

Response to Justice Committee Call for Evidence Justice (Sexual Offences and Trafficking Victims) Bill

This submission has been drafted by the Migration Justice Project at Law Centre NI in conjunction with Belfast and Lisburn Women's Aid, Flourish NI and Migrant Help. The four endorsing organisations are members of the Department of Justice's Modern Slavery and Human Trafficking NGO Engagement Group.

About the organisations



Belfast and Lisburn Women's Aid provides specialist support to female victims of trafficking in Northern Ireland. It provides NRM support on behalf of the Department of Justice and also provides support to female victims who are outside the NRM process.



support

Flourish provides long term tailored support to both male and female survivors of modern slavery. Its aim is that survivors are empowered to be able to move on to lead safe independent, resilient lives.

Most of Flourish's clients are post NRM



Law Centre NI seeks to promote social justice in Northern Ireland, using the law as a tool for social change. It provides legal advice and representation in immigration, social security and employment law and provides policy advocacy and training.

Migrant Help is a leading provider of

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



specialist support and accommodation services for adult victims of trafficking and their dependants in the UK. It has dedicated casework teams assisting victims in Scotland, Northern Ireland and England. In Northern Ireland it provides support on behalf of the Department of Justice.

Contents

| | |
|--|----|
| 1.0 Introduction | 3 |
| Proposed role for the Committee: a summary | 4 |
| 2.0 Social security entitlement for survivors of trafficking..... | 5 |
| 3.0 Statutory defence for survivors of trafficking..... | 10 |
| 4.0 Quashing historical convictions relating to exploitation | 13 |
| 5.0 Healthcare entitlement for survivors of trafficking | 16 |

1.0 Introduction

- 1.1. Our organisations support the two trafficking-related provisions contained in the Justice (Sexual Offences and Trafficking Victims) Bill.
- 1.2. Specifically, we support Clause 16 that will extend statutory assistance and support provided under section 18 of the Human Trafficking & Exploitation (Northern Ireland) Act to adult potential victims of slavery, servitude or forced or compulsory labour where there is no element of trafficking.
- 1.3. We also support Clause 17 that removes the requirement for the Department to publish an annual strategy and replaces it with a requirement to publish such strategy at least once every 3 years. While we support extending the strategy's life cycle, we think the Department should be required to publish a Progress Update on an annual basis. Accordingly, we welcome Justice Minister Long's assurance in a recent Assembly debate whereby the Department will continue to produce annual progress report updates.¹
- 1.4. **This current legislative process affords an opportunity for the Committee to secure a number of further amendments and/or ministerial assurances to improve protections for victims of trafficking.**
- 1.5. There are four separate issues that we would like to bring to the Committee's attention. These are the need to:
 - Provide a social security entitlement for recognised victims of trafficking
 - Ensure that the statutory defence protects all victims of criminal exploitation including persons convicted of offences related to Class A drugs
 - Amend the statutory defence to provide retrospective effect and expunge the existing convictions of victims of sexual exploitation for prostitution-related offences.
 - Provide a healthcare entitlement for any person who has gone through the NRM
- 1.6. This paper is divided into separate sections that address the four issues in turn. A brief background to the issue is presented along with recent case studies (the names have been changed). Where relevant, comparisons are made with other jurisdictions. Each section concludes with a proposed role for the Committee.

¹ [Justice \(Sexual Offences and Trafficking Victims\) Bill: Second Stage: 13 Sep 2021: Northern Ireland Assembly debates - TheyWorkForYou](#)

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



Proposed role for the Committee: a summary

- 1.7. In relation to the DOJ Modern Slavery & Human Trafficking Strategy, we invite the Committee to:
 - Amend Clause 16 to require the Department to publish a Progress Update on an annual basis.

- 1.10 In relation to a social security entitlement, we invite the Committee to:
 - Amend the relevant social security legislation to specify that a positive Conclusive Grounds decision provides a right to reside for benefit purposes;
 - Alternatively, the Committee could seek an amendment to Section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 to create a new power for the Department of Justice to award ex gratia payments to all persons with a positive Conclusive Grounds decision. Discretionary Support may provide the means by which this could be delivered.

- 1.11 In relation to the statutory defence, we invite the Committee to:
 - Request an update from the Department in relation to the review of the statutory defence;
 - Recommend that the defence is revised to more fully reflect that 'nonpunishment principle' and to ensure that the defence adequately covers emerging forms of criminal exploitation.

- 1.12 In relation to prior criminal convictions including for prostitution, we invite the Committee to:
 - Request the Department to consider giving retrospective effect to the statutory defence in the upcoming review;
 - As an essential immediate step, seek a ministerial commitment for a timeframe for expunging prostitution-related offences within this current Assembly mandate.

