



**Migration Justice Project**

**Law Centre NI response to the DOJ Modern  
Slavery & Human Trafficking Strategy 2021/22**

**January 2021**

## Law Centre NI response to the DOJ Modern Slavery & Human Trafficking Strategy 2021/22

### Introduction

1. The Law Centre works to promote social justice in Northern Ireland using the law as a tool for social change. We work to achieve social justice through legal advice, casework and representation before the tribunals and courts. Through our research and policy advocacy, we work to secure progressive changes to law policy and practice.
2. The Law Centre is a member of the DoJ NGO Engagement Group, the Anti Trafficking Monitoring Group (ATMG), the NI Strategic Migration Partnership and the Refugee and Asylum Forum. Over the years, we have represented a number of victims/survivors of trafficking in immigration and employment matters.

### About this response

3. The Law Centre welcomes the opportunity to respond to this consultation. LCNI supports the strategic aim of eradicating modern slavery from NI and agrees that the draft Strategic Priorities of Pursue, Protect and Prevent remain appropriate for the 2021/22 strategy.
4. LCNI broadly supports all the proposed actions contained within the draft strategy. LCNI proposes a number of additional activities for inclusion. Given the nature of LCNI's work, the bulk of our comments relate to the Protect strategic priority.
5. In autumn 2020, the Criminal Justice Inspectorate published 'Hidden in plain sight: tackling modern slavery and human trafficking in NI'. One of the recommendations is to extend the DOJ Modern Slavery & Human Trafficking Strategy to 'more effectively involve other Departments'.<sup>1</sup> This recommendation was made specifically in the context of awareness-raising measures, however, LCNI considers it equally applicable to other areas. Accordingly, throughout this consultation response, LCNI draws on its expertise in supporting other vulnerable persons and recommends that DOJ works in partnership with the Department for Economy, Department of Health / HSC Trusts and the Executive Office to deliver specific initiatives.

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<sup>1</sup>Criminal Justice Inspectorate NI, 'Hidden in plain sight: Tackling modern slavery and human trafficking in NI' (CJINI 2020), at 6.

**Summary of recommendations:**

Law Centre NI recommends:

1. That specific child measurements and commitments are developed under each strategic priority.
2. The Executive commits to progressing all available opportunities that ensure that anti-trafficking capability is not diminished in NI as a result of UK leaving the EU.
3. That DOJ commissions research into the long-term experiences of victims/survivors of trafficking in NI.
4. Statutory NRM provision is extended for all victims/survivors and that provision remains in place where there is a pending application for a Residence Permit.
5. That DOJ works with Department for Economy to explore options for further augmenting the existing LCNI Employment Rights Project service to assist victims/survivors to obtain financial redress for their exploitation.
6. That DOJ works with the Law Society NI to explore options for the development of an immigration advice quality standard in NI. This would benefit all recipients of immigration advice including victims/survivors of human trafficking.
7. That DOJ reviews the effectiveness of mechanisms to identify victims of human trafficking in Larne House Short Term Holding Facility.
8. That DOJ seeks an update from the Department for Communities about the implementation of the Work & Pension Committee's recommendations in NI.
9. That DOJ works with the Department of Health / HSC Trusts to increase awareness of the availability of support under the 1972 Order for victims/survivors of trafficking.
10. That DOJ works with the Department of Health to extend healthcare entitlement to persons who are challenging negative NRM decisions. An amendment to the Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2015 would provide the necessary protection.
11. That DOJ works with Department for Economy to amend the Further Education ESOL policy to ensure that victims/survivors of trafficking and their family members can access free ESOL.

12. That DOJ works with Department for Economy to ensure that victims/survivors of trafficking are eligible for student support for Higher Education purposes.
13. That DOJ works with TEO to explore and address issues applicable to asylum seekers and victims/survivors of modern slavery.
14. That DOJ commits to exploring and resourcing the direct involvement of victims/survivors in the policy process.

## Comments on strategy

### Strategic Priority: Pursue

15. As an overriding comment, LCNI urges DOJ to better prioritise anti-child trafficking measures and to ensure that specific child measurements and commitments are included in all three of the strategic priorities (at present, children are only covered within the Protect priority).
16. **LCNI recommends that specific child measurements and commitments are developed under each strategic priority.**
17. LCNI shares the concerns expressed by Anti Trafficking Monitoring Group about the impact of the UK's departure from the EU on NI's ability to tackle modern slavery. Close collaboration between the police forces of EU Members States has been essential in dismantling trafficking networks, recovering victims and bringing perpetrators to justice.
18. **LCNI recommends that the DOJ Strategy commits the Executive to progressing all available opportunities that ensure that anti-trafficking capability is not diminished in NI as a result of UK leaving the EU. We therefore recommend that Para 2.1.2. is amended to include measures by which NI will continue to ensure an effective operational response including through Joint Investigation Teams.**
19. With regards to para 2.1.1, LCNI welcomes the commitment to progress amendments to section 18 [support for victims of forced labour] of NI's 2015 Human Trafficking legislation. LCNI considers that there should be no distinction – whether in law or practice – in the way that victims of forced labour are supported.
20. With regards to para 2.1.2, LCNI welcomes the commitment to develop a longer-term approach to tackling modern slavery and human trafficking in NI. LCNI recalls its submission to the DOJ Strategy 2016/17 in which we recommended that DOJ commissions longitudinal research to monitor the progress of (re)integration of victims/survivors of trafficking and modern slavery.<sup>2</sup> LCNI reiterates this recommendation for the 2021/22 Strategy.
21. **LCNI recommends that DOJ commissions research into the long-term experiences of victims/survivors of trafficking in NI. This research would evaluate the effectiveness of current support measures and inform future strategies and action plans designed to support the integration of victims/survivors into NI.**

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<sup>2</sup> Law Centre NI, 'Response to Draft DOJ Human Trafficking Strategy 2016/17' (LCNI, 2016). Available at: [2016Response\\_DoJDraftHumanTraffickingStrategy\\_Sep.pdf](https://www.lawcentreni.s3.amazonaws.com/2016Response_DoJDraftHumanTraffickingStrategy_Sep.pdf) (lawcentreni.s3.amazonaws.com)

**Strategic Priority: Protect**

22. Objective 2.2.2 commits to scoping the potential for adult potential victims of modern slavery to be provided for an extended recovery and reflection period, subject to available resources. In a recent Assembly debate, the Justice Minister reported that of the 81 people who entered NRM support in 2019-20, 71 received support for periods in excess of 90 days. In most cases, support was provided for almost one year. The Justice Minister also advised that the discretionary power to extend support and assistance after a positive conclusive decision has been used on 23 occasions over the past four years.<sup>3</sup> LCNI commends DOJ and the support providers for their flexible approach taken to date, which has enabled support packages to remain in place for vulnerable persons.

23. The NRM process does not, in itself, provide recognised victims of trafficking with access to the labour market or a benefit entitlement. Without access to an income and accommodation, victims/survivors are vulnerable to further exploitation. Unfortunately, it is not uncommon for recognised victims of trafficking to experience homelessness when exiting the NRM. For foreign nationals, entitlement is only obtained if the victim is granted a Residence Permit (which confers Discretionary Leave to Remain). This period of homelessness could be addressed if NRM support remains in place while any application for a Residence Permit is pending.

**24. LCNI recommends that statutory NRM provision is extended for all victims/survivors and that provision remains in place where there is a pending application for a Residence Permit.**

**a. Legal redress and compensation**

25. Objective 2.2.2 is to provide victims of modern slavery with appropriate and effective support. LCNI highlights the need to support victims/survivors in seeking financial redress for their exploitation. At their point of recovery, most victims/survivors are destitute, having endured months or years of extreme financial hardship. Obtaining financial redress is therefore greatly beneficial for the victim/survivor and their family; it can also reduce susceptibility to further exploitation and can assist victims/survivors recover their sense of dignity and self worth.

26. While it can bring many benefits, the process of obtaining financial redress is difficult and lengthy. The criminal process offers two key remedies: Slavery and Trafficking Reparation Orders and the Criminal Injuries Compensation

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<sup>3</sup> NIA Deb: victims of modern slavery (13 October 2020), p.23. Available at: [NIA Hansard 13 Oct 2020\\_victims of modern slavery.pdf](#)

Scheme. However, relatively few cases of modern slavery result in arrests and then go on to successful prosecution.<sup>4</sup> Therefore, the prospects of obtaining financial redress through the criminal process are limited from the outset.

27. Civil remedies are also available, the key remedy being the Industrial Tribunal.<sup>5</sup> However, the Industrial Tribunal is particularly difficult for victims/survivors to navigate due to factors including: the short time limits, the prospect of cross examination, the doctrine of illegality, issues relating to the enforcement of tribunal awards and lack of legal aid (these issues are discussed in a LCNI 2017 briefing paper.<sup>6</sup>) Lack of legal aid is a particular obstacle as it means that private practice solicitors are very limited in the assistance they can provide. The Law Centre's Employment Rights Project, supported by the Department for the Economy, has therefore been an important source of specialist support for those affected by labour exploitation.
28. Other civil remedies include civil claims to the County or High Courts. Potential claims in tort and contract law for victims/survivors of modern slavery include: personal injury, harassment, false imprisonment, assault, battery, deceit, negligent misrepresentation, conspiracy, breach of contract, etc.
29. International legislation enshrines the right to compensation for victims of human trafficking/modern slavery.<sup>7</sup> In January 2020, it was confirmed that there had been no awards through the Criminal Injury Compensation Scheme to victims/survivors of human trafficking over the preceding five years. Ten applications had been made of which eight were denied and two remained pending.<sup>8</sup>
30. In a 2017 policy briefing, LCNI highlighted a number of difficulties for victims/survivors accessing compensation: the eligibility criteria excludes applicants who cannot demonstrate having suffered physical violence and/or

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<sup>4</sup> Ms Jemma Dolan MLA: "Between 2017 and 2020, the PSNI recorded 108 human-trafficking and exploitation crimes in this jurisdiction. Over the past three years, nine individuals have been prosecuted for human-trafficking offences and four convictions have been secured." NIA Deb: victims of modern slavery (13 October 2020). Available at: [NIA Hansard 13 Oct 2020 victims of modern slavery.pdf](#)

<sup>5</sup> A person who has experienced labour exploitation may have a right to bring a claim against their employer before an Industrial Tribunal for a range of issues including: breach of contract (wrongful dismissal)<sup>16</sup>; unfair dismissal; breach of the laws around national minimum wage; dismissals for health and safety reasons; breach of the Working Time Regulations and unauthorised deductions from wages

<sup>6</sup> Law Centre NI, 'Policy Information Briefing: Legal remedies for victims of labour exploitation (LCNI, 2017). Available at: [Law Centre \(NI\) Policy Information Briefing](#)

<sup>7</sup> The Council of Europe Convention on Action Against Trafficking in Human Beings No. 197, 2005, Article 15(3); Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Article 12(2).

<sup>8</sup> ACQ 714/17-22 Ms Joanne Bunting responded 27 Jan 2020. Available at: [AIMS Portal \(niassembly.gov.uk\)](#)

mental trauma; the scheme does not cover compensation for loss of earnings; the scheme precludes any violence suffered prior to arrival in NI, etc. LCNI also highlighted the need to review the guidance to take into account (then) recent litigation.<sup>9</sup>

31. The recent CJINI report acknowledges the lack of successful applications for compensation and recommends that DOJ reviews its guidance for applicants to the Northern Ireland Criminal Injuries Compensation Scheme and engages with relevant stakeholders and victims' groups to identify how to overcome the barriers in accessing the scheme.<sup>10</sup>

**32. LCNI recommends that DOJ works with Department for Economy to explore options for further augmenting this existing specialist legal service at LCNI to assist victims/survivors to obtain financial redress for their exploitation. In addition to providing support to individuals, this service could also collate evidence about the effectiveness of remedies and draft policy recommendations for DOJ's consideration.**

#### **b. Quality of immigration advice**

33. A key issue for many victims/survivors of trafficking is their immigration status. Solicitors play a critical role in assisting persons apply for the necessary immigration status. The Refugee & Asylum Forum, of which Law Centre is a member, has recently written to the President of the Law Society to highlight the need to ensure consistency in advice provision. It is noted that in England Wales, the Law Society oversees an Immigration & Asylum Accreditation Scheme. This quality standard applies to all practitioners providing advice under a legal aid contract, including solicitors, barristers and OISC authorised practitioners. No equivalent accreditation scheme is in place in NI. However, a report commissioned by the Executive Office recommended the development of an analogous accreditation scheme in Northern Ireland.<sup>11</sup>

**34. LCNI recommends that DOJ works with the Law Society NI to explore options for the development of an immigration advice quality standard in NI. This would benefit all recipients of immigration advice including victims/survivors of human trafficking.**

#### **c. Identification of victims/survivors at Larne House**

35. LCNI remains concerned that potential victims/survivors are not always identified at Larne House Short-Term Holding Facility and are therefore

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<sup>9</sup> Ms C v Criminal Injuries Compensation Authority, CI 011/15/00026 [Nov 2015].

<sup>10</sup> Criminal Justice Inspectorate NI, 'Hidden in plain sight: Tackling modern slavery and human trafficking in NI' (CJINI 2020), operational recommendation 6.

<sup>11</sup> Dr Fiona Murphy, Dr Ulrike M. Vieten, 'Asylum seekers and refugees' experiences of life in Northern Ireland' (QUB, 2017), p 36.

treated as immigration offenders rather than victims of crime.<sup>12</sup> In a 2016 submission to the Chief Inspector of Borders and Immigration, LCNI highlighted the seemingly limited role of Border Force in identifying potential victims of trafficking. In the preceding three year period, Border Force had acted as a First Responder just once (139 potential victims were identified during this period). The latest NRM figures show that Border Force did not act as a First Responder in Q2 (18 potential victims) or Q3 (49 potential victims) in NI.<sup>13</sup> It would be surprising if no detainee at Larne House has experienced exploitation; thus, the low rate of NRM referrals by Border Force remains a concern.

**36. LCNI recommends that DOJ reviews the effectiveness of mechanisms to identify victims of human trafficking in Larne House Short Term Holding Facility.**

**d. Destitution and homelessness: social security**

37. Access to safe and secure accommodation is of particular importance to victims/survivors of modern slavery. However, as outlined above, some persons exiting the NRM experience homelessness despite having being conclusively recognised as victims of trafficking. This needs to be addressed. Homelessness can also occur in situations where persons do not agree to be referred through the NRM process or where persons are referred in to the NRM process but do not receive a positive conclusive grounds decision or where there are delays in processing applications for social security.

38. In 2017, the Work & Pensions Committee issued a report on victims of modern slavery and made a number of recommendations to improve their access to social security.<sup>14</sup> Recommendations included *inter alia* removing the Habitual Residence test for victims of modern slavery and ensuring the victims are protected from benefit sanctions.

**39. LCNI recommends that DOJ seeks an update from the Department for Communities about the implementation of the Work & Pension Committee's recommendations in NI.**

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<sup>12</sup> LCNI raised concerns about this in its 2011 and 2016 submission to GRETA. Available at: [Modern slavery & human trafficking | Law Centre NI](#) The NIHRC also raised concerns in its submission to the UN Committee against Torture. NIHRC, 'Submission to UN Committee Against Torture 57<sup>th</sup> Session on the Sixth Periodic Report of Great Britain and Northern Ireland on compliance with the UNCAT' (NIHRC, 2016).

<sup>13</sup> Home Office statistics, 'National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2020 – April to June (17 September 2020); Home Office statistics, 'National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2020 – July to September' (5 November 2020).

<sup>14</sup> Work & Pensions Committee, 'Victims of modern slavery: twelfth report of session 2016-17' (HC 803), 26 April 2017.

#### e. Destitution and homelessness: social care

40. Where destitution occurs in situations where a person has no entitlement to social security, one possible route to support is through community care law. Under the Health & Personal Social Services (NI) Order 1972, the HSC Trusts have a power to provide any necessary support to avoid a breach in human rights arising from situations of destitution. The threshold for any intervention is high and generally only applies in situations where a person is destitute and has additional care needs e.g. disability. There is no guidance in place to explain how victims/survivors of trafficking might access such support.
41. The NI Strategic Migration Partnership is currently undertaking a piece of work to consider pathways to support for persons subject to the No Recourse to Public Funds (NRPF) rule.
42. **LCNI recommends that DOJ works with the Department of Health / HSC Trusts to increase awareness of the availability of support under the 1972 Order for victims/survivors of trafficking.**

#### f. Healthcare provision

43. There is currently a gap in legislative provision for persons in the trafficking system with regards to their health entitlement. Regulations provide for free healthcare for persons within the NRM recovery and reflection period and also for persons with a positive conclusive grounds decision.<sup>15</sup> However, there is **no** provision for persons who are outside NRM support provision who are challenging a negative Home Office provision. Such persons are not eligible to receive primary care (i.e. register with a GP) or secondary care and are only entitled to limited services such as A&E or treatment on public health grounds. LCNI is not yet aware of any victims/survivors who have been denied healthcare under the existing regulations. However, it is essential that persons have access to healthcare when appealing negative decisions; this is particularly important given the timescales involved in the appeal process.
44. LCNI previously worked on this issue in relation to refused asylum seekers (who are now protected in law). We documented a number of cases where lack of access to primary care resulted in life-threatening situations. In addition to having an adverse impact on patients' health, the restrictive

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<sup>15</sup> [Provision of Health Services to Persons Not Ordinarily Resident Regulations \(Northern Ireland\) 2015 \(legislation.gov.uk\)](http://legislation.gov.uk)

Visitors exempt from charges - human trafficking

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.

legislation caused difficulties elsewhere in the health system e.g. as a result of delayed discharges from hospital. LCNI would be willing to provide further information to DOJ on this point.

- 45. LCNI recommends that DOJ works with the Department of Health to extend healthcare entitlement to persons who are challenging negative NRM decisions. An amendment to the Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2015 would provide the necessary protection. As an interim measure, LCNI invites DOJ and Department of Health to agree a policy whereby all victims/survivors are eligible for free healthcare.**

**g. Access to education**

46. The Council of Europe Trafficking Convention requires State Parties to ‘adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education’ (Article 12(4)).
47. Language ability can be a factor for migrants’ vulnerability to exploitation,<sup>16</sup> while limited language skills can hinder the support and recovery of victims/survivors.<sup>17</sup>
48. Conversely, good English language skills support victims/survivors with the process of integration and are particularly helpful in terms of employment prospects i.e. securing decent (non exploitative) work.
49. English language classes are offered by a number of voluntary and community organisations. However, these courses tend to be informal and do not lead to qualifications requested by employers. Being able to access ESOL at Further Education Colleges is therefore important.
50. There is currently no provision within Department for Economy policy to provide free access to ESOL (English language) for victims/survivors of human trafficking. In contrast, there is provision whereby asylum seekers, refugees and Syrian refugees accepted under the Vulnerable Persons Resettlement Scheme may access free ESOL provision at Further Education colleges.<sup>18</sup> This means that where a victim/survivor of trafficking has a

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<sup>16</sup> Fiona David, Katharine Bryant and Jacqueline Joudo Larsen, Migrants and their vulnerability to human trafficking, modern slavery and forced labour’ (IOM, 2019); Fudge and Strauss, ‘Migrants, Unfree Labour, and the Legal Construction of Domestic Servitude: Migrant Domestic Workers in the UK’, in Migrants at Work : Immigration and Vulnerability in Labour Law, ed. By Costello and Freedland, (2014).

<sup>17</sup> Independent Anti Slavery Commissioner, ‘Preparing for impact: How we can overcome barriers and cultivate a culture of collaboration, understanding, and respect to achieve impact on survivor support’ (July 2020).

<sup>18</sup>Department for Economy, Circular Number FE 12/15 Addendum No. 12 Available at: [FE-12-15-addendum-two.pdf \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/FE-12-15-addendum-two.pdf)

concurrent asylum claim she is eligible for free ESOL; however, for persons who have not also claimed asylum (e.g. EEA nationals), there is no entitlement. It does not appear to LCNI that this disparity in support entitlement can be justified.

