



**Opportunities and Obstacles:
Ensuring access to**

compensation

for trafficked persons in the UK

Janice Lam and Klara Skrivankova
Anti-Slavery International 2009

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Cover photo: Rajan (27, Nepalese) is a former domestic slave.

"I was working in India, for two years, for a family. They were very kind to me. They treated me like a son. One day they told me they were going to London. They said I was coming with them. When I got here I realised I wasn't just working with my family any more. I worked 14-15 hour days, cooking, gardening, cleaning, ironing. I worked between two houses. They held on to my passport but twice in the four years I was with them I was allowed to go home to see my family in Nepal. In October, when I came back to England, I didn't go back. I don't want to complain about my family. They weren't bad people. I don't have a job at the moment. It's hard without a reference. But I'm free. I like being in the park. I'm breathing nicely now."



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Anti-Slavery International October 2008

ISBN 978-0-900918-71-1

Acknowledgments

We would like to thank to all those who have contributed to this report with their information and advice. In particular, we would like to thank Julie Barton, formerly of the Poppy Project, for her input on attitudes of trafficked women.

Special thanks also to Lovell's law firm, Yasmin Waljee, Deirdre O'Leary and others for their devotion and pro bono work in bringing compensation claims of trafficked women.

Anti-Slavery International would like to thank the City Parochial Foundation for funding this project.

The views expressed herein are those of Anti-Slavery International and in no way reflect the opinion of the funder.

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Executive summary

Human trafficking is one of the most serious human rights issues in the modern world. As a criminal enterprise, traffickers profit from the abuse and exploitation of women, men and children. It also deprives countless individuals of their basic human rights and freedoms. The high-profit, low-risk nature of the crime, coupled with the inadequate responses and policies of governments, has allowed human trafficking to thrive worldwide.

Although there has been an increase in the number of convictions for human trafficking in the UK, legal remedies and compensation for trafficked persons have remained inaccessible. This report identifies the legal remedies available to trafficked persons in England and Wales and analyses the effectiveness of each remedy viewed in light of its accessibility to trafficked persons.

Under the UK law, trafficked persons have four different options to seek compensation:

- a) compensation order in criminal proceedings;**
- b) application to Criminal Injuries Compensation Authority;**
- c) civil litigation;**
- d) in some cases before an employment tribunal.**

Because of the numerous practical and legal barriers that trafficked persons in the UK face, it is currently unlikely that they will receive any compensation for their injuries and suffering either from the trafficker or from the state.

Restitution for victim's injuries can be obtained at the criminal trial only upon application of a compensation order. Research for this report identified only one known instance, however, where the prosecution has expressed an intention to apply for a compensation order on behalf of a trafficked person. A review of over 41 cases resulting in 95 trafficking convictions in the UK failed to uncover any cases where the court ordered the trafficker to pay compensation to the victim. Despite the fact that traffickers' assets have been confiscated during police operations and through court proceedings, the criminal profits are not used to compensate victims for their injuries and suffering.

Our research similarly suggests that trafficked persons rarely pursue remedies through employment tribunals or civil courts. Undocumented workers, who may constitute a significant number of trafficked persons, are excluded from employment tribunals purely on the basis of their immigration status. Lack of availability

of legal aid for pursuit of civil claims or employment claims hinders trafficked persons from obtaining effective legal representation.

To date, the national compensation fund, known as the Criminal Injuries Compensation Scheme, has provided the only effective means of compensation for women trafficked for sexual exploitation. At least five awards have been made so far. These successes were made possible by a significant investment of resources by a law firm and several voluntary organisations.

The effectiveness of legal remedies for trafficked persons is also dependent on the provision of comprehensive support services to trafficked persons. Support services are necessary to address the individual's physical and psychological needs and to inform and assist him or her in the pursuit of legal options and remedies. Support services must be provided to all trafficked persons, not just those trafficked for sexual exploitation. Without such support and a meaningful opportunity to recover, those most vulnerable are unlikely to be able to access justice. Participation of an individual in legal proceedings, whether criminal or civil often depends on the his/her emotional well-being and ability to present a clear and consistent account of his/her experiences. An individual who has been severely traumatised though trafficking experience cannot realistically be expected to participate in a consistent manner. Thus, immediate attention for the trauma they have suffered and ongoing support are key components to enable a trafficked person to access justice.

The legal remedies available to trafficked persons do not exist within a vacuum. In other words, the ability to pursue compensation is not simply a function of the sufficiency of existing legal remedies. Rather, it is also dependent on the attitudes and mindset of policymakers and law enforcement, as well as the awareness of judiciary and prosecution. A human-rights approach is essential in upholding the rights of the most vulnerable. While many stakeholders interviewed for this report supported the idea of compensation for trafficked persons, a substantial number also admitted that they had not previously considered it or that it was a low priority. Compensation for trafficked persons appears to be seen as a marginal issue.

The current UK policy provides little guidance for the relevant bodies, such as the police, prosecution or the judiciary regarding the pursuit of compensation

payments for victims of trafficking. Although The Council of Europe Convention on Action Against Trafficking in Human Beings was ratified by the Government in December 2008, it has failed to fully grasp the practical measures needed to uphold a human-rights and victim-centred approach.

The review of opportunities and obstacles to justice for trafficked persons in the UK clearly showed that, standing alone, the existence of legal provisions for compensation is insufficient to ensure that they are accessible to trafficked persons. Specific measures are needed to implement these provisions. This report therefore highlights a number of policy recommendations, including the following:

- 1. Mainstream the issue of compensation into UK anti-trafficking policy. In particular, ensure that concrete actions are spelled out in the Action Plan to overcome obstacles that prevent trafficked persons from accessing compensation and that proceeds of crime confiscated from traffickers are used to compensate victims of trafficking.**
- 2. Provide trafficked persons with a temporary residence permit as a part of the Council of Europe Convention implementation, to enable them to initiate a claim for compensation if they so choose.**
- 3. Issue guidance and training on the use of compensation orders in human trafficking cases. Provide training to police and prosecutors to ensure that compensation orders are applied for in every appropriate trafficking case where traffickers' assets are available. Training should include the types of loss that compensation orders cover (not just financial loss but also personal injury). Training should also be provided on the Proceeds of Crime Act 2002, specifically section 13, which enables Crown Courts to require that a compensation order be paid out of a confiscation order.**
- 4. Extend employment law protections to enable all workers to enforce core statutory employment rights, regardless of their immigration status. For example, all workers should be entitled to receive minimum wage.**
- 5. Ensure that trafficked persons have access, from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings regarding compensation in a language they understand.¹**

¹ Requirement of the Council of Europe Convention on Action Against Trafficking in Human Beings, Article 15, adopted 16 May 2005, entered into force 1 February 2008, available at http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197_en.asp#TopOfPage

1. Introduction

Trafficking in human beings generates large profits for traffickers at a very low risk. For trafficked persons, on the other hand, their experience means not only loss of potential earnings, but also physical and psychological injuries that, in many cases, will remain lifelong scars. Trafficked persons face significant risks in reporting the crime to authorities: risk of reprisals from the traffickers, risk of re-trafficking, risk of long-term debt bondage, risk of destitution, risk of social exclusion, detention and deportation and risk of being charged with a criminal offence. These risks not only expose trafficked persons to further abuse but also contribute to their sense of helplessness and injustice.

Globally, profits generated from all forms of forced labour amount to US\$ 44.3 billion² per year, with the majority of the profits generated in industrialised countries. The estimated annual profits of traffickers from forced economic exploitation are \$3.8 billion, with profits highest in industrialised countries (US\$ 2.2 billion).³ Profits from trafficking for sexual exploitation amount to US \$27.8 billion, with \$13.3 billion made in industrialised countries.⁴ Whilst estimates are available on the profits made from trafficked persons, there is no corresponding information on how much of these profits are seized and used to compensate the victims.