- 1.13 In relation to a healthcare entitlement, we invite the Committee to:
 - Seek an assurance from the Justice Minister that the discretion currently available under Section 18 of the NI legislation extends to medical treatment. The Department should then set out a process by which this discretion could be sought and by which BSO would agree to re-register a patient.
 - If a Ministerial assurance is not provided, the Committee could amend the NI trafficking legislation to provide the Minister with a discretion to direct that a person has access to healthcare;
 - Alternatively, the Committee could amend the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 to clarify that any person who has gone through the NRM retains a healthcare entitlement.

2.0 Social security entitlement for survivors of trafficking

- 2.1 At present, **despite being recognised as survivors of trafficking**, a small number of persons in Northern Ireland are **homeless and destitute**. Committee members may be surprised to note that a positive Conclusive Grounds²³ decision does not, in itself, provide a benefit entitlement.
- 2.2 Social security is extremely important in helping survivors of modern slavery and human trafficking (re)integrate into society. The financial independence afforded by the social security system provides some stability, facilitates access into work and also helps reduce survivors' susceptibility to future exploitation.⁴ The Independent Anti Slavery Commissioner notes that where victims and survivors cannot access the necessary housing and financial support, they can be "drawn back into exploitative or abusive situations".⁵
- 2.3 The current situation, whereby recognised victims of trafficking experience destitution, cannot be reconciled with the victims-centred focus of Northern Ireland's Modern Slavery & Human Trafficking Strategy.

Northern Ireland's Modern Slavery & Human Trafficking Strategy 2021/22⁵ commitments:

PREVENT: Reduce vulnerability to exploitation and re-exploitation. PROTECT: Ensure adult and child victims are provided with appropriate and effective support and protection to help them recover.

Current process

- 2.4 Survivors of trafficking are entitled to statutory support throughout the NRM process, which is provided by Women's Aid or Migrant Help and funded by the Department of

² "Conclusive Grounds decision" is a decision taken by the Single Competent Authority as to whether, on the balance of probabilities, there are sufficient grounds to decide that the individual being considered is a victim of modern slavery (human trafficking or slavery, servitude, or forced or compulsory labour). See Home Office guidance, '[Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the Modern Slavery Act 2015\)](#)' and '[Non-Statutory Guidance for Scotland and Northern Ireland](#)' Version 2:3, June 2021.

⁴ F. David, K. Bryant, J Joudo-Larsen, '[Migrants and their vulnerability to human trafficking, modern slavery and forced labour](#)' IOM (2019).

⁵ Independent Anti-Slavery Commissioner Strategic Plan 2019-2021 Presented to Parliament pursuant to Section 42 (10) (a) of the Modern Slavery Act 2015 October 2019, at para 1.4.1. ⁵Department of Justice, '[Modern Slavery & Human Trafficking Strategy 2021/22](#)' (DOJ, 2021).

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



Justice. The minimum period of statutory support for survivors in NI is currently 45 days.⁶ The Department has discretionary powers to extend the support period⁷ and indeed Justice Minister Long reports that NRM support is routinely provided for “closer to a year, which is the average time taken by a single competent authority to make a conclusive decision”.⁸ The Department’s willingness to exercise discretion by extending NRM support to date is welcome.⁹

- 2.5 Once a person has received a Conclusive Grounds decision, unless she is a British/Irish citizen, she will have to apply for immigration status, which depends on their nationality and date of arrival in the UK. The EU Settlement Scheme is for EEA nationals who arrived before December 2020. Other EEA nationals and non EEA nationals may be eligible to apply for a renewable one year Residence Permit. Some trafficked persons have concurrent asylum claims and must wait for a determination on their asylum claim.
- 2.6 Once a survivor leaves NRM support, her/his benefit eligibility is assessed. Eligibility is determined by immigration status and the relevant residence benefit criteria.

2.7 *Table 1 Entitlement to social security for survivors of human trafficking*

| Person with positive NRM Conclusive Grounds | Immigration status | Entitlement to social security |
|---|---|---|
| Non EEA nationals | If the non EEA victim does not have a concurrent asylum claim, s/he is granted a residence permit (one year renewable Discretionary Leave to Remain) | Yes |
| | If the non EEA victim has a concurrent asylum claim, s/he is generally not granted a residence permit despite being a recognised victim of trafficking. ¹⁰ | No benefit entitlement until a decision on asylum claim |
| EEA nationals who arrive in UK after 30 December 2020 | Residence Permit (one year renewable Discretionary Leave to Remain) ¹¹ | Yes |
| EEA nationals resident in NI by 30 December 2020 | EU Settled Status if resident for 5+ years | Yes |
| | EU Pre Settled Status if resident for < 5 years | No Very limited entitlement ¹² |

