

## **Independent Anti-Slavery Commissioner**

### **Law Centre response NRM consultation**

#### **About the Law Centre**

1. Law Centre (NI) works to promote social justice and provides specialist legal services to advise organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to our member organisations in different areas of law: employment, health and social care and social security.
2. Law Centre (NI) welcomes this opportunity to share our thinking on legal redress with the Independent Anti-Slavery Commissioner following his recent NRM stakeholder meeting in Belfast. We are mindful that the Commissioner is particularly interested in solutions. Accordingly, we propose a number of specific recommendations, which stem from our experience of providing legal advice and representation to exploited workers. These recommendations relate to the Commissioner's particular interest in improving 'move on' pathways and long-term support for victims.

#### **Legal remedies for victims of labour exploitation**

3. We have recently published a briefing paper on redress: 'Modern Slavery: legal remedies for victims of labour exploitation'.<sup>1</sup> Our view is that the current system for redress is not victim centred, which is not surprising given that it was developed before our contemporary understanding of modern slavery. Legal redress is of utmost importance to the individual both in practical terms – financial payment/compensation may reduce the victim's vulnerability to re-trafficking, and in psychological terms – the award is a powerful symbol of justice and can help the victim acknowledge the wrong and move on. In addition, our experience is that access to legal redress can aid in the identification of victims: once one worker has successfully asserted a legal right (e.g. has recovered their unpaid wages), his/her colleagues may be more willing to come forward.

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<sup>1</sup> Law Centre NI, 'Legal Remedies for victims of labour exploitation' (February 2017) Accessible here: <http://www.lawcentreni.org/Publications/Policy-Briefings/Legal-remedies-for-victims-of-labour-exploitation-Law-Centre-NI-Feb-17.pdf>

**Law Centre case study**

We acted for a group of Romanian workers who were rescued by the PSNI in 2014. Our clients were part of a larger group, many of whom returned to Romania shortly after being rescued. Although this group knew we were assisting their coworkers/friends, they did not present as clients. However, once we resolved the cases for our clients, the remaining group came to us for assistance. Unfortunately, due to the significant lapse in time from these people being rescued and coming to us as clients, we were very limited in the assistance we could provide (any claim to an Industrial Tribunal was significantly out of time). We did however manage to recover some wages through the HMRC National Minimum Wage enforcement unit.

4. We therefore consider that the benefits of legal redress are twofold: first, it helps with the 'move on' for victims; second, it helps promote identification of victims.

**Five recommendations**

5. In our paper, we identified five recommendations that we believe will facilitate access to justice for victims of modern slavery in Northern Ireland. These recommendations echo a paper developed by FLEX (which we fully endorse).<sup>2</sup> Employment is a devolved area of law and so we are engaged with the relevant Northern Ireland department (Department for Economy). Officials are receptive to the idea of setting up a working group to develop thinking and to consider our recommendations, which include to:
  - Consider whether the Criminal Injuries Compensation Scheme could enable victims of modern slavery to secure compensation for unpaid wages arising from their exploitation;
  - Ensure that the Criminal Injuries Compensation Scheme is compliant with the NI Human Trafficking & Exploitation Act (i.e. by removing the 'co-operation requirement)
  - Establish a specific fund to compensate victims for unpaid wages where the trafficker/exploited cannot be located or has no assets. The existing Redundancy Payment Fund could be a useful model for such a scheme. One possibility would be to fund this scheme with money recouped via confiscation orders made under

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<sup>2</sup> The Law Centre contributed to the FLEX workshop that preceded the briefing paper. See FLEX, 'Improving access to compensation for victims of trafficking for labour exploitation in UK' (September 2016) Accessible here: [http://www.labourexploitation.org/sites/default/files/publications/FLEX\\_Access\\_to\\_comp\\_WP.pdf](http://www.labourexploitation.org/sites/default/files/publications/FLEX_Access_to_comp_WP.pdf)

the Act or via the money raised by HMRC through penalties for non-payment of the national minimum wage.

- Enact a new employment claim specifically of labour exploitation that would allow claimants to apply to an Industrial Tribunal for compensation for injury to feelings for distress/injury caused by human trafficking / forced labour. Such a claim could be analogous to discrimination law and would extend liability to other parties who have aided the exploitation.
  - Make legal aid available for victims of human trafficking / forced labour to take civil proceedings either at the Industrial Tribunal or, where currently not available, in the civil courts.
6. Further information about these recommendations including the rationale and background information can be found in our briefing paper.

#### **A further recommendation**

7. At a recent roundtable discussion on legal remedies, we identified a further recommendation:
- Extend the three month limitation period for tribunal claims for potential victims of modern slavery.
8. The rationale for this recommendation is as follows. Our experience is that the three month limitation period for Tribunal claims presents particular difficulties for victims of labour exploitation. The period immediately following the rescue / identification of a potential victim of modern slavery is disorientating for the individual partly due to the number of different processes running concurrently (e.g. relating to the victims' immediate health and personal safety, police investigations, immigration status, etc.) Put simply, there is not enough time or space for a victim to consider the availability of potential legal remedies and the merits of pursuing same.
9. The three month limitation also poses problems for legal representatives. One modern slavery case the Law Centre has been involved in was only referred to us days before the three month limitation period expired. There were multiple victims (all requiring interpreters) and the logistics of organising appointments and taking instructions within a very limited time period was extremely challenging.
10. Accordingly, we suggest that provision is made to extend the three month limitation for workers who can provide evidence of having a positive 'Reasonable Grounds' decision. Extending the three month limitation would bring a number of benefits. First, it will give victims access to the Industrial Tribunal and therefore to a financial remedy. Second, it will give legal representatives time to take full and detailed instructions (this will ultimately assist all parties to the hearing). Third, it will help encourage other victims to come forward, as outlined above.

11. Effectively, we are advocating for a system where a positive NRM decision ‘passports’ the victim to other entitlements,<sup>3</sup> i.e. to a grant of Legal Aid and an extension of the three month limitation. While we have considered ‘passporting’ in the context of employment claims, we would invite the Commission to consider developing an NRM ‘passporting’ system that could apply in other situations (for example, could an NRM decision passport to a fee waiver for the purposes of Further Education?)

### **Good practice in Northern Ireland**

12. While the employment law framework in Northern Ireland is similar to that in Great Britain, there is some divergence. We have identified two aspects unique to this jurisdiction, which we think facilitate access to justice for victims of slavery.
- a) First, unlike Great Britain, which introduced tribunal fees in 2013, there is no fee for workers lodging a claim at the Industrial Tribunal or Fair Employment Tribunal in Northern Ireland.
  - b) Second, Northern Ireland did not introduce legislation equivalent to the Deduction from Wages (Limitation) Regulations in July 2014. This means that workers in Northern Ireland are not prevented from claiming more than two years of wages owed to them.

#### **Law Centre Case study**

In 2013/2014, the Law Centre acted for an agricultural worker who had been subject to over 12 years of labour exploitation by an employer. We successfully helped the worker settle a claim for failure to pay the National Minimum wage dating back to the 1998 introduction of the minimum wage. If a limitation on the period for which workers could claim back pay had been in place at that time, it would have resulted in considerable injustice to our client.

13. The Commissioner may wish to commend the Northern Ireland approach to other jurisdictions.

We hope these comments are useful. Please do not hesitate to contact us should you require any further information. Email: [Elizabeth.griffith@lawcentreni.org](mailto:Elizabeth.griffith@lawcentreni.org) Tel: 028 9024 4401

April 2017

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<sup>3</sup> An example of ‘passporting’ can be found in social security, where a grant of higher rate DLA/PIP disability payments gives entitlement to e.g. the Blue Badge scheme, Carer’s Allowance, etc.