, the judge suspected that he may be a victim of trafficking, but as the issue was never raised, the trial continued and T was convicted and sentenced to two years detention. While serving his sentence, it was determined that T was a victim of trafficking, but his solicitors were not informed until a year later. An appeal was subsequently brought, and T's conviction was overturned.²¹

¹⁵ *Rantsev v Cyprus and Russia* [2010] 51 EHRR 1

¹⁶ *Atamewan, R (on the application of) v SSHD* [2013] EWHC 2727

¹⁷ See *Gudanaviciene & Ors v Director of Legal Aid Casework & Anor* [2014] EWHC 1840 (Admin) (13 June 2014), available at <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1840.html>

¹⁸ See EU Trafficking Directive, Article 8.

¹⁹ *L, HVN, THN, T v R* [2013] EWCA Crim 991

²⁰ See Crown Prosecution Service, *Legal Guidance*, 'Human Trafficking and Smuggling', available at http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a16

²¹ *L, HVN, THN, T v R* [2013] EWCA Crim 991

and convicted, they can appeal to have their convictions overturned. Victims can also apply to the Criminal Cases Review Commission to have their case reviewed.²²

D. Immigration Remedies

Victims who are not UK or EEA nationals may want to seek immigration remedies in order to remain in the UK. EEA nationals may also seek immigration remedies that allow them to remain in the UK and access benefits, without having to ‘exercise treaty rights’ (i.e. work or study). Although a positive conclusive grounds decision does not guarantee an immigration remedy, the following options may be available to such victims under certain circumstances:

Discretionary Leave

Discretionary Leave may be granted to victims of trafficking who have a positive conclusive decision in three situations:²³

- The victim is cooperating with an ongoing police investigation and their presence is necessary. Discretionary leave is generally for 12 months and 1 day, which is extendable. The police must formally request that the victim be granted leave on this basis;²⁴
- The victim has lodged a compensation claim against their trafficker, discretionary leave would help them secure justice, and it would be unreasonable for them to pursue the claim outside the UK; or
- The personal circumstances of the victim are so compelling that discretionary leave is considered appropriate and should consist of a minimum 12 months and 1 day and maximum 30 months, determined by the facts of the case. UKVI guidance to Competent Authorities provides the example of a victim who should be allowed to finish a course of medical treatment that would not be readily available if they were to return home.²⁵

Asylum or Humanitarian Protection

If the victim is unable to return to their country of origin due to fear of persecution or serious harm, they may qualify for leave to remain as a refugee or for humanitarian protection. The fact that the victim has been trafficked will not be a ground, in itself, for granting refugee status; however the victim may be able to establish that they fit one of the recognised grounds, such as “membership of a particular social group”, where trafficking victims as a group are at risk of persecution in the country of origin.²⁶ For example, the Home Office’s guidelines recognise that female victims of trafficking for sexual exploitation may face serious consequences if they return to their home country, including reprisals or retaliation from traffickers, discrimination from their community and families, and the risk of being re-trafficked.²⁷ Such risks may also be present in cases involving male victims or victims of labour exploitation, especially where their home country has limited protection and reintegration programmes in place.

Article 4 of the ECHR, which prohibits slavery, servitude and forced or compulsory labour, can also strengthen immigration applications and asylum claims. In particular the European Court of Human Rights has said that: “States were not permitted to leave [a victim of trafficking] unprotected or to return her to a situation of trafficking and exploitation”.²⁸

Where issues of immigration status arise, it will be important to secure immigration advice from a qualified solicitor, barrister or OISC-regulated adviser.

²² See <http://www.justice.gov.uk/about/criminal-cases-review-commission> for details.

²³ UK Home Office, *Discretionary Leave*, pp. 5 and 10, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312346/discretionaryleave.pdf

²⁴ See UK Home Office, *Victims of Trafficking – Competent Authority Guidance*, p. 101, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298421/traffickingcompetent.pdf.

²⁵ *Ibid* at p. 98.