⁶ Section 18, ‘Assistance and support pending determination by competent authority’, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

⁷ Section 18(9) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (legislation.gov.uk)

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



- ⁸ Criminal Justice Inspectorate, [‘Modern Slavery and Human Trafficking: An inspection of how the criminal justice system deals with modern slavery and human trafficking in Northern Ireland. \(cjini.org\)’](#) (CJINI, 2020) See para 4.26 for more detail about the extension of NRM support.
- ⁹ In 2019-2020, of the 81 people who entered support, 71 received support for periods in excess of 90 days. See: Official Report (Hansard) Tuesday 13 October 2020 Volume 131, No 6 at p 23.
- ¹⁰ Liz to check with ATMG
- ¹¹ Home Office guidance states: “From 1 January 2021, EEA nationals who receive a positive conclusive grounds decision will automatically be considered for a grant of Discretionary Leave under this policy in the same way as non-EEA nationals currently do.” Home Office, [‘Discretionary Leave considerations for victims of modern slavery’](#) Version 4:0, 8 December 2021 pg 11.
- ¹² A person who has been resident in NI for 2+ years and who can demonstrate poor health/disability may be awarded Personal Independence Payment. In theory, a person with Pre Settled status may be eligible to receive

2.8 Home Office delays in granting Residence Permits can also result in periods of destitution for non EEA migrants. Although the Department of Justice may extend the period of NRM support in such instances (and this is welcome), for many survivors, it would be preferable to be able to move on from NRM support and into mainstream social security as this affords greater independence.

Survivors as rights-holders

2.9 It must be remembered that survivors of modern slavery are rights-holders in international law. The Council of Europe Trafficking Convention requires States Parties to adopt necessary measures to assist victims in their physical, psychological and social recovery. This includes ensuring a standard of living capable of ensuring their subsistence including through appropriate and secure accommodation and material assistance.¹³

Flourish case study

Lukas is a European national who was trafficked to NI for purposes of criminal exploitation. He has a positive Conclusive Grounds decision.

Lukas is not eligible to receive EU Settled Status as he has not been in NI for 5 years. Accordingly, he has applied for Pre Settled Status.

Lukas has been homeless ever since he exited the NRM trafficking process. He has ‘sofa surfed’ and at one point had to live in a tent. He is keen to start work but without a fixed address this is virtually impossible. He is managing two serious health conditions that require ongoing treatment and constant monitoring.

Lukas has unsuccessfully sought assistance from NIHE and Social Services. He is entirely reliant on charitable support, which is coordinated by Flourish NI.

Migrant Help case study

Domantas is a European national who has a positive Conclusive Grounds decision. Like Lukas, Domantas is not eligible for social security because he has not been in NI for 5 years.

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



Due to circumstances linked to his exploitation, Domantas has recently had a limb amputated. Migrant Help has arranged for Domantas to live in accommodation provided by the Solas Trust. His accommodation is paid for by the Department of Justice under a continuation of NRM support. Domantas is keen to find work. While Domantas is grateful to the Solas Trust and Migrant Help for the comprehensive support he is receiving, he would rather be independent and be able to move forward with his life.

contribution-based benefits, however, in practice it is extremely likely that an exploited worker had a National Insurance Number.

¹³ Article 12, [Council of Europe Convention on Action against Trafficking in Human Beings 2005](#)

UK position

2.10 The UK government is aware that a positive Conclusive Grounds decision does not, in itself, afford any entitlement to social security.

2.11 In 2017, the Work and Pensions Committee conducted an inquiry into the treatment of victims of modern slavery.⁸ The Committee received extensive evidence of EEA victims of trafficking who experienced destitution following the NRM process. Witness Baroness Butler-Sloss, Trustee of the Human Trafficking Foundation explained:

It is an extremely unattractive anomaly and an extremely expensive process putting a person through the NRM to get a positive outcome that everyone accepts that person is a victim of an appalling crime. At that stage, having spent all that money, having gone through all that process, there is **no result except a piece of paper.**⁹

2.12 Accepting the evidence presented to it, the Committee recommended that all victims of modern slavery should be given at least one year's leave to remain with recourse to benefits and services. Further, victims should be exempt from the habitual residence test.

2.13 Both recommendations were rejected. According to Government such changes would risk incentivising individuals to make false trafficking claims in an attempt to fraudulently obtain leave to remain or delay removal and/or result in abuse of the benefit system.¹⁰ The Government did however agree to publish a leaflet on immigration options for victims of modern slavery.

⁸ Work and Pensions Committee 'Victims of modern slavery (HC 803)' 26 April 2017.