Access to justice⁵ for trafficked persons is crucial to effectively combat trafficking. Next to the importance of having the sense of justice and acknowledgement of the violations that happened, compensation also plays a vital role in the rehabilitation of trafficked persons. All too often the assistance to trafficked people is understood and limited to shelter, some level of counselling and safe return. Social integration and re-integration programmes are occasionally included. Assistance to realise their legal rights and support in seeking compensation for those trafficked is hardly ever considered in anti-trafficking policies.

The experience of support organisations shows that a financially independent and secure former victim, who has a positive and empowering experience with the justice system (be it criminal or other part of the system), is more likely to achieve recovery or to be close to recovery. Consequently, the vulnerability of such persons to re-trafficking is significantly lower.

Therefore, we consider it important to focus on compensation and include the concept of access to justice and support in seeking compensation into the assistance programmes offered to trafficked persons, alongside the services that are usually offered, such as shelter.

In the UK, access to justice and compensation is not understood as one of the elements of assistance to trafficked people and hence disregarded in anti-trafficking policy. Furthermore, even the support services currently available do not meet all the needs. To date, the Government's efforts to combat human trafficking have largely focused on trafficking for sexual exploitation. As such, support services cater virtually exclusively to persons trafficked for sexual exploitation.⁶

Persons trafficked for forced labour are not a homogeneous group and their needs and experiences must be understood in this context.⁷ Some may enter the country legally on visas for domestic work or in the care, construction and agricultural industries, whilst others enter illegally.⁸ Some may come to work in legal occupations, such as factory or construction work, whilst others work in illegal industries, such as the drug trade or forced begging.⁹ Trafficked persons often come from unstable and economically devastated places, as traffickers frequently identify vulnerable populations characterised by oppression, little social mobility and few economic opportunities.

² Belser, P., *Forced Labour and Human Trafficking: Estimating the Profits*, ILO, March 2005, p.11.

³ *Ibid.*, p.11.

⁴ *Ibid.*, p.15.

⁵ We understand access to justice as the ability of trafficked persons to overcome the trafficking experience and prevent its recurrence by seeking and obtaining a remedy, through the justice system, for grievances according to human rights principles and standards.

⁶ A Government-led pilot testing the provision of services to persons trafficked for labour exploitation is currently underway, which should lead to the development of such services in the near future.

⁷ *Fact Sheet: Labor Trafficking, The Campaign to Rescue and Restore Victims of Human Trafficking*, U.S. Department of Health and Human Services, available at: http://www.acf.hhs.gov/trafficking/about/fact_labor.html

⁸ *Ibid.*

⁹ *Ibid.*

Although there is no single way to identify persons trafficked for forced labour, common indicators, as defined by the ILO, include:

- Forced isolation
- Debt bondage
- Withholding of wages
- Withholding of identity documents (e.g., passport)
- Threats of violence
- Threats of denunciation to authorities on the basis of the individual's undocumented immigration status or participation in an illegal industry.

The following case studies illustrate but a few examples from the UK.

Case Study
A man trafficked from Eastern Europe to the UK was subjected to conditions of forced labour in Cambridgeshire.¹⁰ In addition to having his identity papers seized, he was given only minimum food rations over a 12-month period. Despite being forced to work long hours on the land, he was denied his wages.

Groups of workers are just as susceptible as individuals to exploitative and abusive practices at the hands of traffickers and gangmasters.

Case Study
Migrant workers from Poland used for flower picking throughout the UK were subject to huge unauthorised deductions from their wages for transportation and accommodation. They were also issued a threatening letter that stated that workers were not free to leave before the end of the contract without paying £700.¹¹ Workers were housed in cramped and unsafe accommodations and received just 4p per bunch of flowers picked. Some workers received just £24 for a nine hour day.

With regards to domestic servitude, statistics from Kalayaan illustrate the range of physical and psychological abuse and exploitation experienced by migrant domestic workers, many of whom are trafficked to the UK for labour exploitation.

Migrant Domestic Conditions of Work 2006¹²

Physical abuse	26%
Psychological abuse	72%
Sexual abuse	10%
No own room	61%
No own bed	43%
No regular meals	41%
No meal breaks	70%
No time off	70%
Not allowed out of house	61%

Research has documented the health impacts of labour trafficking, ranging from a variety of physical and mental health problems. Physical problems resulting from abuse and methods of forced labour include scars, headaches, hearing loss, cardiovascular or respiratory problems, and limb amputation.¹³ Other ailments that may also develop include chronic back pain and visual and respiratory problems from working in agriculture, construction or manufacturing under dangerous conditions.¹⁴

Psychological effects are equally debilitating. These range from helplessness, shame and humiliation, a sense of betrayal, shock, denial and disbelief, disorientation and confusion, and anxiety disorders including post-traumatic stress disorder (PTSD), phobias, panic attacks, and depression.¹⁵ In severe situations, some individuals may also develop a psychological response known as Traumatic Bonding or "Stockholm Syndrome," which is characterised by cognitive distortions where reciprocal positive feelings develop between captors and their hostages, to enable them to cope with their experience.¹⁶

Recent cases and anecdotal evidence strongly suggest that persons trafficked for forced labour in the UK remain largely unidentified and unassisted. Left to fend for themselves, their vulnerable psychological and economic condition may often be exacerbated by their isolation. Some feel they have no alternative but to remain in their abusive situation, thereby perpetuating the cycle of labour trafficking. Others who have escaped their traffickers have been deported from the country without receiving the wages they are owed.

¹⁰ *Migrant Rescued From Slave Labour*, BBC, 26 October 2007, available at <http://news.bbc.co.uk/1/hi/england/cambridgeshire/7061774.stm>

¹¹ Gangmasters Licensing Authority, *Forced Labour at 4p a Bunch*, 7 May 2008, available at http://www.gla.gov.uk/embedded_object.asp?id=1013358.

¹² Kalayaan, *Briefing: Bonded Labour in the UK?* Statistics produced using Kalayaan's registered database for 2006 (N=312).

¹³ *Fact Sheet: Labor Trafficking, The Campaign to Rescue and Restore Victims of Human Trafficking*, U.S. Department of Health and Human Services, available at http://www.acf.hhs.gov/trafficking/about/fact_labor.html

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

The harm to persons trafficked for forced labour makes the provision of comprehensive support services an immediate necessity.

Case Study

Gangmaster Victor Solomka was convicted in February 2005 for his exploitation of hundreds of irregular migrant workers.¹⁷ Solomka supplied approximately 700 individuals, many of whom were irregular migrant workers from Eastern Europe, to farms and fish factories throughout England and Scotland. Workers toiled for 15 to 16 hours a day but received only £4.30 an hour and faced unlawful deductions for job placement, rent, transport to and from the factories and, in some cases, food.¹⁸ Workers shared cramped and squalid living quarters and were described by police as being exploited “mercilessly without concern or compassion.”¹⁹ Meanwhile Solomka quickly amassed over £5 million through his illegal operations and exploitation.

Characteristic of many trafficking scenarios, Solomka and his henchmen controlled the workers through threats of physical violence and their irregular immigration status. Even after Solomka was arrested by the police, the former workers were still too frightened to be identified. Still, despite the trauma, exhaustion, physical and psychological abuse endured by the workers, which law enforcement authorities roundly acknowledged, there is no evidence that law enforcement and government authorities made any effort to address their needs or provide them with appropriate support services.²⁰ To the contrary, the Home Office’s responded to Solomka’s victims as an immigration problem rather than as victims of forced labour and further penalised them with deportation. Indeed, of the 38 workers who were initially arrested at the time of the operation, 28 were swiftly deported back to their homes in Eastern Europe, including Belarus, Ukraine, Russia and Latvia. There is also no indication that Solomka’s victims were provided with any opportunity to pursue justice against their trafficker in the UK.