²⁶ UK Courts and Tribunals have previously found that women victims of trafficking from certain countries form a particular social group e.g. *SB (PSG – Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002; *AZ (Trafficked women) Thailand CG* [2010] UKUT 118 (IAC);

²⁷ UK Home Office, *Victims of Human Trafficking: guidance for frontline staff*, p.25, available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/275239/Human_trafficking.pdf.

²⁸ *Rantsev v Cyprus and Russia* (Application no. 25965/04), paragraph 271.

Compensation

A. What are the options for victim compensation?

Compensation Order: When a defendant is convicted for trafficking or other offences, the Court may, under Section 130 of the *Powers of the Criminal Courts (Sentencing) Act 2000*, make an order requiring that the defendant pay compensation to the victim.

Civil Claim: A victim of trafficking may bring a claim in the County Court based on civil law actions such as harassment, false imprisonment, and breach of contract. A victim could also bring a claim under the *Human Rights Act 1998* against a public body or the UK, for example, for failing to properly investigate their case.

Employment Tribunal: A victim of trafficking may bring a claim to an employment tribunal for employment-related abuses such as failure to pay the national minimum wage, for unlawful deductions, or for discrimination.

Criminal Injuries Compensation Authority (CICA) Claim: A victim of trafficking might also pursue a claim via the Criminal Injuries Compensation Scheme, a fund designed to compensate 'blameless' victims of violent crime, if he or she has sustained a personal injury within Great Britain directly attributable to being a victim of a violent crime.²⁹

Case Study: Victim of exploitation in the construction industry awarded over £60,000 by the Employment Tribunal

A father of three from the Czech Republic came to the UK in 2009 looking for work. He met a man, G, who promised to find him work, and to make all the necessary arrangements. The victim trusted him, and relied on him as G spoke English and the victim did not. However G exploited the victim, and put him in work in which he was mistreated, housed in a small room with three other men, and given only bread and butter to eat. When tried to leave, he was 'traded' and exploited by a second man H, who treated him even more poorly. The victim was forced to live in a caravan with no heat or running water, was fed very little, and was threatened with beatings. The victim worked for over a year on building sites and house renovations, and was paid only £20 per week. He was later exploited by a third man, K, before leaving and finding help through a charity.

The victim took a claim against his 'employers' to the Employment Tribunal. The victim succeeded in his claims for failure to pay the National Minimum Wage, failure to pay holiday pay, failure to provide particulars of employment, and race discrimination. The employers were ordered to pay over £60,000 in compensation.

B. What kinds of damage or loss can be compensated?

Compensation Order: Compensation can be awarded for personal injury, loss or damage resulting from an offence. In deciding the amount of compensation to be paid, the court will consider the defendant's means and ability to pay. Usually compensation orders do not include unpaid wages during the period of exploitation. However in a recent case, where the traffickers' assets were confiscated under proceeds of crime legislation, a victim of trafficking for labour exploitation was awarded an amount for the value of the work she was forced to carry out (see box below).

Civil Claim: The compensation available in civil claims depends on the claim that is made. In general compensation will aim to 'make good' the damage or loss suffered by the victim as a result of the civil law

²⁹ Criminal Injuries Compensation Authority, *Victims of Human Trafficking and the Criminal Injuries Compensation Scheme*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/351337/human-trafficking-leaflet.pdf

breach (e.g. the harassment or breach of contract). Compensation may be awarded for psychiatric harm, anxiety, loss of earnings, pain, suffering and loss of amenity. Extra, or ‘aggravated’ damages may be awarded in cases involving deceit, false imprisonment and assault, or where the claimant’s “essential human integrity” has been compromised;³⁰ and ‘exemplary’ damages may be awarded where the trafficker has made a significant profit from these actions.

In human rights claims, UK courts and the European Court of Human Rights may award damages, cancel illegal decisions or order public authorities not to take actions that would be unlawful. Previously cases have been taken where the UK authorities have failed to properly investigate cases of trafficking or to protect victims from further harm.