⁹ Work and Pensions Committee 'Victims of modern slavery (HC 803)' 26 April 2017 at para 40

¹⁰ Government response to the Work and Pensions Committee available here: [Victims of modern slavery: Government Response to the Committee's Twelfth Report of Session 2016–17 - Work and Pensions Committee - House of Commons \(parliament.uk\)](#)

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



- 2.14 Our organisations have previously highlighted this problem e.g. to the Work & Pensions Committee, DOJ consultation on its draft Modern Slavery & Human Trafficking Strategy and most recently to the NI Affairs Select Committee.

Social security provision in NI

- 2.15 As Social Security is a devolved or ‘transferred’ power to NI, **there is scope for the Department for Communities to make the relevant social security benefits available to all recognised survivors of trafficking.** Universal Credit and Discretionary Support are perhaps the most relevant benefits.¹¹ While the principle of social security ‘parity’ applies,¹² NI social security policy can and has diverged from that in GB: the ‘mitigation package’, comprised of a series of Welfare Supplementary Payments, is an example of same. As a general principle, the Northern Ireland Executive must cover the costs of any divergence. However, the budgetary implications of our proposal are minimal.

Number of potential beneficiaries

- 2.16 The number of potential beneficiaries is relatively small and is estimated to be fewer than 40 persons at any time.

Table 2 Estimated number of victims of trafficking who require social security support

| Category of victims with a positive Conclusive Grounds decision | Estimated number |
|---|------------------|
| EEA victims ¹³ | 29 |
| Non EEA victims waiting for a decision on a concurrent asylum claim ¹⁴ | 10 |
| Total | 39 |

Role for the Committee

- 2.17 The desired policy change could be implemented through two different ways. The Committee may wish to use the present Bill to amend the relevant social security

¹¹ Note that NI does not have powers to make Child Benefit or Guardian’s Allowance available to victims of trafficking as these benefits related to ‘excepted’ powers and are delivered by HMRC.

¹² Section 87 of the Northern Ireland Act 1998

¹³ The number of EEA survivors in NI is relatively small. NRM data from the last five years shows that out of 335 potential victims identified 2016-2020, less than one quarter (19%) are European nationals i.e. 65 individuals. Assuming all 65 EEA survivors have remained in NI and did not have any other qualifying immigration status, they were required to apply to the EU Settlement Scheme by June 2021. We do not have any specific EUSS data relating to survivors of modern slavery. However, extrapolating from UK wide data, we estimate that 29 of the 65 survivors were granted Pre Settled Status and are thus affected by the existing benefit rules. Home Office [EU Settlement Scheme statistics](#) updated 12 August 2021 provide a Pre Settled rate of 43%.

¹⁴ In the absence of any Home Office data on this, support organisations estimate an approximate 10 people in this position.

legislation to specify that a positive Conclusive Grounds decision is a right to reside for benefit purposes. This should apply regardless of the nationality of the survivor.

- 2.18 Alternatively, the Committee could seek an amendment to Section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 to create a new power for the Department of Justice to award an ex gratia payment akin to Universal Credit to all persons with a positive Conclusive Grounds decision.

3.0 Statutory defence for survivors of trafficking

About the statutory defence

- 3.1 Section 22 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provides a statutory defence for victims and survivors of human trafficking in relation to certain offences. This provision gives effect to the principle of the non-punishment of trafficking victims that is affirmed in international law and guidelines.¹⁵ In essence, the statutory defence is aimed at ensuring that a victim of trafficking is not punished for unlawful acts committed as a consequence of trafficking.
- 3.2 The statutory defence does not apply to all offences. In Northern Ireland, the defence does not apply to an offence which, in the case of a person over the age of 21, is punishable on indictment with imprisonment for life or a term of a least 5 years, other than a defined list of offences including drug related offences in respect of Class B or C drugs and offences relating to false immigration documents. The Department has a power to amend the list of relevant offences which the statutory defence applies.¹⁶
- 3.3 Support organisations are concerned the existing statutory defence does not provide adequate protection for victims of emerging forms of criminal exploitation.

Emerging forms of criminal exploitation

- 3.4 The Independent Anti Slavery Commissioner, the Home Office and NI politicians recognise the unsettling thought that what we currently know of modern slavery is the

¹⁵ See: Council of Europe Convention on Action Against Trafficking in Human Beings (into force in 2008); EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims; ILO Protocol to Convention 29 (The Forced Labour Convention 1930); UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1 (2002), etc.

¹⁶ Section 22(10)

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



“tip of the iceberg” with regards to the scale of the problem in NI.¹⁷¹⁸ Collectively, we all still have a lot to learn about modern slavery and emerging forms of exploitation.