In addition to addressing the needs of trafficked persons, the provision of specialised assistance will assist in bringing traffickers to justice. As discussed above, successful investigations and prosecutions

require the availability and cooperation of witnesses, which in turn depends upon the provision of victim and witness care. Dedicated caseworkers and advocates play a critical role in supporting trafficked persons through the criminal justice system, which is often a lengthy and stressful experience. Support workers inform victims of their legal rights and remedies, answer questions, ensure access to an interpreter and provide ongoing moral support and encouragement to allay the individual’s fears and concerns. The current ad hoc approach to the investigation and prosecutions of trafficking for forced labour cases must be replaced with a victim-focused approach.

The ratification of the Council of Europe Convention on 17 December 2008 is expected to bring about some improvement in support to persons trafficked for forced labour, as the minimum levels of protection and support set out in the Convention will apply to all trafficked persons, not just those trafficked for sexual exploitation. It is critical, however, that the Government does not just implement the minimum levels of protection but rather executes a long-term strategy through in-depth study of current best practices for trafficked persons, both in the UK and in other countries.

Although trafficked persons have an established right to compensation and various compensation mechanisms are in existence in the UK, the actual receipt of a compensation payment by a trafficked person is, in practice, extremely rare. The few examples of trafficked persons in the UK who did receive compensation are clearly exceptions. Indeed, research for this report showed that compensation is viewed neither as a fundamental element of restorative justice nor as a key element of anti-trafficking policies and measures.

This report explores both the opportunities for restorative justice within the British legal system as well as the obstacles posed by the current anti-trafficking policy, lack of implementation of norms and lack of awareness. The second and third sections introduce the research methodology and terminology and examine the four opportunities to seek compensation available in the UK. This section also provides an overview of the UK’s

¹⁷ Victor Solomka was convicted of conspiring to facilitate the commission of breaches of immigration law and of one count of money laundering between December 2000 and March 2004. He was subsequently sentenced to seven years in prison.

¹⁸ *Police Hail Gangmaster Conviction*, BBC, 3 February 2005, available at <http://news.bbc.co.uk/1/hi/scotland/4233873.stm>

¹⁹ *Ibid.*

²⁰ See Crown Prosecution Press Release, *CPS to Confiscate Gangmaster’s Illegal Assets After Guilty Verdict*, 3 February 2005, http://www.cps.gov.uk/news/pressreleases/archive/2005/112_05.html (“The CPS is determined to show criminals that crime does not pay and we will put a stop to their extravagant lifestyles which are funded at the expense of their victims.”); Comment of Detective Inspector Paul Cunningham, available at <http://thescotsmen.scotsmen.com/ViewArticle.aspx?articleid=2600538> (“What [the workers] encountered was a life of sheer hell.”)

obligation under the Council of Europe Convention,²¹ commitments made by the Government in the Action Plan²² and the role of victim assistance programmes. The fourth and fifth sections detail the findings of the research and analyse the procedural and substantive obstacles that prevent trafficked people from accessing compensation. The sixth section provides policy recommendations intended to address each identified obstacle and ensure that access to compensation for trafficked persons becomes a reality.

The OSCE/ODIHR 2008 report *Compensation for trafficked and exploited persons in the OSCE region* concluded that:

“In view of the fact that a small minority of trafficked persons claim compensation and even fewer receive compensation payments; states must make more efforts to improve compensation systems for the benefit of trafficked persons, in light of their international legal obligations. There is no single model that will guarantee that compensation is made to all or a majority of trafficked persons and there are numerous practical barriers which may prove difficult to overcome. They should therefore ensure that a multiplicity of remedies is available so that trafficked persons have some chance of success in making a claim. It is possible for states to borrow the best attributes from some existing schemes in order to establish or improve their own systems. However, states should do this within the development of a comprehensive policy on compensating trafficked persons.”

²¹ Council of Europe Convention on Action against Trafficking in Human Beings, available at http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197_en.asp#TopOfPage.

²² UK Action Plan on Tackling Human Trafficking, Home Office and Scottish Executive, March 2007, updated July 2008, available at <http://www.homeoffice.gov.uk/documents/human-traffick-action-plan?view=Binary>.

2. Methodology

The research sought answers to the following main questions: Does the law in the UK provide sufficient routes for victims of trafficking to seek compensation? Is compensation for trafficked persons accessible in the UK? Are any changes in the current system needed? How does the anti-trafficking policy in the UK deal with compensation for trafficked people?

Research for this report relied mainly on qualitative methods but some quantitative data was also collected on trafficking cases in the UK. Although the research provides an overview of the standards and procedures in the UK, it should not be viewed as exhaustive.

Desk research comprised the first stage of research and was conducted through an in-depth review of UK trafficking legislation, statutory guides, legal treaties and court decisions. Government, UN and NGO reports, journal articles, conference reports and presentations were also consulted.

Quantitative data was collected through the examination of recent human trafficking cases in England and Wales, as well as the related issue of the status of undocumented migrant workers who had been trafficked. Data on trafficking convictions was collected through extensive review and research of news articles, government and police press releases, parliamentary reports, and appellate court decisions. Certificates of conviction were requested from 21 courts in relation to the trafficking convictions of 125 individuals, their sentences and the imposition of any confiscation or compensation orders made by the court. Responses were received from 15 courts regarding 95 individuals. The resulting data was compiled and analysed for trends.

The research further involved a questionnaire survey and direct interviews with stakeholders. Police, prosecutors and judges involved in the trafficking cases were then contacted to obtain qualitative data, including knowledge of and perspectives on compensation for trafficked persons. Specific questionnaires were designed for police forces, prosecution and judges to elicit information on their perceptions of victim care and compensation. Each questionnaire was designed to obtain information in the following areas:

- Necessary measures for prevention of trafficking, prosecution of traffickers and protection of trafficked persons
- Awareness of and perceived effectiveness of compensation measures for trafficked persons

- Effectiveness of compensation orders and asset recovery in the context of trafficking cases
- Case-specific information

A total of 35 interviews were then conducted with individuals who were directly involved in the investigation and prosecution of a number of human trafficking cases in the UK.

The interviews were semi-structured and covered similar areas to the questionnaires. The breakdown of the interviewees was:

- 15 police officers
- 7 prosecutors
- 3 judges
- 3 support workers
- 4 solicitors and
- 3 civil servants

The purpose of the interviews was to ascertain the perceptions of the importance of compensation to trafficked persons and the effectiveness and accessibility of legal remedies.

Methodological Limitations

There were specific courts whose participation in the research would have been significant, specifically in providing information about confiscation and compensation orders in cases of convicted traffickers, but whose responses were not received. Additionally, due to the cost of obtaining court transcripts, it was beyond the scope and budget of this project to obtain the court's reasoning in every case where compensation orders were not made.

The report focuses almost exclusively on England and Wales due to the high concentration of trafficking cases reported there and the uniform legal system. This is not to suggest that human trafficking does not occur in Scotland and Northern Ireland; rather, trafficking cases have been identified in both places and more research is needed on the nature of human trafficking in the rest of the UK.

Notwithstanding some limitations, this report is the first attempt to research the issue of compensation for trafficked persons in the UK. The information gathered in interviews, the variety of stakeholders involved and the breadth of sources used to inform this research bring us to conclusion that this report is a significant piece of work that sheds light into the reality of redress for trafficked persons in the UK and provides a strong fundament for further work.

3. Terminology

In this report, the term “compensation” has been used to refer to the financial payment made to an individual for the loss, injury or harm suffered as a result of another’s actions or breach of duty.

Compensation includes both general damages and special damages. General damages compensate the claimant for the non-monetary aspects of the specific harm suffered, such as physical or emotional pain and suffering and loss of enjoyment of life. Special damages compensate the claimant for the quantifiable monetary losses suffered, such as out-of-pocket medical expenses, repair or replacement of damaged property and lost earnings (both historically and in the future). Special damages can include direct losses and consequential or economic losses resulting from lost profits in a business.

“Legal remedy” is used to refer to the enforcement of a right through a court or administrative proceeding (e.g., employment tribunal). The term is also used to refer to a specific amount of monetary damages, as distinguished from an equitable remedy (e.g. injunctive relief or specific performance) or declaratory relief (i.e., where a court determines the rights of the parties to an action without awarding damages or ordering equitable relief).