Employment Tribunal: In most cases compensation aims to put the worker in the position they would have been in had their employer not acted wrongfully (e.g. by failing to National Minimum Wage). These damages usually account for financial losses, such as loss of earnings, unfair or constructive dismissal, and unpaid wages and overtime. Compensation for ‘hurt feelings’ may also be granted in a small minority of claims, most notably for discrimination.

If a victim is awarded compensation at the Employment Tribunal and the employer fails to pay, the victim can force them to do so by requesting that the local County Court send an enforcement officer. This will cost £40 and require the employee to submit an “Application to Enforce an Award” form along with a copy of the Employment Tribunal’s decision to the County Court. Legal aid is not available for these enforcement actions. However, various solicitor firms do offer assistance to victims of trafficking on a pro bono basis for enforcement actions.

CICA Claim: There are a number of payments available as remedy under the Criminal Injuries Compensation Scheme,³¹ with a maximum possible award of £500,000.³² The two most relevant are injury payments and loss of earnings payments. Annex E of the Scheme outlines the amount of compensation payable to a victim based on the type of injury suffered, and lists a specific amount for each particular injury. The Scheme provides compensation for those victims suffering mental injuries that have a “substantial adverse effect on a person’s ability to carry out normal day-to-day activities for the time specified”.³³ Loss of earnings payments may also be available if, as a result of their injury, the victim has no or limited capacity for paid work.

Case Study: Salford couple ordered to pay victim of domestic servitude £100,000 in compensation.³⁴

Ilyas and Tallat Ashar were jailed in October 2013 after a young Pakistani woman was found sleeping in their cellar in 2009. The victim had been repeatedly raped and forced to work as a servant at the family’s properties as a child, having been trafficked into the UK when she was about 10 years old. The couple were sentenced to imprisonment and the Court of Appeal extended their jail terms to 15 years and six years respectively, after their initial sentence was described as “unduly lenient”. Following a hearing under the Proceeds of Crime Act, the County Court ordered that the couple pay £100,000 compensation to the victim and repay £42,000 for benefits falsely declared in her name. The judge calculated the value of the work carried out by the girl when she was being exploited based on the minimum wage, assuming she worked for 12 hours a day, seven days a week, during her long period of exploitation.

³⁰ See *AT v Dulghieru* [2009] EWHC 225 (QB).

³¹ See Ministry of Justice, *Criminal Injuries Compensation Scheme* 2012, paragraph 30.

³² *Ibid*, paragraph 31.

³³ *Ibid*, Annex E, p. 47.

³⁴ Details from *Cellar slave girl: Salford couple must pay victim £100,000*, BBC News, 15 October 2014, <http://www.bbc.co.uk/news/uk-england-manchester-29559771>

C. How do I apply for compensation?

Compensation Order: The Crown Prosecution Service must formally request a compensation order or the Court may simply make the order. The police should advise victims of the possibility of compensation, and if the victim wishes, the police should then ask the Crown Prosecution Service to request compensation on the victim's behalf.³⁵ If passed, a new provision on reparation orders in the *Modern Slavery Bill*, currently passing through Parliament, will require the court to consider making an order in all cases where the exploiter is convicted of slavery, forced labour or human trafficking, whether or not requested by the prosecution.³⁶

Civil Claim: A civil compensation claim is usually started in the County Court, by completing a claim form and providing details of the claim, together with payment of the filing fee (if not eligible for a fee waiver – see below).

Employment Tribunal: Employment Tribunal claims can be made by completing an online form,³⁷ or by completing and posting a paper form.³⁸ Before making a claim, most employees must first undergo 'early conciliation' with the Advisory, Conciliation and Arbitration Services (ACAS),³⁹ and provide an 'early conciliation certificate number' with the application form.

CICA Claim: Applications to the Criminal Injuries Compensation Authority can be made online.⁴⁰ A hotline is also available: 0300 003 3601. Victims will need to provide the following information with their applications: (1) evidence from a competent authority confirming their identification as a potential victim of human trafficking; (2) the relevant Crime Reference Number (which the Police will have provided); (3) details of the incident including the date; and (4) details of injuries and any medical treatment sought.

