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Dear Christine

Follow up submission to the Justice Committee on support for victims and survivors of modern slavery

On behalf of Jill Robinson (Flourish), Orla Gardiner (Migrant Help) and Noelle Collins (Belfast & Lisburn Women's Aid) and Law Centre NI, I would like to thank the Committee for the opportunity to provide written and oral evidence to the Committee on the Justice (Sexual Offences & Trafficked Victims) Bill.

We were really heartened by the Committee's interest in the issues we raised. Attached is a follow up briefing that addresses all the topics you raised in your letter dated 29 November 2021. You asked us to provide:

- a) An indication of the budgetary resource for recognised victims of trafficking
- b) Our views on slavery and trafficking risk orders
- c) Proposed wording for a draft amendment to quash the convictions of victims with prostitution-related convictions
- d) Further information on family reunion for victims of trafficking

In addition, we have provided:

- e) A draft amendment to provide healthcare to persons with negative NRM outcome.

We have suggested a possible course of action for the Committee to consider for each topic.

We are happy to provide any further information and wish you well with your work.

Yours sincerely

Liz Griffith
Head of Policy & Research

Follow up submission to the Justice Committee on support for victims and survivors of slavery

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Follow up submission to the Justice Committee (amended 13 December 2021)

This follow up 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.

This submission responds to topics raised in the Committee's letter dated 29 November 2021.

About the organisations



Belfast and Lisburn

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.



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 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.

a) Budgetary resource for recognised victims of trafficking

1. We highlighted to the Committee the fact that some victims of human trafficking in NI experience destitution and homelessness despite having a positive NRM outcome.
2. Since our oral evidence, we have discussed this issue with officials at Department for Communities and have proposed that social security legislation and/or policy is amended to provide a social security entitlement to victims and survivors of trafficking. These discussions remain ongoing. Nonetheless, we accept that this would be a complex and time-consuming piece of work for DfC as it sits at the intersection between immigration and social security policy. Also, even if DfC were to adopt our proposal, it may only be able to provide a partial remedy. This is because DfC is likely to be restricted to providing social security to persons who are not subject to immigration control. The number of people in this category is decreasing.¹
3. We believe that the simplest solution is for the Department of Justice to provide *post NRM* financial support for a period of 12 months. **Our view is that legislative change is not necessary.** Section 18(9) of the Human Trafficking & Exploitation (NI) Act 2015 provides a power for DOJ to continue to ensure the provision of assistance and support “for such period as the Department thinks necessary”. Our view is that DOJ could provide post NRM support if directed by the Committee. This would include the full range of support services listed at s.18(7).²
4. With regards to anticipated budgetary costs, we estimate that it would cost the Department approximately £0.35 million per annum to provide financial support to all affected persons i.e. persons with a positive NRM outcome who are either:
 - a. An EEA victim with Pre Settled Status; or
 - b. A non EEA victim waiting for a decision on a concurrent asylum claim or other immigration application.
5. Other categories of victims are eligible for social security and therefore do not need additional *post NRM* support from DOJ. This includes:
 - a. An EEA victim with Settled Status; and
 - b. A non EEA victim who has been granted a Residence Permit.

¹ Most EEA nationals and non EEA nationals who arrive in UK post January 2021 are now subject to immigration control.

² (7) The assistance and support which may be provided under this section includes, but is not to be restricted to, the provision of— (a) appropriate and safe accommodation; (b) material assistance (including financial assistance); (c) assistance in obtaining healthcare services (including counselling) [note that we have proposed different wording with regards to healthcare – see below]; (d) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person; (e) translation and interpretation services; (f) assistance in obtaining legal advice or representation; (g) assistance with repatriation.

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Category of victims with a positive NRM outcome in NI	Estimated number of people in NI	Estimated cost p.a. ³
EEA victims ⁴	29	£261,463
Non EEA victims waiting for a decision on a concurrent asylum claim or other immigration application ⁵	10	£90,160
Total	39	£351,623

6. This calculation makes the following assumptions. The claimant is making a single claim for Universal Credit and is aged 25 or over with no dependents. Housing costs are based on the Belfast Local Housing Allowance 1-bed rate. The claimant has no earned or unearned income and does not have capital in excess of the UC limit.
7. Overall, we consider that the cost of £0.35m per annum is relatively modest and yet this expenditure would significantly reduce the risk of further exploitation / re-trafficking.

Suggested role for the Committee

8. We would invite the Committee to direct the Department to provide post NRM to all persons with a positive NRM outcome who do not otherwise have an entitlement to social security. Such support should be available for a 12 month period but may end sooner if it is no longer required e.g. if the person successfully obtains work or obtains a right to reside for social security purposes.
9. We would propose that the Department consults with key stakeholders –specifically Flourish, Migrant Help and Women’s Aid – as to *how* to provide the post NRM support. We anticipate that in some instances the best option will be to simply extend the existing NRM package of support; this might be appropriate for individuals with high support needs. However, in other instances, financial support could be provided through other means such as payment for rent; this might be an appropriate option for individuals who have few support needs and/or are keen to become independent.