This report refers to trafficked persons as both “he” and “she” to reflect the reality that women, men and children are all trafficked. However, women and children are overwhelmingly trafficked, particularly for sexual exploitation, and are at the highest risk of being trafficked for other purposes because of their relative lack of power, social marginalization, and their overall status as compared to men.

The terms “trafficking victim” or “trafficked person” are used interchangeably.

The term “access to justice” refers to the ability of trafficked persons to overcome the trafficking experience and prevent its recurrence by seeking and obtaining a remedy, through the justice system, for grievances according to human rights principles and standards.

4. Opportunities for Justice

This section explores the provisions in the British legislation related to compensation to victims of crime or to workplace exploitation and their applicability to trafficked persons. We also look at the relevant international treaties that the UK is bound by and finally explore the concept of compensation from the point of view of a trafficked person.

When examining the ability of trafficked persons in the UK to seek and obtain remedy, we will look at the opportunities (the existing normative protection) and the obstacles (capacity to seek remedy and the capacity to provide effective remedy) to access in justice:

<p>1. Normative Protection (Existence of remedy):</p>	<p>a. By international and constitutional law b. By legal and regulatory frameworks c. By customary norms and jurisprudence</p>
<p>2. Capacity to seek a remedy (legal empowerment):</p>	<p>a. Legal awareness b. Legal counsel c. Capacity to access formal and informal justice services</p>
<p>3. Capacity to provide a effective remedy (adjudication, enforcement and oversight)</p>	<p>a. Effective adjudication and due process: judicial, quasi-judicial, informal and traditional systems b. Enforcement: Police and prisons c. Civil society oversight</p>

(Source UNDP 2007)

4.1 International and Domestic Obligations

The rise of human trafficking has resulted in legal and policy initiatives both amongst the international and European community and within the UK. The UK is bound by a number of international treaties relating to trafficking and forced labour.²³ The UK is a party to the European Convention on Compensation to the Victims of Violent Crime and must also give regard to the EU Council Directive of 29 April 2004 on compensation of crime victims. Perhaps the two most important recent developments in the UK have been the ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings²⁴ and the publication of UK Action Plan on Tackling Human Trafficking in March 2007.²⁵

- **Council of Europe Convention on Action Against Trafficking in Human Beings**

On 1 February 2008, the Council of Europe Convention on Action against Trafficking in Human Beings (“Convention”) entered into force upon receiving its tenth ratification by a Council of Europe member state.²⁶ The Convention recognises trafficking in human beings as a major human rights issue and focuses on the protection of victims and their rights. The Convention applies to all forms of trafficking, both national and transnational, whether or not related to organised crime. It applies regardless of the victim’s identity — women, men or children — and whatever the form of exploitation: sexual exploitation, forced labour or services. Ratification of the Convention requires that states fully implement the rights, obligations and protections of the treaty into their domestic law. The UK signed the treaty on 23 March 2007. On 14 January 2008, the Home Office announced its intention to ratify the Convention by the end of the year, which they did on 17 December 2008.²⁷

Trafficking prevention and victim protection are covered by Chapters II and III of the Convention, respectively. Chapter II contemplates the prevention of trafficking through the implementation of government

²³ The UK is a party to the UN Convention on Transnational Organised Crime and its supplementing protocols, including the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children; it ratified ILO Forced Labour Conventions 29, 105 and C97.

²⁴ The Council of Europe Convention is available at http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197_en.asp#TopOfPage. The UK ratified the Convention on 17 December 2008.

²⁵ The updated UK Action Plan was published in July 2008 and is available at <http://www.crimereduction.homeoffice.gov.uk/humantrafficking004.pdf>.

²⁶ The first ten countries to ratify the Convention are Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and Slovakia. On 9, 11, 17 and 30 January 2008 respectively, France, Bosnia and Herzegovina, Norway and Malta deposited the instruments of ratification. The Convention entered into force with regard to these four countries on 1 May 2008.

²⁷ Home Office Press Release, Home Secretary Moves to Ratify the Council of Europe Convention Against Trafficking in 2008, 14 January 2008, available at <http://press.homeoffice.gov.uk/press-releases/Trafficking>.

²⁸ The Convention became part of UK law on 1 April 2009.

policies and programmes. Parties are to strengthen national coordination between law enforcement and judicial bodies, as well as between social services, immigration and customs officials and nongovernmental organisations. The provisions under this chapter require that parties employ a human rights-based approach to engage in research, awareness raising and education campaigns, and social and economic initiatives and training programmes. Programmes are to have a particular focus on persons vulnerable to trafficking, such as women and children.

The focus of Chapter III of the Convention is victim protection. The chapter comprises provisions on victim identification, protection and assistance. Specifically, this includes the provision of a recovery and reflection period, residence permit and legal remedies such as compensation. Parties must allow for a minimum of a 30-day recovery and reflection period during which victims illegally present in the country may not be removed from the territory of the party. The recovery and reflection period is intended to allow victims to recover at least a minimal degree of physical and psychological stability.

Article 15 addresses four aspects of compensation and legal redress. First, parties must ensure that victims have access to information on relevant court and administrative proceedings in a language that they can understand from their first contact with law enforcement authorities.²⁹ Second, a party must provide for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law in order to make compensation and other legal remedies accessible to victims.³⁰ Third, a victim must be ensured the right to compensation to cover both material and non-material damage.³¹ Finally, recognising that a trafficked person will rarely receive full compensation from the trafficker himself, Article 15 requires that parties take steps to guarantee compensation to victims. Examples include establishment of a state compensation fund or social assistance programmes funded by the seizure of criminal assets. The Convention is the only international legal standard that establishes the right of victims of trafficking to compensation.

The Convention's monitoring mechanism – the Group of experts on action against trafficking in human beings (GRETA) – is to be established by 1 February 2009 to ensure the full and effective implementation of the Convention by each of the parties.³² To this end

GRETA is responsible for regularly evaluating and reporting on the measures taken by the parties.³³ Those parties whose measures fall short of the Convention's standards will be required to improve their action.

• **UK Action Plan on Tackling Human Trafficking**

On 23 March 2007, the same day the UK signed the Council of Europe Convention on Trafficking in Human Beings, the Government published its first UK Action Plan on Tackling Human Trafficking after a year-long national consultation. The aim of the Action Plan was to highlight current work on human trafficking across the Government and other agencies, identify gaps in existing work, and outline future plans in the areas of prevention, investigation, enforcement and prosecution, provision of protection and assistance to victims and the issue of child trafficking. The Action Plan includes a number of action points designed to create a holistic strategy to combating human trafficking in the following areas:

1. Prevention of trafficking
2. Investigation, law enforcement and prosecution
3. Providing protection and assistance to adult victims of trafficking
4. Child victims of trafficking

The Action Plan highlights the areas of forced labour and child trafficking as knowledge gaps and acknowledges the need for more investigation into the scale of the problem. The Action Plan also recognises the need for increased support to trafficked persons, including those trafficked for forced labour.

With respect to compensation for trafficked persons, however, the Action Plan is virtually silent. The Action Plan states that victims may seek compensation through one of three ways: (1) requesting that the prosecutor apply for a compensation order upon the trafficker's conviction, (2) suing the offender in the civil courts or (3) applying through the Criminal Injuries Compensation Scheme³⁴ The proposal, however, contains no strategy, timetable, assessment tool or objective with respect to improving or ensuring victims' access to compensation.

At the beginning of July 2008, the Government published an updated version of the Action Plan. The new action plan fails to mention compensation at all. Although it acknowledges the need to build up a

²⁹ Council of Europe Convention, Art. 15(1).

³⁰ Art. 15(2).

³¹ Art. 15(3).

³² Art. 36.; the members of GRETA were nominated in December 2008 and appointed in January 2009

³³ *Ibid.*

³⁴ *UK Action Plan on Tackling Human Trafficking*, March 2007, p. 58.

network of expertise around the recovery of traffickers' assets, it fails to link seized assets of traffickers with the compensation of victims.