D. What are the legal requirements?

Compensation Order: For a compensation order to be made, the exploiter must be identified, prosecuted and convicted of an offence, though it need not be an offence of human trafficking. Evidence of the amount of loss or damage will generally need to be provided, and the court may decide not to make a compensation order if the case is not straightforward or simple.⁴¹

Civil Claim: There is no specific law that sets out the legal requirements for a victim of trafficking to bring a civil claim against their perpetrator. Instead, a claim would be brought based in tort law (e.g. for personal injury or harassment) or contract law (e.g. for unpaid wages).

Employment Tribunal: Most claims require the victim to be a "worker" or "employee" as defined under the relevant legislation. This generally requires the victim to have an employment contract (this may be either written or oral). Before proceeding with a claim, the parties must also attempt to resolve the dispute using ACAS. If conciliation is unsuccessful, ACAS will issue a certificate that will need to be submitted to the Employment Tribunal before it will hear a claim.

CICA Claim: A person is eligible to bring a claim if they have sustained a personal injury directly attributable to a 'crime of violence', which is defined to include crimes involving a physical attack, threats of violence, or sexual assault. For victims of trafficking, it is important to note that neither human trafficking or forced labour are specifically listed as 'crimes of violence' under the Scheme, and they must therefore demonstrate that

³⁵ <http://content.met.police.uk/Article/Can-I-claim-for-compensation/1400007084461/1400007084461>

³⁶ See Section 8, Modern Slavery Bill 2014.

³⁷ Available at <https://www.employmenttribunals.service.gov.uk/employment-tribunals>

³⁸ For address and other details see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306273/employment-tribunal-making-claim-t420.pdf

³⁹ For details on this process and the application form, see <http://www.acas.org.uk/earlyconciliation>

⁴⁰ <https://www.gov.uk/claim-compensation-criminal-injury>

⁴¹ See further, Crown Prosecution Service, 'Sentencing and Ancillary Orders', *Prosecution Policy and Guidance*, (September, 2011) available at http://www.cps.gov.uk/legal/s_to_u/sentencing_and_ancillary_orders_applications/index.html

their exploitation involved violence or fear of violence. A CICA award will also not be made unless the person has been conclusively identified as a victim by a competent authority under the NRM, or has been granted temporary protection, asylum or humanitarian protection.⁴²

E. Is there a time limit?

Compensation Order: A compensation order is usually made at the time of sentencing, following the conclusion of the prosecution and conviction.

Civil Claim: The time in which most claims can be brought is six years.⁴³ However, with respect to personal injury claims the limitation is three years⁴⁴ and for human rights claims it is one year.⁴⁵ The time limit can be extended in limited circumstances.

Employment Tribunal: The majority of claims must be brought within 3 months of the wrong occurring. However, where this is not possible, and the time limit has been missed, the Tribunal can extend the time limit. Again, the grounds for extension of time are limited and so it is advisable to make a claim within time.

CICA Claim: An application should be made as soon as reasonably practicable after the crime, and in any event, within two years after the date of the incident.⁴⁶ However, a claims officer may extend the period for an application where he or she is satisfied that due to exceptional circumstances the victim could not have applied earlier or the evidence presented means the application can be determined without extensive enquiries.⁴⁷

F. Is legal aid available?

Compensation Order: Legal aid is not available, on the basis that the Crown Prosecution Service requests compensation orders on behalf of the victim, and there is therefore no requirement for legal assistance. However victims may nonetheless benefit from legal assistance in quantifying and gathering evidence of their injury or damage.

Civil Claim: Legal aid is available for civil legal services provided in relation to damage claims arising from the trafficking or exploitation⁴⁸ and for claims under employment law connected to the exploitation of the individual.⁴⁹ Legal aid may also be available as exceptional case funding, where it is considered that failure to provide the claimant with funding would breach, or threaten to breach, the claimant's human rights.⁵⁰

Employment Tribunal: Legal aid is available for assistance in making claims under employment law, however it is only available for preparation of the Employment Tribunal case. Representation at the Employment Tribunal is not covered and so exceptional case funding will need to be sought.⁵¹

CICA Claim: Legal aid is not available for CICA applications.⁵²

42 Ministry of Justice, *Criminal Injuries Compensation Scheme* 2012, paragraph 15.

43 Limitations Act (1980), Sections 2, 4A, 5 and 9.

44 *Ibid*, Section 11.