- 3.5 In recent years, there has been an increase in the number of victims of trafficking who have been trafficked for criminal exploitation, namely to distribute heroin. These victims tend to present with alcohol/drug dependency including addictions to Class A drugs. It is clear that their drug addiction is very much linked to their exploitation and the coercive means of their traffickers.

Extract from PSNI website statement dated 27 August 2020²⁴

The Police Service of Northern Ireland conducted five searches in Belfast on Wednesday 26 August as part of its involvement in a joint operation with judicial authorities and police in Lithuania and the Republic of Ireland [...]

Detective Inspector Shaw said: The Organised Crime Group targeted today is believed to be responsible for trafficking large quantities of heroin into Northern Ireland and the Republic of Ireland. It is also believed that one of the members of this group, who is from Lithuania, is responsible for recruiting and trafficking people from Lithuania for drug trafficking and money laundering in Northern Ireland.

- 3.6 As currently drafted, the NI statutory defence does not afford protection from prosecution for offences related to Class A drugs. Further, the NI statutory defence may not provide protection against all the criminal activity associated with ‘county lines’, which is another emerging form of criminal exploitation in GB.¹⁹
- 3.7 It is of course noted that notwithstanding the apparent gap in protection afforded by the statutory defence for Class A offences, such offences will not necessarily result in prosecution. The PPS guidance states:

Every case must be considered on its own merits, having regard to the seriousness of the offence committed. Should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this

¹⁷ [Independent Anti-Slavery Commissioner - One year as Commissioner and this is only the beginning \(antislaverycommissioner.co.uk\)](https://www.antislaverycommissioner.co.uk) (August 2016); [PSNI rescue 15 sex workers after blitz on brothels - BelfastTelegraph.co.uk](https://www.psnirescue.com); [Sex 'slavery' up two thirds in Northern Ireland as web makes it easier - Belfast Live](https://www.belfastlive.com); [Modern Slavery and Human Trafficking: An inspection of how the criminal justice system deals with modern slavery and human trafficking in Northern Ireland. \(cjini.org\)](https://www.cjini.org)

¹⁸ PSNI, ‘Searches in Belfast and three arrests, as part of joint operation’ 27 August 2020.

¹⁹ Crown Prosecution Service, ‘County Lines: a typology’ 6 August 2018

should be considered as a strong public interest factor mitigating against prosecution.²⁰

Non-punishment principle

3.8 The UN Special Rapporteur on trafficking in persons has recently issued advice on the non-punishment principle:

The non-punishment principle applies to criminal, civil, administrative and immigration offences, regardless of the gravity or seriousness of the offence committed. Its effectiveness is undermined when application is limited to minor offences only. GRETA has repeatedly recommended that the nonpunishment principle be applied to all offences that victims of trafficking were compelled to commit and has recommended the removal of exceptions. According to the OSCE recommendations, “the duty of non-punishment applies to any offence so long as the necessary link with trafficking is established”. Any list of offences relevant to the non-punishment principle in domestic legislation or guidelines therefore must be clearly stated as being non-exhaustive.²¹

3.9 As currently drafted, it appears that the statutory defence does not meet the OSCE/Special Rapporteur’s standards given the finite number of offences to which it applies.

Original legislative intent

3.10 During the legislative process underpinning the development of the Human Trafficking and Modern Slavery Act (NI) 2015, the concept of a statutory defence attracted broad political support. Towards the end of the process – at the Further Consideration Stage – the scope of the statutory defence was widened through the adoption of an amendment co-signed by Justice Minister Ford and Lord Morrow. The amendment sought to ‘extend the ambit of the defence to include a set of offences that trafficking victims are particularly at risk of’ – this includes drug-related offences.²²

3.11 It is evident from the drafting history that the **legislative intent was to ensure the availability of the statutory defence to victims recovered from criminal exploitation relating to drug use**. At that time, there were a number of cases of

²⁰ PPS, [‘Draft policy for prosecuting cases of modern slavery and human trafficking: draft for consultation’](#) (PPS, January 2021) at para 4.1.5.

²¹ A/HRC/47/34, ‘UN Special Rapporteur on trafficking in persons especially women and [girls: implementation of the non-punishment principle](#)’ 17 May 2021 at para 37.

²² Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill: Further Consideration Stage Official Report: Monday 01 December 2014

human trafficking for cannabis cultivation in NI (cannabis is a Class B drug as per the Misuse of Drugs Act 1971) however heroin distribution had not materialised as form of exploitation.

Review of the statutory defence

3.12 The DoJ Modern Slavery Strategy 2021/22 commits the Department to review the effectiveness of the Section 22 statutory defence. The review should take into account related reviews including the Criminal Justice Inspection's 2020 recommendation to review the effectiveness of the provision and its use in Northern Ireland within one year of the publication of the Independent Anti-Slavery Commissioner's review of the statutory defence in GB.²³ The Commissioner's review was published in October 2020.²⁴ **Role for the Committee**

3.13 The Committee may wish to request an update from the Department in relation to the review of the statutory defence. Further, the Committee may wish to recommend that the defence is revised to more fully reflect that 'non-punishment principle' and to ensure that the defence adequately covers emerging forms of criminal exploitation.

4.0 Quashing historical convictions relating to exploitation

4.1 The statutory defence does not provide a remedy for recognised victims who have **prior** convictions relating to their exploitation.

4.2 Women's Aid has highlighted a number of cases where prior convictions related to prostitution are making it extremely difficult for trafficked women to exit prostitution and move into mainstream employment. Despite the fact that these women have been conclusively recognised as victims of trafficking, they cannot avail of the protections afforded by the statutory defence.

Women's Aid case studies

Laura's story

Laura is from NI. She was trafficked for sexual exploitation. She has been conclusively recognised as a victim of trafficking and her trafficker is in prison awaiting trial. Laura is a very determined and resilient young woman. She wants to move forward with her life and further her education. She has embarked on studies to help her secure a job in the health and social care sector.

²³ Criminal Justice Inspection, 'Hidden in plain sight: Tackling modern slavery and human trafficking in Northern Ireland' (CJINI, 2020) para 2.73.

²⁴ Independent Anti Slavery Commissioner, 'The Modern Slavery Act 2015 statutory defence call for evidence' October 2020 [the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf](https://www.antislaverycommissioner.co.uk/the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf) ([antislaverycommissioner.co.uk](https://www.antislaverycommissioner.co.uk))

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



Laura was recently offered a job as a care worker in a nursing home. She was absolutely delighted and excited to start a new chapter of her life. She filled out the Access NI and disclosure checks honestly and openly. Laura was devastated when the employers retracted their offer of employment due to criminal convictions relating to past prostitution.

Emma's story

Like Laura, Emma is from NI and is conclusively recognised as a victim of trafficking. Unlike Laura, Emma is still working as a prostitute. The trauma and consequences of being trafficked have had a profoundly negative impact on Emma's confidence, self-esteem and well-being: she has been exploited by traffickers for so long that she is now afraid she will have no access to income or any ability to make money if she exits prostitution.

Emma has hopes and dreams of becoming a nurse one day but struggles to find a way forward. She is fearful of applying for Universal Credit as she would find it too difficult to explain how she has managed to survive without any income. She would like to find other work but is frightened that her criminal record will be discovered through Access NI and would disqualify her for any health-related role. The thought of having to disclose her past to potential employers would be too humiliating and simply too much.

- 4.3 Women's lives, such as Laura and Emma, continue to be blighted by past convictions. In Laura's case, her criminal record is the main barrier that is keeping her trapped in prostitution.
- 4.4 At present, the criminal justice system fails to recognise these women as victims of abuse. Legislative change is necessary to ensure that female victims of sexual exploitation are fully recognised as victims rather than perpetrators of crime.

Retrospective application of the statutory defence

- 4.5 The UN Special Rapporteur has advised that to fully implement the non-punishment principle, States must make provision for expungement of criminal records for trafficked persons:²⁵

Ensuring the full and effective implementation of the non-punishment principle requires **provision for the expungement or sealing of all related criminal records and relief of any sanctions imposed**, including fines or other administrative sanctions. Such relief should be provided in legislative and other necessary measures and be supported through the provision of legal

²⁵ A/HRC/47/34, 'UN Special Rapporteur on trafficking in persons especially women and [girls: implementation of the non-punishment principle](#)' 17 May 2021 at para 50.

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



aid, to avoid an undue burden being placed on a trafficked person and to enable full recovery.

- 4.6 Accordingly, it is our view that the statutory defence should be amended to provide retrospective effect or other provisions developed to provide relief from past convictions.

Irish initiative to expunge convictions related to prostitution

- 4.7 In Spring 2021, Justice Minister Helen McEntee announced an initiative to expunge previous convictions related to prostitution for victims of human trafficking.²⁶ The Minister described this as a “a significant step in recognising and responding to the needs of victims of sex trafficking”. She announced that officials would be drafting the necessary legislative amendments to provide for the expungement. In total, An Garda Síochána have identified 607 convictions to be expunged as a result of this initiative.
- 4.8 The Minister highlighted that this legislative initiative will “firmly assert [Ireland’s] national policy position that the focus of An Garda Síochána’s attention is not directed towards those in the sex trade, who are exploited and victimised, but rather towards those who are responsible for exploiting them and those who purchase and demand services.”
- 4.9 The initiative followed a recommendation issued by academics Dr Monica O’Connor and Ruth Breslin from the Sexual Exploitation Research Programme in 2020.²⁷
- 4.10 In July 2021, Justice Minister Naomi Long responded to an assembly question requesting her to detail any discussions she had with her counterpart in the Republic of Ireland regarding potentially expunging criminal records for victims of trafficking and sexual exploitation:³⁴

I am aware of the initiative announced by Justice Minister Helen McEntee TD to expunge convictions for certain repealed offences related to prostitution.