4.2 Assistance and protection of the rights of trafficked persons

The Need for Assistance and Compensation

As with any victim of a serious crime, a person who has been rescued from a trafficking situation often experiences trauma and a wide range of physical and psychological injuries. The rehabilitation of victims can be viewed in distinct phases: first, a period of recovery and then a period of rebuilding their lives.

Through each of these phases, a victim's needs change.³⁵ Immediately after escaping from the situation, a victim will have short-term survival needs, which include basic necessities such as safe housing, food, clothing, medical care, legal services and advocacy within the criminal justice system, interpretation services and immigration assistance. Once these short-term needs are met, the intermediate needs of the individual must be considered and addressed in order to help them continue to recover and rebuild their lives. These include continued medical care, mental health counselling, transitional housing, education and language classes, job training and work authorisation. Long-term needs include integration and re-settlement skills (e.g., accessing public transportation, decision making and managing finances), risk assessments and safety planning and contact with family and friends.

Compensation is often overlooked in favour of the individual's short-term survival needs. As victims start to rebuild their lives, the importance of compensation becomes increasingly important. Compensation helps the victim to recover from physical, emotional and financial losses, enables the victim to pay for treatment and have the opportunity to restart his or her life.

Compensation also plays a preventative and deterrent function. Many trafficked persons are in debt, which persists even after they have escaped the exploitation. They may have come to seek work in the UK due to economic need and poverty in their home country. The majority of them come to the UK with a clear vision of earning money and thereafter wish to return to their

home country. If, as a result of abuse, they were prevented from earning any money whatsoever, or if their debt persists, then they would be unable to return. They remain in a very vulnerable situation, or become even more vulnerable due to an increased debt. In such cases, compensation could play an important role in preventing the re-trafficking of these individuals or assist with re-integration in their original community.

The restorative function of compensation can be a very important element in the process of recovery of trafficked persons. It is not just the financial aspect of compensation that benefits the trafficked person, but also the sense of justice and recognition that they were victims of a serious crime and deserve compensation. If the victim receives compensation directly from the trafficker, for some the sense of justice might be even stronger.

Development in the UK

Over the past five years, assistance for trafficked persons in the UK has vastly improved. Before the establishment of dedicated safe houses, trafficked persons had little, if any, access to essential support services such as medical care or counselling. In some cases, trafficked women were arrested on immigration offences and quickly deported back to their home countries. Victim care and witness protection ranked low throughout the process of criminal proceedings.

The establishment of formal support services, such as the POPPY Project set up in 2003, has filled an important void. The project, which provides safe accommodation and referrals to medical, legal and social services to women trafficked for sexual exploitation is funded by the Government. Women supported by the project also receive access to education and English classes and may be eligible to remain in the country for a four-week reflection period.³⁶

Many police officers reported building and maintaining relationships of trust with trafficked women as a critical component of the victim care process. In several cases, the police maintained regular contact with trafficked women both in the UK and through follow-up visits to their home countries throughout the course of the criminal proceedings. In these cases, the police found that they were subsequently better positioned to assist them through the criminal justice process and gather fuller

³⁵ *Comprehensive Services for Survivors of Human Trafficking: Findings from Clients in Three Communities*, Urban Institute, June 2006, p.12.

³⁶ A reflection period is intended to provide protection and support to the trafficking victim. It enables them to escape the influence of their traffickers, access specialist services, and have time to make informed decisions about their future plans, including the adjustment of immigration status and whether to cooperate with law enforcement authorities. In the UK, the reflection period will be 45 days when the Council of Europe Convention enters into force for the UK in early 2009.

Table 1³⁷
Changes in the needs of trafficked peoples

Short-term Needs	Intermediate Needs	Long-term needs
<ul style="list-style-type: none"> • Safe housing • Food • Clothing • Medical care • Resolution of immigration status 	<ul style="list-style-type: none"> • Continued medical care • Mental health counselling • Transitional housing • Education • Language classes • Job training • Work authorisation 	<ul style="list-style-type: none"> • Integration and re-settlement life skills • Risk assessments • Safety planning • Contact with family and friends • Return to country of origin

evidence against the traffickers at trial. Partnerships between law enforcement and NGOs abroad have also assisted in the resettlement process for trafficked persons who have returned home.

Prosecutors have similarly reported a great improvement in overall victim care. Indeed, several prosecutors reported that witness care and management was the route to securing a successful conviction against the trafficker. The increase in pre-trial meetings with victims and witnesses was also credited with allaying some fears and concerns before the trial.

Going forward, there is still a pressing need to expand the capacity of assistance for people trafficked for sexual exploitation and develop provisions for persons trafficked for forced labour. The Government ran a pilot in the summer of 2008 to test provisions for victims of labour trafficking, and showed that a number of provisions for assistance will need to be in place once the Council of Europe Convention enters into force for the UK.

Whilst the updated Action Plan establishes the provision of a 45-day reflection period and residence permit for trafficked persons, it provides no guidance on formal procedures for administering the scheme, as none had yet been devised at the time of writing. The implementation of a uniform and well-devised national approach to victim identification and assistance is a prerequisite to developing a functional national referral mechanism, which the Government has indicated its intention to develop. To ensure that the provisions in the Council of Europe Convention on compensation to trafficked persons are implemented, access to compensation must be embedded into the referral mechanism and accompanied by extensive training throughout the UK for relevant law enforcement and government staff.

³⁷ *Ibid.*

4.3 Attitudes of Trafficked Persons Towards Compensation

Attitudes of trafficked persons towards compensation may vary widely. In some cases, trafficked persons are simply not interested in pursuing compensation and wish to forget about their experiences. Others feel that no amount of money could compensate for the trauma and suffering they have endured or have other needs that are so pressing that they are unable to consider it. In other cases they may be desperate to recover unpaid wages as a means of supporting themselves and their family members or to escape persistent debt bondage.

Lawyers and case workers cite fear as the most common reason that trafficked persons do not wish to pursue compensation. Fear of the trafficker, fear of an unknown legal system and fear of cooperating with law enforcement rank primary among these concerns. Some of the women supported by The POPPY Project have been very ambivalent about the idea of applying for compensation. Women who have been controlled by their traffickers can often become very dependent on support service providers and find such decisions difficult to make for themselves. Hence, the role of support is crucial.³⁸

Consequently, the decision to pursue compensation is generally one that a vulnerable individual cannot make quickly, as it requires confronting personal concerns and considering the implications of the process. For example, pursuing civil or criminal compensation claims requires victims to recount the traumatic experiences and injuries they have endured within the criminal justice system, which for many reasons some victims of trafficking may be unable or unwilling to do. Thus, not every trafficked person will pursue compensation but some may not even consider the option because they lack support or information.³⁹ An individual's fears can be addressed to a large extent through continuous support and care by lawyers and case workers, clear and simple explanations of different legal options, and involvement in the process from the outset.

From the victim's perspective the need for compensation is driven by more than solely financial gain and it is rarely their first priority. Victims want

recognition from society for the harm they have endured and 'closure.' In the UK there have been very few awards of compensation made to victims of trafficking. Those individuals who have been awarded compensation have endured lengthy asylum appeals and criminal trials requiring them to give evidence against their traffickers. An award of compensation at this stage in a woman's case marks the end of her time as a 'victim' and offers new opportunities and hope for the future.

Women with the right to remain in the UK have used the money awarded to them to finance reunions with family members from whom they have often been separated from for many years. Women have also used the money pursue education and training opportunities to enable them to enter the legitimate employment market. There is a certain element of 'poetic justice' in this for the women who were deceived into travelling to the UK with false promises of work or study but were forced into prostitution instead.