³ Our calculation is as follows: Standard Allowance (single, 25 or over) = £324.84; Housing Costs Element (Belfast BRMA and LHA 1-bed rate) = 98.42 x 52 / 12 = £426.49; Total Monthly Award (per individual claimant) = £751.33; Total Annual Award (per individual claimant) = £751.33 x 12 = £9015.96

⁴ 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. If we assume that all 65 EEA survivors remained in NI and applied to EUSS, extrapolating from UK wide data, we estimate that 29 of the 65 survivors were granted Pre Settled Status and therefore have no benefit entitlement. Home Office [EU Settlement Scheme statistics](#) updated 12 August 2021 provide a Pre Settled rate of 43%.

⁵ In the absence of any Home Office data on this, support organisations estimate an approximate 10 people in this position.

b) Views on Slavery and Trafficking Risk Orders

10. Our organisations are broadly supportive of Slavery and Trafficking Risk Orders, which we view as additional tools available for law enforcement to disrupt human trafficking and exploitation. However, we think it would be beneficial to examine their effectiveness and their feasibility in NI through a consultation process. Accordingly, we look forward to DOJ realising its commitment to engage with stakeholders on this topic as per the current Modern Slavery strategy 2021/22.⁶ We hope that there will be an opportunity for organisations working in GB to provide their experiences of STROs so that they can be amended to improve their effectiveness, if needed, before being implemented here.

Suggested role for the Committee

11. The Committee may wish to request that DOJ outlines its plans for its engagement on Slavery & Trafficking Risk Orders including timeframe.

c) Quashing convictions of victims with prostitution-related convictions

12. As we highlighted to the Committee, a number of female recognised victims of trafficking continue to be adversely impacted by prostitution-related convictions. It would seem that the criminal justice system continues to treat these women as perpetrators rather than victims of crime.

13. Drafting an amendment to quash such convictions requires expertise in criminal law which unfortunately none of our organisations have. As amending the criminal law could be a complex and lengthy process, we suggest that a practical 'work around' is identified that could provide prompt relief for victims. For example, the Access NI disclosure process could be amended so that prostitution-related offences for recognised victims of trafficking are not disclosable and/or are not accessible to prospective employers. This would provide an interim remedy while the process of legislative change is underway. We recommend that a taskforce is set up to quickly identify a short-term and long-term solution.

14. The broader issue here is that NI's statutory defence is too narrow as it only applies to a small number of offences and it does not have any retrospective effect. We recall that the UN Special Rapporteur has advised that to fully implement the non-punishment principle (as required by international law), States must make provision for the expungement of related criminal records and relief of any sanctions imposed on persons subject to exploitation.⁷

⁶ [modern-slavery-strategy-27-05-v2_0.pdf \(justice-ni.gov.uk\)](#) page 20.

⁷ 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.

Suggested role for the Committee

15. The Department is committed to reviewing the effectiveness of the existing statutory defence (s.22). The Committee may wish to request an update from the Department in relation to this review including timeframes. Further, the Committee should recommend that the scope of the review is broad enough to include the issue of retrospective effect; it would be a missed opportunity if the review only looks at applicable offences.
16. In acknowledgement of the ongoing difficulties caused by the prostitution-related offences on women in NI, the Committee may wish to:
 - a. Seek a Ministerial commitment to ensure that prostitution-related convictions are expunged and establish a taskforce to deliver same;
 - b. Ensure that expungement of prostitution-related convictions is included in the next DoJ Modern Slavery strategy;
 - c. Ask the Department to identify the number of persons who would benefit from the expungement of prostitution-related convictions in NI.⁸

d) Family reunion rights for victims of trafficking

17. As we highlighted in our oral evidence, it is now extremely difficult for victims of trafficking to be reunited with their family members. As we explained, a vital legal route closed on 31 January 2020 with devastating consequences for victims and survivors of human trafficking.
18. Since the end of the Brexit transition period, the Dublin III Regulation can no longer be relied upon by persons separated from their loved ones. The family reunification provisions of Dublin III Regulation permitted EU member states to request that the Home Office “take charge” of asylum claims if eligible family members were present in the UK. This provided a mechanism whereby family members – often unaccompanied children – could be reunited with their parents, legal guardians or older siblings who had claimed asylum in the UK. The family reunification provisions under the Dublin III Regulation were more workable, and significantly faster, than the family reunion provisions contained in the UK’s Immigration Rules. The Immigration Rules route is much more restrictive in scope e.g. applies only to pre-flight spouses and minor children. Crucially, this route is only available to persons who have completed the asylum process and who have obtained refugee status. This process can take several years.

⁸ It is noted that in the Republic of Ireland, An Garda Síochána have identified 607 convictions to be expunged.

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19. It is difficult for a victim of trafficking to contemplate reintegration into NI society while close family members remain stranded in dangerous circumstances. We consider that family reunification is an essential aspect of a victim's recovery.