I have not yet had any discussions with her on this issue, but my officials are liaising with their counterparts in the Department of Justice Ireland and will keep me informed as legislative proposals are developed.

²⁶ Irish Government News Service Merrion Street: [Minister McEntee announces initiative to expunge previous convictions for ‘sale of sex’](#) 26 April 2021.

²⁷ Dr Monica O’Connor and Ruth Breslin, ‘Shifting the Burden’ [Sexual Exploitation Research Programme 2020](#) ³⁴ [AQW 21752/17-22](#). Answered 21/07/2021.

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



- 4.11 While it is welcome that DOJ officials are liaising with Irish counterparts on this issue, we feel that this issue requires urgent attention and we seek the Committee's assistance in progressing it.
- 4.12 The process by which a person can apply for a disregard and pardon of convictions for decriminalised sexual offences offers a model of how this could be done. However, our preference is that convictions are expunged automatically rather than placing the onus on the trafficked persons to apply to a scheme.

Role for Committee

- 4.13 The Committee may wish to direct the Department to consider expanding the scope of the statutory defence to have a retrospective effect as part of the upcoming review.
- 4.14 Given the ongoing and profoundly negative effect of criminal records on female victims of sexual exploitation, we invite the Committee to seek a ministerial commitment for a timeframe for expunging prostitution-related offences within this current Assembly mandate. The urgency of this issue cannot be overstated.

5.0 Healthcare entitlement for survivors of trafficking

General principles of healthcare

- 5.1 Healthcare is generally accessible for everyone in NI. However, it is only **free** for persons who are *ordinary resident*. If a person is not ordinarily resident, then s/he is considered to be a visitor and must be charged for any health treatment.
- 5.2 A visitor must pay for health treatment unless s/he: falls into a specified exemption category;²⁸ requires a specified services or treatment;^{29,30} or is from a particular country that has a reciprocal agreement with the UK.
- 5.3 In general, survivors of human trafficking who are within the NRM process cannot be considered ordinary resident and therefore would normally be liable to be charged. However, there is an explicit exemption contained in the NI healthcare legislation that means that *most* survivors of trafficking are not charged for their healthcare.

²⁸ The exemption categories are set out in the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015

²⁹ Services and treatments that are always free includes A&E, treatment for communicable diseases (including Covid-19) etc.

³⁰ A person who has been resident in NI for 2+ years and who can demonstrate poor health/disability may be awarded Personal Independence Payment. In theory, a person with Pre Settled status may be eligible to receive contribution-based benefits, however, in practice it is extremely likely that an exploited worker had a National Insurance Number.

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



Unfortunately, a small number of survivors fall outside this exemption, as illustrated by the following table.

Table 3 Entitlement to free healthcare for survivors of human trafficking

| Category of survivors | Entitlement to free healthcare |
|---|--|
| Persons currently within the NRM process | Yes |
| Recognised victims of trafficking i.e. persons who have received a positive Conclusive Grounds decision | Yes |
| Persons who have received a positive Reasonable Grounds but negative Conclusive Grounds decision | No Very limited entitlement ³⁷ |

Existing legislation

- 5.4 NI healthcare legislation restricts access to free healthcare to survivors of human trafficking who are currently waiting for a NRM decision to be determined or who have received a positive Conclusive Grounds decision. No provision is made for persons who have received a negative Conclusive Grounds who may be challenging this decision.³⁸ Operational guidance confirms that refused survivors of human trafficking are no longer exempt from health charges.³⁹

Flourish case study

Hien is an Asian national who was trafficked to NI for purposes of criminal exploitation. He was referred into the NRM process during which time he was entitled to healthcare. Although he received a positive Reasonable Grounds decision, he received a negative Conclusive Grounds decision. As a result, his NRM support was discontinued and he was de-registered from his GP. Hien is seeking to challenge the NRM decision, which is a lengthy legal process.