Financial compensation is particularly important to victims of trafficking from non-EU countries as they have no recourse to public funds in the UK and are therefore not entitled to any social security benefits. A8 and A2⁴⁰ nationals can exercise their treaty rights to seek employment in the UK but in practice many victims are not able to exercise such rights to legitimate employment if they do not speak English or have no previous work experience. Furthermore, many women remain psychologically damaged by their experiences long after they have managed to escape and are unable to work or study as a result. For these women their only choice is either to continue to work in the sex industry in the UK to support themselves and face further exploitation or to return home and risk being found and re-trafficked.

Awards of compensation need to take into consideration not only the physical and psychological harm to the victim but also the loss of opportunities such as employment or education and loss of earnings or earning potential. In short, compensation must account for the course a woman's life may have taken had she not been a victim of trafficking, and whether the fact of being trafficked caused serious harm to a woman's life plan.

³⁸ This chapter benefited from input by Julie Barton, formerly of the POPPY Project, who was involved in supporting the trafficked women who received compensation through the CICA.

³⁹ Indeed, nearly half of the police interviewed for this report stated that they did not raise the issue of compensation unless the trafficked person specifically expressed an interest.

⁴⁰ A8 nationals are from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, which joined the European Union (EU) on 1st May 2004. A2 nationals are from Bulgaria and Romania, which joined the EU on 1st January 2007.

4.4 Compensation Mechanisms under the UK Law

Under UK law, compensation to a crime victim may be paid either directly by the offender or by the state. Trafficked persons, as victims of crime, have four different options enabling them to seek compensation for their injuries and losses:

- A. Through a compensation order during criminal proceedings
- B. by application to the Criminal Injuries Compensation Authority (CICA)
- C. through civil litigation and
- D. in some cases, before an employment tribunal.

Although the remedies are not exclusive of one another, only some have been pursued on behalf of a trafficked person at present.

A. Compensation Order

At the conclusion of a criminal proceeding, a defendant who has been convicted of a crime against another individual may be ordered to pay compensation to the victim for any personal injury, loss or damage resulting from the offence.⁴¹ The victim may be compensated for personal injury; losses through property damage or fraud; loss of earnings whilst off work; medical and travelling expenses; and pain and suffering.⁴² The victim cannot apply for a compensation order, but rather must inform the police of his or her desire to do so. Interviews with police revealed that there is no standard procedure to inform trafficked persons of their right to receive compensation and the subject remains largely unaddressed in trainings concerning trafficking in human beings. If the police do not communicate this information to victims, the victims' chances of obtaining compensation through this route would depend on the awareness and pro-activity of the prosecution and the court.

In theory, the police are to provide the victim with a MG19⁴³ compensation claim form on which to record her losses, as well as any supporting documentary

evidence where available, such as estimates and bills. Where compensation for personal injury is sought, information concerning medical visits to a doctor or dentist is also required.

The Prosecution Team Manual of Guidance provides guidance notes to police to assist them in the completion of the form MG19. For example, the notes state that: "Where possible the MG19 should be completed at the same time as the statement of the complaint. The victim should be given a form MG19 as soon as possible after the defendant has been charged or the offence has been listed as TIC [taken into consideration]".⁴⁴ Police have a duty to provide assistance to victims who may have difficulty completing the form, and the victim should be provided with an explanatory leaflet entitled "Victim of Crime".⁴⁵ The police pass the completed form and a copy of relevant receipts, bills and estimates to the Crown Prosecution Service (CPS) to make an application in court for a compensation order against the offender.

The court must consider compensation in every appropriate case (i.e., where the victim has suffered personal injury, loss or damage) and decide whether to order an offender to pay compensation and, if so, the appropriate amount. The court must consider the offender's circumstances and his ability to pay, but need not take into account a confiscation order.⁴⁶ Thus, a compensation order may not be for the full amount of the victim's loss. If a court chooses not to award compensation, it must state the reasons for not doing so.⁴⁷ A victim will only receive the compensation after the offender has paid the money into court. The maximum level of compensation that may be awarded by the Magistrates Courts, which deal with less serious offences, is £ 5,000; in the Crown Courts, there is no such limit.

A court's failure to make a compensation order against a convicted offender in the Crown Court is not subject to judicial review by the Divisional Court.⁴⁸ In other words, the Divisional Court lacks jurisdiction to hear an application for judicial review of the Crown Court's decision not to make a compensation order, thus leaving a disappointed victim with only the option of pursuing a civil remedy against the defendant.

⁴¹ Section 130(1), Power of Criminal Courts (Sentencing) Act 2000 (c.6).

⁴² Criminal Justice System, *Compensation for Victims of Crime*, available at <http://www.cjsonline.gov.uk/victim/compensation>

⁴³ A copy of the MG19 form can be found in the Appendix of this report.

⁴⁴ Prosecution Team Manual of Guidance (2004 Edition), Home Office, p. 175, available at

<http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/prosecution-manual-section3?view=Binary>

⁴⁵ *Ibid.*

⁴⁶ Sections 130(11) PCCSA; Sections 13(2) and (3), Proceeds of Crime Act 2002 (c.29).

⁴⁷ Section 130(3), PCCSA.

⁴⁸ *Faithfull v Ipswich Crown Court*, [2007] EWHC 2229 (Admin). The Court reasoned that section 29(3) of the Supreme Court Act 1981 precluded it from hearing an application because the decision of the Crown Court related to trial on indictment, which has been held to include the sentence passed at the end of the trial. The Court further held that its lack of jurisdiction to hear the claimant's application did not violate his human rights as he could still seek financial compensation from the defendant in civil court.

The guidance provided to prosecutors regarding their role in applying for a compensation claim in the criminal proceedings is vague and reflects the wide discretion left to prosecutors. The Crown Prosecutor's Service Guidelines state that "the prosecutor may draw the court's attention to its power to award compensation and invite them to make such an order where appropriate".⁴⁹ Thus, it remains a matter of the prosecutor's initiative whether to apply for a compensation order on behalf of a trafficked person.

B. Criminal Injuries Compensation Scheme (CICS)

The Criminal Injuries Compensation Scheme (CICS) is a national fund that entitles innocent victims of violent crime to compensation for injuries suffered in England, Scotland or Wales.⁵⁰ The offender need not have been caught or convicted but the victim must report the crime to the police promptly and should cooperate in any criminal investigation. An applicant may seek compensation for physical and mental injuries, as well as for lost earnings and special expenses such as medical treatment.

The scheme has a tariff of injuries that enables single payments or a scale of awards which group together injuries of comparable severity and allocate a specific financial value to them. Compensation will only be paid if the personal injury exceeds the threshold value of £1000. Compensation, however, may be withheld or reduced if the claimant is deemed to have provoked or participated in the assault or has a criminal record.⁵¹ On average, solicitors reported that the process takes about 18 months to two years from the time an application is commenced to the time a decision is received from the Criminal Injuries Compensation Authority (CICA).

Legal aid may be available for initial advice and assistance in preparing an application to the Authority. To date, the CICS has proved to be the only tested and effective mechanism of obtaining compensation for trafficked persons in the UK. The few trafficked persons that were awarded compensation were supported by the pro bono unit of Lovell's law firm in collaboration with the Poppy Project to bring the first CICS applications on behalf of women trafficked to the UK for sexual exploitation, and a £10,000 grant from a UK funder enabled Poppy to identify and work with

Case Study

In July 2007, the first successful compensation awards were made to two young Romanian women who were trafficked to the UK for sexual exploitation.⁵² The individuals, who had been forced into prostitution, suffered rape, physical and mental abuse over the period of several years before escaping from their traffickers and found refuge at the Poppy Project. Both women stood as prosecution witnesses at the trial of their trafficker, and he was subsequently convicted of rape and controlling prostitution and sentenced to 21 years in prison.

The first woman, who was trafficked into the country in 2002 at the age of 16, received £62,000, which included £22,000 for sexual abuse and £40,000 for lost earnings and opportunity.⁵³ The second claimant, who was 13 at the time she was trafficked into the UK in 2004, received £36,500, which included £16,500 for sexual abuse and £20,000 for lost opportunity. The lower award accounted for the shorter length of time the woman was held under the control of the trafficker and her lower earning potential due to her age.

suitable test cases.