45 Human Rights Act (1998), Section 7(5).

46 See Ministry of Justice, *Criminal Injuries Compensation Scheme* 2012, paragraph 87.

47 *Ibid*, paragraph 89.

48 Para 32(3) Schedule 1 Legal Aid, Sentencing and Punishment of Offenders Act 2012

49 Para 32(2) Schedule 1 Legal Aid, Sentencing and Punishment of Offenders Act 2012

50 *R (Gudanaviciene and 5 others) v (1) Director of Legal Aid Casework and (2) the Lord Chancellor* [2014] EWHC 1840 (<http://www.bailii.org/ew/cases/EWHC/Admin/2014/1840.html>)

51 Part 3 Schedule 1 Legal Aid, Sentencing and Punishment of Offenders Act 2012

52 Part 3, Schedule 1, Legal Aid, Sentencing and Punishment of Offenders Act 2012

G. How much does it cost?

Compensation Order: As the Crown Prosecution Service requests compensation orders on behalf of the victim, there is no cost to the victim.

Civil Claim: The cost of a civil claim can include both fees associated with filing a claim and lawyers fees. The cost of filing a claim depends on the amount of compensation claimed. However the fee can be waived by applying for a fee remission and demonstrating that the victim falls below the income threshold.⁵³

If the victim is eligible for legal aid, then there will be no cost in being legally represented, and the victim will be protected from having orders made requiring them to pay the defendant's fees if they lose the claim. If the victim is in employment they may be required to pay a contribution to their legal costs. Where the victim is successful in their claim and receives compensation then they may be asked to pay a proportion of the legal fees incurred.⁵⁴ If the victim is not eligible for legal aid, she or he will need to pay the costs of her or his own lawyer, and may be liable to pay the costs of the defendant/trafficker if the claim is unsuccessful.

Employment Tribunal: There are now fees for making a claim in the Employment Tribunal. Current fees are £160 for more 'basic' unpaid wages claims, and £250 for more 'complicated' discrimination claims. As above, these fees can be waived if the victim is eligible and applies for a fee remission.

CICA Claim: There is no fee for a CICA claim. However, proving some injuries, in particular psychological injury, may require obtaining reports that may have some associated costs.

H. What other barriers exist?

Compensation Order: The most significant barrier is the fundamental requirement that there has been an identification of the perpetrator, a prosecution and a successful conviction. Additionally, if an order is made, the victim will not be able to recover the award until there is no further possibility of appeal.⁵⁵

Civil Claim: It is often difficult for victims to identify their perpetrator – the person against whom the civil claim should be brought. If identified, it is often problematic to find the defendant or to locate and secure their assets. In such cases, an order freezing the assets of the alleged trafficker can be sought at the very beginning of proceedings. This should prevent the trafficker from transferring their assets abroad and out of the reach of the courts should an award of damages be made against them.

Employment Tribunal: In order to bring a claim in an employment tribunal, a victim must meet the definition of "employee" or "worker". Victims of trafficking, who do not have the legal right to work in the UK during their period of exploitation, will not have a valid employment contract. Consequently, they will generally be unable to bring contract claims, including for unpaid wages or unfair dismissal. However, a recent Supreme Court decision has held that undocumented migrants can bring discrimination claims against their traffickers/employers, and has opened up the possibility of bringing other claims on public policy grounds.⁵⁶

In addition, some victims of trafficking are enrolled as self-employed without their knowledge or by force. Usually self-employed persons are not considered 'employees', however if the Tribunal concludes that the victim was not genuinely self-employed then compensation may still be awarded.

⁵³ See HM Courts & Tribunals Service, *Court and Tribunal Fees – Do I have to pay them?*, Form EX160A, available at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-from-07-october-eng.pdf>

⁵⁴ Civil Legal Aid (Statutory Charge) Regulations 2013

⁵⁵ Section 132, Subsection (1), Powers of the Criminal Courts (Sentencing) Act 2000.

⁵⁶ *Hounga v Allen & Anor* [2014] UKSC 47 (30 July 2014)

CICA Claim: There are a number of reasons for which a CICA award will be reduced or withheld. These include:

- i. If the criminal injury was not reported to the police as soon as reasonably practicable (although the age and capacity of the victim will be taken into account, and whether the effect of the incident on the victim was such that it could not have been reasonably reported earlier);
- ii. An applicant fails to fully cooperate with the police or the claims officer;
- iii. Where an applicant's conduct before, during or after the incident or character in general make an award inappropriate; and
- iv. Where an applicant has previous convictions.⁵⁷

Case Study: Employment Tribunal claims by undocumented workers – Allen v Houna⁵⁸

Mary Houna was brought from the Nigeria to the UK to work as a domestic servant in 2007. At that time she was approximately 14 years old and had been promised schooling and £50 a month in wages, but received neither. Instead she was forced to work, subjected to serious physical abuse, and finally thrown out of the house. She eventually sought help, and the authorities found there were reasonable grounds to believe she was a victim of trafficking. Yet her claims for compensation were ultimately rejected by the Court of Appeal, because at the time of her exploitation she had no right to work in the UK.

Ms Houna appealed to the Supreme Court and her appeal was heard in May 2014. The Court decided that the fact Ms Houna was undocumented was not related to her discrimination claim, and so could not prevent her from seeking compensation on this basis. The Court also said that it was against public policy to deny victims of trafficking compensation in such circumstances.

⁵⁷ Ministry of Justice, *Criminal Injuries Compensation Scheme 2012*, paragraph 18 and 22-27.

⁵⁸ *Allen v Houna* [2012] EWCA Civ 609. For details and updates see <http://atleu.org.uk/our-recent-cases/>

Comparison Chart of Compensation Avenues

	Compensation Order	Civil Claim	Employment Tribunal Claim	CICA Claim
Definition	Order requiring convicted criminal defendant to pay compensation for personal injury to the victim.	Claim brought in County Court for tort (i.e. harassment, false imprisonment) or breach of contract.	Employment related claim brought in an employment tribunal for such things as failure to pay NMW, unlawful deductions, or discrimination.	Personal injury claim as victim of violent crime from public victim fund.
Damage or loss compensated	Compensation award for personal injury, loss or damage. Award may not exceed £5000 in the Magistrate's Court.	Financial award to restore victim to position they would have been in had exploitation (tort or contract breach) not occurred.	Compensatory damages for financial losses and injury to feelings in discrimination and harassment cases.	Can recover for injury and loss of earnings but not unpaid wages. Maximum award is £500,000.
Requirements	The Crown Prosecution Service must request or Court must order. The perpetrator must be identified, prosecuted and convicted.	Depends on the type of claim.	Claimant must be "worker" or "employee" working under an employment contract. The contract does not have to be in writing.	Must be victim of violent crime. Must meet residency requirements or if a victim of trafficking have been referred into NRM or made asylum application.
Time Limit	Made following a prosecution and conviction.	For most claims the time limit is 6 years, and 3 years for personal injury.	Claims must be brought within 3 months.	As soon as reasonably practicable, and within 2 years.
Legal Aid	Not necessary.	Available for damages claims.	Available for preparation of the case.	Not available.
Cost	No cost.	Fees for filing claim and lawyers fees, except where fee remission granted and where covered by legal aid.	Fees for filing claim and lawyers fees, except where fee remission granted and where covered by legal aid.	No cost.
Barriers	Requires a prosecution and conviction.	Complexity and cost where legal aid not available. Difficulty in identifying and locating perpetrator.	Generally an employment contract must exist. ACAS process must be attempted first.	Various grounds for reduction and denial of award. Award not granted until conclusively identified as a victim or granted asylum.

Contacts for Legal Assistance

Advice on Individual Rights on Europe (AIRE) Centre

Website: www.airecentre.org

Address: The AIRE Centre, Third Floor, 17 Red Lion Square, London, WC1R 4QH

Telephone: 020 7831 4276

Email: info@airecentre.org

The AIRE Centre promotes awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. The AIRE Centre takes cases to the European Court of Human Rights, provides legal advice to other lawyers and advisers in the voluntary sector, provides legal advice to individuals directly, carries out training and drafts reports and other publications.

Anti Trafficking and Labour Exploitation Unit (ATLEU), Islington Law Centre

Website: <http://atleu.org.uk>

Address: 232 Hornsey Road, London N7 7LL

Telephone: 020 7700 7311

Email: atleuteam@islingtonlaw.org.uk

ATLEU is a charity providing legal representation to victims of trafficking and labour exploitation. ATLEU assists victims to obtain safety, recovery and redress.

Anti-Trafficking Legal Project (ATLeP)

Website: <http://www.atlep.org.uk>

Email: info@atlep.org.uk

ATLeP is a network of solicitors, barristers and specialist practitioners who advise, represent and support victims of trafficking and other vulnerable people.

Legal Services Agency (LSA)

Website: <http://www.lsa.org.uk>

Address: Fleming House, 134 Renfrew Street, Glasgow G3 6ST

Telephone: 0141 353 3354

Email: lsa@btconnect.com

Based in Scotland, LSA is a Law Centre and Charity which provides skilled legal advice, assistance and representation to vulnerable people and those who would otherwise find it difficult to get legal advice. Their services focus on women and young people.

First Responders & Support Providers

UK Human Trafficking Centre (UKHTC)

Website: <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre>

Telephone: 0844 778 2406

Email: UKHTC@nca.x.gsi.gov.uk

The UK Human Trafficking Centre is a multi-agency organisation under the National Crime Agency (NCA). It is one of the Competent Authorities in trafficking cases under the National Referral Mechanism.

Gangmasters Licensing Authority (GLA)

Website: <http://gla.defra.gov.uk>

Telephone: 0845 602 5020

Email: licensing@gla.gsi.gov.uk

The Gangmasters Licensing Authority (GLA) was set up to protect workers from exploitation. The GLA licensing scheme regulates businesses who provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law.

Police forces

Directory: www.online.police.uk/forces.htm

Local authorities

Directory: www.gov.uk/find-your-local-council

Health and Social Care Trusts (Northern Ireland)

Directory: www.healthandcareni.co.uk/index.php?link=trusts

The Salvation Army (TSA)

Website: www.salvationarmy.org.uk/uki/trafficking

Telephone: 020 7367 4500

Email: info@salvationarmy.org.uk

Helpline: 0300 3038151

The Salvation Army is responsible for delivering the UK government's contract to manage support services for adult female and male victims of Human Trafficking. They offer support to victims through accommodation and support services including: legal advice; health care; counselling; and educational opportunities

The Poppy Project

Website: www.eavesforwomen.org.uk/about-eaves/our-projects/the-poppy-project

Telephone: 020 7735 2062

The Poppy Project has 14 bed spaces for women who need accommodation and who over 16 years of age and trafficked into the UK. Support workers work with women to create individual support plans which include financial help, support accessing health services and treatment, specialist counselling, criminal and immigration-related legal advice, education and employment opportunities and other support as needed.

Migrant Help

Website: www.migranthelp.org

Telephone: 01304 203977

Helpline: 07766 668781

Migrant Help is the lead contractor for victim support in Scotland and is a sub-contractor to The Salvation Army in England and Wales.

The Medaille Trust

Website: www.medaille.co.uk

Address: C/O Caritas Diocese of Salford, Cathedral Centre, 3 Ford Street, Salford, M3 6DP

Email: enquiries@medaille-trust.org.uk

The Medaille Trust is a charity founded to help women, young men and children who have been trafficked. They provide safe housing and physical and psychological assistance, raise awareness trafficking in the UK and conduct campaigns.

Kalayaan

Website: www.kalayaan.org.uk

Telephone: 0207 243 2942

Kalayaan is the only organisation in the UK providing support services to migrant domestic workers. Kalayaan provides: advice on immigration and employment; support in retrieving passports from employers; training in accessing healthcare and mainstream services; English for speakers of other languages (ESOL) courses; support with reading and writing letters or forms; practical emergency assistance to clients who have recently left abusive employers; a social space for clients.

Barnardos

Website: www.barnardos.org.uk

Helpline: If you think that a child is in immediate danger dial 999. Children seeking help should call Childline on 0800 11 11. Alternatively, call 0808 800 5000 to discuss your concerns with the NSPCC 24 Hour Child Protection Helpline.

Barnardos works with children who have been trafficked into the UK.

Unseen

Website: www.unseenuk.org

Unseen works towards the eradication of slavery and offers support services for victims.

Trafficking Awareness Raising Alliance Scotland (TARA)

Website:

www.saferglasgow.com/what-we-do/support-services-for-victims/support-to-victims-of-human-trafficking.aspx

Helpline: If you wish to make a referral or have an enquiry about the service call 0141 276 7729.

TARA works with women over the age of 18 yrs who may be victims of trafficking for commercial sexual exploitation. The team provides support to access safe accommodation; emotional support; advice and guidance; advocacy; and safety and care plans.

NSPCC National Child Trafficking Help Centre (CTAC)

Website: www.nspcc.org.uk/Inform/research/ctail/ctail_wda84866.html

Helpline: 0808 800 5000 / Email: help@nspcc.org.uk

CTAC is a specialist service providing information and advice to any professional working with children or young people who may have been trafficked into the UK

Black Association of Women Step Out (BAWSO)

Website: www.bawso.org.uk

Telephone: 029 20644 633

Email: Info@bawso.org.uk

Helpline: 0800 7318147

BAWSO is an all Wales, Welsh Government Accredited Support Provider, delivering specialist services to people from Black and Ethnic Minority backgrounds who are affected by domestic abuse and other forms of abuse, including human trafficking.

New Pathways

Website: www.newpathways.org.uk

Telephone: 01685 379 310

Email: enquiries@newpathways.org.uk

New Pathways provides specialist counselling and advocacy services for women, men, children and young people who have been affected by rape or sexual abuse.

Others

The Helen Bamber Foundation

Website: www.helenbamber.org
Email: reception@helenbamber.org
Phone: 0207 631 4492

The Helen Bamber Foundation provides practical support and treatment to victims of trafficking to deal with their pasts and build new futures.

The Citizens Advice Bureau (CAB)

Website: www.citizensadvice.org.uk
Directory: www.citizensadvice.org.uk/index/getadvice.htm

The CAB provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities.

Pay and Work Rights Helpline

Website: <https://www.gov.uk/pay-and-work-rights-helpline>
Telephone: 0800 917 2368

Provides free and confidential telephone advice for workers and employers on workers' rights, including National Minimum Wage and working hours. The helpline has a free translation service available in over 100 languages.

Child Specific Services

Children's Legal Centre

Website: www.childrenslegalcentre.com
Telephone: 01206 877910
e-mail: CLC@essex.ac.uk

Coram Children's Legal Centre provides free legal information, advice and representation to children, young people, their families, carers and professionals.

Children and Families Across Borders (CFAB)

Website: www.cfab.org.uk
Telephone: 020 7735 8941
E-mail: info@cfab.org

CFAB is a unique UK-based charity which identifies and protects children who have been separated from family members as a consequence of trafficking, abduction, migration, divorce, conflict and asylum.

ECPAT UK

Website: www.ecpat.org.uk
Telephone: +44 (0) 207 233 9887
e-mail: info@ecpat.org.uk

ECPAT UK is a children's rights organisation campaigning against child trafficking and exploitation in the UK and on its international aspects.

FOCUS ON LABOUR EXPLOITATION

GUIDE TO LEGAL REMEDIES FOR VICTIMS OF TRAFFICKING FOR LABOUR EXPLOITATION

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