Hien has Type 2 diabetes. He has managed to get by without a GP's supervision since being deregistered from his GP. However, the issue of GP registration emerged during Covid-19. Hien was very keen to get the Covid vaccine however this proved difficult without having GP registration. Flourish worked with Mears (asylum accommodation provider) to ensure that he could access the vaccination despite not being registered. While this has addressed his immediate concern, he is still without regular access to a GP.

Hien is an older gentleman and is vulnerable due to his age, limited English, health condition and experiences of exploitation.

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



Why is healthcare entitlement important?

5.5 Covid-19 has underscored the need for universal access to healthcare. Being able to access healthcare at a GP setting is critical.

Extract from NI Direct⁴⁰ - Coronavirus (COVID-19) regulations and guidance: what they mean for you

³⁸ The relevant legislation is the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015, Regulation 10:

10.—(1) No charge may be made or recovered in respect of any services forming part of health services provided to a visitor, where the competent authorities— (a) consider there are reasonable grounds to believe that person is a victim within the meaning of Article 4 of the Convention, and the recovery and reflection period in relation to that person under Article 13 of the Convention has not yet expired; or (b) have identified that person as a victim within the meaning of Article 4 of the Convention.

(2) In this regulation “the competent authorities” means the competent authorities of the United Kingdom for the purposes of the Convention, and “the Convention” means the Council of Europe Convention on Action Against Trafficking in Human Beings. ³⁹ Para 3.22: Those whom the Competent Authority confirm not to be victims of trafficking are no longer exempt from charge. Department of Health, PNOR Regulations Operational Guidance’ (undated) at para 3.22.

⁴⁰ [Coronavirus \(COVID-19\) regulations and guidance: what they mean for you | nidirect](#)

Ignoring potential health problems or symptoms can have serious consequences, so it is vitally important that you do not delay in seeking help.

5.6 The following issues can arise when a person does not have access to free health:

- There is a serious health risk to the individuals: no access to GP and prescriptions can lead to significant deterioration of existing healthcare conditions
- Increased expenditure for public purse: deterioration in health conditions result in increased A&E admissions. By way of example, an asthma sufferer who was deregistered from her GP was unable to obtain a routine prescription and ended up in Intensive Care following a serious asthma attack.
- Difficulties for medical professionals: hospital consultants are reluctant to discharge patients who were not under the care of a GP. This can lead to prolonged hospital stays.

Comparison with asylum seekers

5.7 The situation for asylum seekers provides a helpful comparison. Prior to 2015, refused asylum seekers were also liable to be charged for healthcare and deregistered from their GP.

5.8 The Department of Health accepted a recommendation from the Health Committee to change the legislation to ensure that all asylum seekers retain an entitlement to

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



healthcare while they remain in the jurisdiction.³¹ New legislation came into effect in 2015 and makes it clear that all refused asylum seekers are eligible for healthcare.³² This is confirmed in departmental guidance.³³³⁴

Scottish approach

- 5.9 The relevant trafficking legislation in Scotland creates a discretionary power whereby Scottish Ministers can authorise medical treatment for victims of trafficking who have received a negative Conclusive Grounds decision.³⁵ This provides a model which could be adopted in Northern Ireland.

Proposed amendment

- 5.10 A healthcare entitlement could be secured a number of ways.
- 5.11 We invite the Committee to seek an assurance from the Justice Minister that the discretion currently available under Section 18 of the NI legislation extends to medical treatment. The Department should then set out a process by which this discretion could be sought and by which BSO would agree to re-register a patient. This approach would not require legislative change and thus could be implemented quickly.
- 5.12 If a Ministerial assurance is not provided, we invite the Committee to seek an amendment to the NI trafficking legislation to provide the Minister with a discretion to direct that a person has access to healthcare i.e. adopting the Scottish model.#
- 5.13 Alternatively, we invite the Committee to seek an amendment to the NI healthcare regulations to clarify that any person who has gone through the NRM retains a healthcare entitlement.

³¹ Committee for Health, Social Services and Public Safety, Hansard, 17 September 2014.

³² The 2015 regulations revoke and replace the [Provision of Health Services to Persons Not Ordinarily Resident Regulations \(NI\) 2005](#).

³³ 3.15 Regulation 9(b): asylum seekers and others seeking refuge—anyone who has made a formal application to the Home Office to be granted temporary protection, asylum or humanitarian protection is exempt from charges.

³⁴ .16 Under this regulation anyone who has made an application for asylum even when it is failed is still exempt from charge Department of Health, PNOR Regulations Operational Guidance' (undated) at para 3.16.

³⁵ Human Trafficking & Exploitation (Scotland) Act 2015. See [regulation 9](#)

Extending protections for survivors of trafficking: role for Justice Committee

September 2021



For further information please contact Liz Griffith at the Justice Migration Project at Law Centre NI: [REDACTED]