All applications to the CICA thus far have been on behalf of individuals trafficked for sexual exploitation; currently, applications are also being prepared on behalf of persons trafficked for labour exploitation. Reports of a number of positive developments suggest that good practices are being reinforced.

For example, several police forces reported that they regularly informed trafficked women of their right to seek compensation through CICA, with some even completing the applications on the women's behalf. Police have also reported benefiting from training on the CICS application process run by Lovell's law firm. Solicitors also described improvement in the working relationships with police that, for the most part, have allowed for the efficient and timely collection of necessary documentary evidence.

⁴⁹ Crown Prosecution Service, *Sentencing and Ancillary Orders Application*, available at http://cps.gov.uk/legal/section15/chapter_c.html#10.

⁵⁰ Northern Ireland has its own victim compensation scheme.

⁵¹ The requirement that crime victims be innocent is problematic for cases of trafficking victims, where the victims themselves might have committed an immigration or drug offence as part of their trafficking experience.

⁵² Information from barrister Parosha Chandran.

⁵³ *Ibid.*

Three additional applications have since resulted in successful outcomes for several other women trafficked for sexual exploitation with awards of £30,547 and two for £16,500.⁵⁴ At least four more applications are awaiting decision. In one of these cases, the applicant was awarded an interim payment of £22,000.⁵⁵ The payments appear to herald increasing recognition and sensitivity to the injuries sustained by trafficked persons. The Authority's acceptance of the applicants' false imprisonment and forced prostitution claims as a basis of compensable injury solidifies the ability of trafficked persons to claim under the scheme.

The successful compensation awards received under the CICS are indeed a welcome development for trafficked persons. In the future, compensation under the CICS should also be accessible to persons trafficked into the UK for purposes other than sexual exploitation who meet the eligibility requirements of the scheme.

Unfortunately, public backlash against the recent compensation awards has highlighted negative perceptions and a lack of understanding about the realities of human trafficking and experiences of trafficked persons. Shortly after the announcement of the awards, the Authority and Lovell's were flooded with numerous complaints from members of the public protesting the use of public funds to compensate foreign victims of trafficking.⁵⁶ The Government should take steps to issue statements with appropriate information to help the public understand the plight of trafficked persons, the Government's international obligations to provide compensation to victims of crime and the reciprocal right of British citizens to claim compensation for injuries sustained in EU and non-EU countries.

Continued success through the CICA is dependent on good quality legal representation and related support. Each application requires a significant investment of time and resources, and costs involve obtaining medical and psychiatric reports, interpreters and accessing legal advice and assistance. Obstacles include securing continued pro bono legal support and funding for additional cases and ensuring contact with the applicant. If this measure is to be effective,

the Government must take steps to assist and equip both the voluntary and private sectors in their efforts to enable trafficked persons to access justice.

C. Civil Remedies

To date, civil remedies have not proven to be an accessible mechanism for trafficked persons seeking compensation. Pursuit of a civil remedy is a time-consuming and energy-intensive undertaking. Additionally, a significant investment of resources is necessary, such as support services and legal representation. In instances where the claimant is particularly vulnerable, faces language barriers, and is unfamiliar with the legal system other specialised services and counselling might be needed. Hence, the pursuit of a civil remedy can be very costly, unless free support from NGOs and pro bono legal support is available.

1. Civil lawsuit

Civil litigation, in which one party seeks to resolve his or her legal grievances against another party for monetary damages, has been cited by the Government as one of the options available to trafficked persons to obtain compensation.⁵⁷ The Government, however, has taken no steps to encourage or enable trafficked persons to seek compensation this way.

A civil lawsuit may be a trafficked person's only means of pursuing justice and compensation against his/her trafficker. It may provide him or her with a sense of justice and a last resort, particularly when the criminal justice system falls short, either because there is not enough evidence to prosecute the trafficker or police investigations are unable to yield sufficient results. Conversely, a civil claim against traffickers may trigger criminal proceedings if specific evidence against trafficker is unveiled. In one case in the UK, police did not begin investigating a forced labour trafficking case until several months after the individual initiated a civil lawsuit in a breach of contract action.⁵⁸

⁵⁴ *Groundbreaking scheme pursuing Criminal Injuries Compensation for female victims of trafficking*, Ashoka Changemakers, available at <http://www.changemakers.net/node/8451>;

⁵⁵ Information from Deirdre O'Leary, Lovells, Assistant Pro Bono Manager, 13 June 2008.

⁵⁶ Information from Poppy Project, February 2008.

⁵⁷ *UK Action Plan on Tackling Human Trafficking*, Home Office and Scottish Executive, March 2007, p.58 ("There are various existing means by which compensation for victims can be sought. These include... the victim suing the offender in the civil courts."). See also *The Government Reply to the Twenty-Sixth Report From the Joint Committee on Human Rights Session 2005-06* HL Paper 245, HC 1126, December 2006 ("It is always open for a victim to sue an offender for damages (compensation) in the civil courts, although we recognise that this may not be a practical option in some cases."), available at <http://www.official-documents.gov.uk/document/cm69/6996/6996.pdf>.

⁵⁸ Due to confidentiality requirements and the sensitive nature of the case, further information cannot be revealed about the case. Information on file with the author.

Current practice in the United States provides a good example of the progress and results that can be achieved through civil action against traffickers. In one extraordinary case in California, a successful civil suit filed by a woman trafficked for forced labour under California state laws precipitated a federal criminal investigation and subsequent conviction of her traffickers three years later.⁵⁹ Moreover, through the civil suit the jury awarded the plaintiff \$825,000 in damages.⁶⁰

Where the trafficker has sufficient, identifiable assets (such as in the cases illustrated later), a judgment from a civil suit provides the fullest measure of relief for the trafficked person. The individual may seek not just *special damages*, which cover pecuniary losses such as medical expenses incurred, loss of earnings or unlawfully seized property, but also *general damages*, which cover pain, suffering, emotional distress and loss of reputation. Such monetary relief could potentially be significant and a necessary resource to enable a trafficked individual to achieve financial stability and rebuild her life by pursuing opportunities previously foreclosed to her, such as education. It may also act as a financial deterrent to other traffickers.

In some cases trafficked persons may find a civil lawsuit to be less threatening and intimidating than participation in criminal proceedings against the trafficker.

Statutory and common law in the UK provide a number of potential causes of action under which a trafficked person could sue the trafficker.⁶¹ Tort law, for example, could allow a trafficked person to seek remedies for the following causes of action:

- Assault
- Battery
- False imprisonment
- Fraud
- Conversion
- Trespass to chattel

Additionally, a trafficked person could pursue damages or an injunction under section 3 of the Protection from Harassment Act, which creates a civil tort⁶² of prohibiting harassment of another. A breach of contract claim would also be a relevant and straightforward means of seeking unpaid wages. Indeed, at least one domestic worker who was trafficked into the UK and exploited for forced labour successfully pursued a breach of contract claim in a civil court to recover unpaid wages.⁶³

Legal representation for impoverished individuals with meritorious claims can sometimes be funded through the Legal Services Commission for cases in England and Wales, the Scottish Legal Aid Board, and the Northern Ireland Legal Services Commission. The Bar Pro Bono Unit and Solicitors Pro Bono Group, for example, match volunteer barristers and solicitors providing free legal assistance with individuals unable to pay for representation or obtain public funding. The Bar Pro Bono Unit provides assistance with cases in all legal areas and in all tribunals and courts in England and Wales. Community law centres, law school clinics and large solicitor firms with organised pro bono coordinators and programmes also provide free legal representation.

Nevertheless, despite these opportunities and services, civil litigation is an illusory option for the vast majority of trafficked persons. Obstacles to pursuing a lawsuit in the UK include: high legal fees; trauma to the victim; the fact that victims are often not identified as victims of trafficking; solicitors' and victims' lack of awareness and knowledge of the legal options; the enormous amount of time, effort and willpower required; limited options for legal aid, particularly for funding interpreters in civil proceedings; lack of interest; legal culture; language barriers; and the victim's fear of harm to himself/herself or his/her family.