Suggested role for the Committee

20. Family reunion is an immigration matter and thus sits with Westminster. Unfortunately, refugee family reunion rights are due to be further restricted through the Nationality & Borders Bill.⁹
21. The Committee may wish to ask the Executive to make representations to the UK Government about the urgent need for safe and legal routes for family reunion for victims of trafficking and asylum seekers in NI.
22. As a practical suggestion, the Committee could propose that the Executive agree a process with the Home Office whereby it can request that asylum claims are expedited. Once refugee status is granted, a family reunion application can then be submitted. This would at least minimise the period of separation between the victim of trafficking in NI and her/his family members. Note that we would not be asking the Executive to request the Home Office to examine the asylum claims *differently*; rather the Executive would identify potential family reunion cases that should be determined without undue delay.

e) Provision of healthcare for victims of trafficking

23. In our oral evidence to the Committee, we highlighted that there is a small number of persons with negative NRM outcomes who have no access to healthcare. We estimate the number of affected persons to be extremely small e.g. < 5 yet clearly this issue of critical importance for the individuals. In our written evidence, we suggested that a healthcare entitlement could be provided in a number of ways. Since then, the Department of Health has confirmed that there is no scope within existing healthcare legislation whereby a person with a negative NRM outcome can access free healthcare. Accordingly, we **consider that a legislative amendment to the Human Trafficking & Exploitation Act (Northern Ireland) 2015 is necessary to provide a full entitlement to healthcare.**
24. We propose that a clause is inserted into the Justice (Sexual Offences and Trafficking Victims) Bill that would amend s.18 of the trafficking legislation. Specifically, s.18 should be amended to clarify that support – including healthcare – can be provided to persons who have received a *negative NRM* outcome. At present,

⁹ See, UNHCR commentary on the Bill: [UNHCR - The Nationality and Borders Bill](#)

there is ambiguity: it unclear whether such a power exists. This amendment would provide welcome legal clarity and would negate the need for litigation on this point. This could be achieved by inserting the words “or is not” into s.18(9)(b).

25. We also propose that the wording of the provision relating to healthcare is amended. The current wording found at s.18(7)(c) refers to “assistance in obtaining healthcare services including counselling”. We propose that this is deleted and replaced with the following words “medical advice and treatment (including psychological assessment, treatment and counselling)”. Our proposed wording replicates s.9(4) of the Human Trafficking & Exploitation (Scotland) Act 2015. We feel that the Scottish legislation provides a more substantive healthcare entitlement. In contrast, there is a risk that the existing NI provision *could* be interpreted quite narrowly by officials in the future. In order to copper-fasten the rights of victims of trafficking, we suggest that the Scottish wording is adopted.

Suggested role for Committee

26. We invite the Committee to propose a new clause that would amend s.18 of the Human Trafficking & Exploitation Act (Northern Ireland) 2015. Annex 1 contains the amended provision, with our proposed changes highlighted in yellow.

ANNEX 1 – Proposed amended wording for s.18

Assistance and support pending determination by competent authority

18.—(1) The Department must ensure that a person to whom this section applies is provided with assistance and support in accordance with this section.

(2) This section applies to a person if—

(a) that person is aged 18 or over or, in a case where the age of the person is uncertain, the Department reasonably believes that person is aged 18 or over; and

(b) a reference relating to that person has been, or is about to be, made to the competent authority for a determination for the purposes of Article 10 of the Trafficking Convention as to whether there are reasonable grounds to believe that the person is a victim of trafficking in human beings.

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(3) Assistance and support is to be provided under this section until there is made in relation to that person—

(a) a determination that there are not reasonable grounds to believe that the person is a victim of trafficking in human beings; or

(b) a conclusive determination that the person is or is not a victim of trafficking in human beings;

but if a conclusive determination that a person is a victim of trafficking in human beings is made within the relevant period, assistance and support is to be provided until the end of that period.

(4) The relevant period is the period of 45 days from the date on which the determination mentioned in subsection (2)(b) is made by the competent authority.

(5) Assistance and support provided to a person under this section—

(a) must not be conditional on the person's acting as a witness in any criminal proceedings;

(b) must only be provided with the agreement of that person;

(c) must be provided in a manner which takes due account of the needs of that person as regards safety and protection from harm;

(d) must be provided to meet the assessed needs of that person, having regard in particular to any special needs or vulnerabilities of that person caused by gender, pregnancy, physical or mental illness, disability or being the victim of serious violence or serious abuse.

(6) Assistance and support under this section must be offered from a person who is of the same gender as the person receiving it.

(7) The assistance and support which may be provided under this section includes, but is not to be restricted to, the provision of—

(a) appropriate and safe accommodation;

(b) material assistance (including financial assistance);

(c) assistance in obtaining healthcare services medical advice and treatment (including psychological assessment and treatment and counselling);

(d) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person;

(e) translation and interpretation services;

(f) assistance in obtaining legal advice or representation;

(g) assistance with repatriation.

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(8) Where assistance and support has been provided to any person under this section, it may continue to be provided even if that person leaves Northern Ireland.

(9) Where—

(a) assistance and support has been provided to a person under this section; and

(b) that person ceases, by virtue of a conclusive determination that the person is **or is not** a victim of trafficking in human beings or the ending of the relevant period, to be a person to whom assistance and support is to be provided under this section,

the Department may nevertheless ensure that assistance and support continues to be provided to that person under this section for such further period as the Department thinks necessary.

(10) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision.