

# The impact of COVID-19 on the availability of legal advice for victims of trafficking and slavery

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## The impact of COVID-19 on victims of trafficking and slavery

ATLEU's experience is that for many victims of trafficking and modern slavery it is not currently possible or safe to provide legal advice remotely. Significant numbers of victims of trafficking do not have access to confidential space, digital devices or the data or wi-fi that they require in order share information with their lawyer or for their lawyer to provide advice that they are sure that they understand. Some victims find the prospect of talking about their trafficking experiences in a remote setting too distressing and with insufficient support available to them afterwards, they may present a serious safeguarding concern. Similarly, many are unable to meet remotely with a medical expert in order for a medico-legal report to be prepared. This means that many victims with cases at an early stage cannot progress at this time. Those with more established cases still require continuity from their legal representative and tend to be anxious about the outcome of their case.

## The impact of COVID-19 on the legal advice sector

The impact of COVID-19 on the legal advice sector is likely to be significant. Most legal aid providers are in a financially precarious situation. Since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) six years ago, 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 service. By 2019-20, the number had fallen to just 47<sup>1</sup>.

Legal aid providers have been faced with significant unforeseen costs in order to enable staff to work remotely and will need to make further investment to ensure that they are able to resume face to face services as soon as possible<sup>2</sup>. They will face obstacles in generating income under a legal aid contract at the usual rate and still have professional obligations to assist their existing clients. In the current climate legal aid providers will not be able to take on unprofitable or high risk cases. They will avoid cases that place pressure on cash-flow and require them to wait years to be paid. **This is highly like to lead to a significant drop in the availability of legal advice for victims of trafficking and modern slavery.**

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<sup>1</sup> <https://www.theguardian.com/law/2019/jul/15/legal-advice-centres-in-england-and-wales-halved-since-2013-14>

<sup>2</sup> Justice Minister, Alex Chalk MP: <https://www.gov.uk/government/news/5-4-million-to-support-legal-advice-sector-during-the-covid-19-pandemic>

## Lack of legal advice for victims of trafficking and slavery

The lack of provision of legal advice for victims of trafficking and modern slavery had been identified as a major concern prior to the pandemic. Legal advice is made available to victims of modern slavery via the legal aid scheme managed by the Legal Aid Agency. In 2018 ATLEU submitted evidence to the [Government's Post-Implementation Review of LASPO](#) raising concerns about the prevalence of advice deserts for victims of trafficking. ATLEU's survey of support organisations found that the north of England was especially poorly served and that victims frequently experienced waiting times of up to 12 months just for an initial appointment with an immigration adviser. Figures suggested that just **1.3%** of those referred into the NRM were able to access legal aid for advice in respect of a potential compensation claim against their trafficker *and* in immigration advice in non-asylum cases.<sup>3</sup>

## The reason for the lack of advice for victims of trafficking and slavery

The primary reason for the paucity of legal advice is that trafficking cases are not financially viable for legal aid providers. The structure of the legal aid payment system requires legal aid providers to work on trafficking cases for as long as 3 years without receiving *any* payment. During this time the legal aid provider must cover all of the costs involved in providing the advice including, the cost of the lawyer's salary and all the associated costs of running a legal practice such as a desk for the lawyer, as well as their management, supervision, training and accreditation. The reality for most legal aid providers is that few can afford to do any of these cases, let alone many. This payment structure results in very few providers developing trafficking expertise. This means that where trafficking cases are taken, many providers deliver poor quality advice, often failing to run important trafficking arguments, not spending the time to explain a victim's case properly and not incurring costs or taking the time necessary to present the right supporting evidence. This results in poor outcomes for victims and an ongoing need for legal advice as victims are given negative decisions, are disbelieved and wait long periods in destitution, struggling to find advice on making a new claim.

## What is different about trafficking cases?

Victims of trafficking are only able to access advice on their trafficking identification case from legal aid providers that hold an immigration and asylum legal aid contract. This means that when victims of trafficking are unable to access immigration advice they are denied assistance with making their trafficking identification case as well as regularising their immigration status. Without this many victims are unable to put forward relevant information and evidence that the Home Office require in order to make a positive Conclusive Grounds decision. The consequence for victims is severe, with many facing a return to exploitation and destitution as a result.

The financial challenges created by the legal aid payment structure is significantly worse in trafficking immigration cases (as opposed to other types of immigration case) because:

- **The average length of case for victims of trafficking is significantly longer** due to the delays in the NRM system. A trafficking identification decision will usually take about 2

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<sup>3</sup> See pages 2-4: [https://drive.google.com/file/d/1SrVQg7nXOtnZXCujuSzgVoj5bfXHn\\_tg/view](https://drive.google.com/file/d/1SrVQg7nXOtnZXCujuSzgVoj5bfXHn_tg/view)

years. Only after a Conclusive Grounds decision is made will the victim's immigration or asylum case be considered. This means the average trafficking case will take at least 2 years and sometimes 3+ years. This is much longer than a standard immigration case.

- **The average cost of running a case for a victim of trafficking is significantly higher** as the cases are more complex. ATLEU estimate this to be an average of over £3000 per case. A competent representative should provide representations and evidence about the victim's trafficking experience as well as seeking supporting evidence for different types of application for leave to remain at an early stage. This can be expensive as victims may need to spend many hours with their lawyer before they will disclose their full story. They have health and protection needs that involve other agencies who the lawyer should liaise with, for example, police, social services, and medical professionals. Medico-legal reports are usually required. For the best outcomes all of this evidence should be provided early to avoid creating waste and cost, where negative decisions would later need to be challenged and victims be supported by health services and charities when they have no other safety net and their chances at recovery are set back.

## **What needs to be done**

ATLEU are calling for an **immediate change** to the way legal aid payments are structured on trafficking cases, with the Ministry of Justice ensuring that the Legal Aid Agency:

- Pay legal aid providers on the basis of the number of hours of advice provided on a trafficking case
- Enable legal aid providers to claim for the hours of advice undertaken every 6 months, during the life of a trafficking case
- Reimburse legal aid providers for any expenses incurred on a trafficking case on a monthly basis (the same time period which a legal aid provider is expected to pay suppliers, such as interpreters or experts, under the terms of a legal aid contract).

**These simple changes can be delivered through existing legal aid mechanisms and would not require additional funding. They are an essential step that must be taken during this crisis to safeguard quality advice, and any advice, for victims of trafficking and slavery.**

## **About ATLEU**

ATLEU secures safety and justice for victims of trafficking and slavery by using and reforming the law. It is the only UK charity providing dedicated and holistic legal advice to victims of trafficking. ATLEU advises victims on: trafficking identification; immigration status; obtaining compensation; and accessing housing, support, subsistence and treatment. ATLEU assists victims before, during and after a referral into the NRM as well as those who choose not to enter. ATLEU provides specialist advice, training and resources to legal practitioners and organisations supporting victims of modern slavery.

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