**51. LCNI recommends that DOJ works with Department for Economy to amend the Further Education ESOL policy to ensure that victims/survivors of trafficking and their family members can access free ESOL.**

52. Another barrier to education for survivors of slavery are the rules relating to student finance. In general, a prospective student cannot apply for student support or 'home student' status unless she meets a 3 year qualifying residence period. A victims/survivor would not be eligible to receive student finance despite having been granted a Residence Permit (Discretionary Leave to Remain).

53. In contrast, the 3 year residence period is waived for refugees.<sup>19</sup> A prospective student who is granted refugee status is immediately eligible to apply for student support (as are any family members).

54. Realistically, the number of victims/survivors who would be in a position to contemplate Higher Education in NI is extremely low. However, LCNI recommends that the DOJ takes a proactive approach and addresses this now.

**55. LCNI recommends that the DOJ works with Department for Economy to ensure that victims/survivors of trafficking are eligible for student support for Higher Education purposes.**

#### **h. Link with TEO Refugee Integration Strategy**

56. To date, asylum and modern slavery matters have largely been addressed separately by the Executive Office and DoJ respectively. However, LCNI's view is that the links between the asylum system and modern slavery should be explored as the two concepts are related and often intertwined. For example: many non EEA victims of trafficking also have concurrent asylum claims; the line between smuggling (voluntary) and trafficking (involuntary) is often far from distinct; and, critically, destitution, including that arising as a result of the asylum system can make people susceptible to exploitation.<sup>20</sup>

57. LCNI considers it would be beneficial for the Executive Office and DOJ to consider how and where the two concepts relate. By way of example, the

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<sup>19</sup> The Education (Student Support) Regulations (Northern Ireland) 2009, Schedule 2. Available at: [The Education \(Student Support\) Regulations \(Northern Ireland\) 2009 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>20</sup> Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, 'Precarious lives: experiences of forced labour among refugees and asylum seekers in England, (University of Leeds, 2013).

Welsh Government recognises that people seeking sanctuary can be vulnerable to exploitation.<sup>21</sup> Accordingly, the Welsh Government has committed to raising these concerns with the UK Government and is devising strategies at a local level to keep asylum seekers safe.

58. The Executive Office is due to consult on its Refugee Integration Strategy in early 2021. This is an opportune moment to establish links between the respective strategies.

**59. LCNI recommends that DOJ works with TEO to explore and address issues applicable to asylum seekers and victims/survivors of slavery.**

**i. Effective participation**

60. The principle of effective participation is that everyone should have the right to participate in decisions which directly affect them. In this context, it means that victims/survivors of human trafficking should have an opportunity to be involved in the development, implementation and monitoring of this strategy.

61. LCNI acknowledges that obtaining the direct involvement of victims/survivors is very challenging and perhaps may not be possible at present, however, it should be a long-term objective. Clearly, the process by which the direct involvement of victims/survivors is obtained would need to be carefully managed. Participants would need to be properly informed and fully supported throughout the process.

62. LCNI is currently involved in efforts to develop a 'Refugee Voices Forum' whereby persons with direct experience of the asylum system are able to contribute to the policy arena on matters relating to integration. This work is very much in its infancy, however, given the similarities between some of the issues faced by asylum seekers and victims/survivors of trafficking (see above), we anticipate that a Refugee Voices Forum could generate learning that could be applicable here. LCNI would be happy to keep DOJ informed of these developments.

**63. LCNI recommends that DOJ commits to exploring and resourcing the direct involvement of victims/survivors in the policy process.**

64. The Law Centre welcomes the opportunity to respond to this consultation. We confirm our willingness to work with DOJ and any other agency on the issues we have highlighted above.

For any further information, please contact Liz Griffith, Senior Research & Policy Officer at Law Centre: [Elizabeth.Griffith@lawcentreni.org](mailto:Elizabeth.Griffith@lawcentreni.org)

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<sup>21</sup> Welsh Government, 'Nation of Sanctuary – Refugee and Asylum Seeker Plan' (2019), pg 16.