Significantly, there is only one known civil suit that has been filed on behalf of any trafficked persons in the UK.⁶⁴ Legal services for trafficked persons have so far

⁵⁹ See Ruiz v. Jackson, Cal., Los Angeles County Super. Ct., No. SC076090, 26 August, 2004 for a description of the civil case; for a description of the criminal case and conviction, see http://www.usdoj.gov/opa/pr/2007/August/07_crt_637.html Defendant Elizabeth Jackson was sentenced to three years in prison after pleading guilty to a single count of forced labour. Jackson arranged to have the victim, a Filipino woman, brought to the United States. Upon her arrival, Jackson confiscated her passport and forced her to work for approximately 16 hours per day, seven days per week. The victim received no more than \$400 per month in wages. Jackson frequently threatened to have the victim deported if she ever left Jackson's employ without permission. Her husband, defendant James Jackson, the former vice president of legal affairs at Sony Pictures, pleaded guilty to alien harbouring and was ordered to perform 200 hours of community service and pay a \$5,000 fine.

⁶⁰ Former Sony Pictures Lawyer and Wife Sentenced in Forced Labour of Filipino Maid, 29 January 2008, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1201601142939>

⁶¹ The UK has a common law legal system, which means that the law is developed through decisions of courts and similar tribunals, rather than through legislative statutes or executive action. The common law is created and refined by judges. "Common law" refers to the body of precedent created by judges that binds future decisions. "Statutory law," on the other hand, refers to the law created by the legislature, rather than the judiciary.

⁶² A "tort" refers to a civil wrong that involves private parties. A person who is legally injured may sue the responsible party to recover monetary damages. Torts cover intentional acts and accidents.

⁶³ See Footnote 40.

been primarily focused on obtaining asylum or humanitarian protection to enable them to remain in the country. Many trafficked persons may not have had a meaningful opportunity to explore civil litigation as a remedy for their personal and financial losses. Although the new Action Plan announces introduction of specific temporary residence permits for victims of trafficking, it is unclear from the Action Plan what procedure will be utilised to grant such permits to trafficked persons, how trafficked persons will be able to apply and whether they will be eligible to obtain a residence permit to pursue an application for compensation.

In addition to providing comprehensive guidance in the Action Plan and accompanying regulations, several initiatives could be implemented to make civil litigation a more accessible remedy to trafficked persons. An increase in funding to law centres would enable solicitors to better meet the needs of trafficked persons who wish to pursue civil remedies. Law centres would be able to increase their staff and the breadth of their services, participate in relevant training and expand their support resources.

Legal aid funding should be extended to cover the costs of interpreters used to assist trafficked persons bringing claims before a civil court or employment tribunal. Moreover, the availability of legal funding for a case and the ability to bring a claim in the civil courts should not depend on the immigration status of the individual; undocumented workers should be entitled to have their day in court as well. Section 4.10 of the Legal Services Commission Funding Code criteria presents potential problems to trafficked persons who seek legal aid funding, as it states that “an application may be refused if it appears unreasonable to grant funding in the light of the conduct of the client in connection with this or any other application or in connection with any proceedings”.⁶⁴ The breadth and ambiguity of the provision is cause for concern, as it suggests that an applicant may be refused for a number of reasons, such as lack of cooperation with police in related criminal proceedings or undocumented immigration status of the applicant.

Training seminars for solicitors and barristers interested in representing trafficked persons in civil lawsuits could be invaluable in overcoming perceived barriers to pursuing civil remedies. Such training could raise awareness of the benefits of civil litigation and

the civil claims relevant to trafficked persons, increase collaboration among members of the legal community and provide a forum for discussing concerns and sharing best practices and ideas.

In a similar vein, test case litigation may provide a useful avenue through which trafficked persons could seek a legal remedy by establishing untested points of law. For example, test case litigation can play an important role in vindicating the rights of trafficked persons by highlighting injustices, bringing to public attention the issue at stake and set legal precedent that may benefit future litigants.

As with any civil lawsuit, lawyers must discuss the risks of pursuing such a remedy, including the length of time involved, any safety concerns of the victim, and the potential challenges of enforcing a judgment. Each of these factors must be carefully considered by any potential plaintiff, but it should not be assumed that a trafficked person is unwilling to pursue civil relief.

2. Employment tribunal

The Government has stated its belief that trafficked persons have sufficient means of enforcing their rights, stating that “the current system of allowing individuals to assert their rights ... through an Employment Tribunal provides adequate protection”.⁶⁵ It is difficult to determine how many, if any, trafficked persons have successfully pursued a claim before an employment tribunal in the UK, but it is clear that the option has the potential to be a powerful remedy to documented workers.

Persons trafficked for forced labour are often held in slavery-like practices. Unlawful employment practices include unauthorised deductions from the employee's wages; unfair dismissal; debt bondage; breach of the terms and conditions of employment and failure to pay national minimum wage. Trafficked persons find themselves in forced labour for a number of reasons, including their dire financial circumstances, irregular immigration status, isolation, language barrier, lack of proper papers or documentation, and the employer's threat or use of force.

The employment tribunal system in the UK is well-developed and intended to be a forum to protect employment rights. Employment tribunals can entertain several different types of claims relevant to trafficked persons.⁶⁷ These include:

⁶⁴ *Ibid.*

⁶⁵ *The Funding Code*, Legal Services Commission, sec. 4.10, para. 3A-023, available at http://www.legalservices.gov.uk/docs/civil_contracting/Funding_code_criteria_Jul07.pdf.

⁶⁶ *Human Trafficking: The Government's Reply to the Twenty-Sixth Report From the Joint Committee on Human Rights Session 2005-06* HL Paper 245, HC 1127, December 2006, para. 9, p. 7.

- (1) Breach of contract or wrongful dismissal;
- (2) Unfair dismissal;
- (3) Discrimination;
- (4) Enforcement of national minimum wage;
- (5) Dismissal for health and safety reasons; and
- (6) Violations of Working Time regulations.

Between April 2006 and March 2007, employment tribunals in England, Scotland and Wales accepted 132,577 claims, with unfair dismissal, equal pay, unauthorised deductions, sex discrimination and breach of contract among the most common types of claims made.⁶⁸ Compensation awards made to successful claimants are significant, as illustrated in the table below.

2006-2007 Statistics for England and Wales⁶⁹

Nature of claim	Average award
Unfair dismissal	£ 7,974
Race discrimination	£14,049
Sex discrimination	£10,052
Disability discrimination	£15,059

The procedure for resolving claims in employment tribunals is intended to be less formal than litigation in civil courts, but legal representation is still recommended, as a number of procedural requirements must be closely followed. For example, the type of claim determines the forum in which it must be raised. Thus, a breach of contract or wrongful dismissal claim may be heard in either an employment tribunal or the ordinary civil courts (e.g., county court or High Court), but unfair dismissal and discrimination claims may only be brought in employment tribunals, which have exclusive jurisdiction over such claims.

Additionally, the claimant must attempt to resolve the issue directly with his/her employer before a tribunal will hear it. Strict time limits also must be observed: applications to a tribunal must be made within three months of the incident, and appeals of the Employment Tribunal's decision must be made to the Employment Appeal Tribunal within 42 days after the decision is received. Failure to follow the procedural requirements may lead to disqualification of the claim. Legal aid is not available for representation in employment tribunals in England, Wales and Northern

Ireland, although legal advice may be available to assist in the preparation of a case before a tribunal according to the claimant's financial circumstances. In Scotland, the Scottish Legal Aid Board provides legal advice and, in complex employment cases, representation at the hearing.

Enforcement of employment tribunal decisions is an additional burden and obstacle to actually collecting any monetary judgment that may be awarded to the claimant. In England and Wales, the prevailing party must resort to the local county courts to enforce payment of the judgment. In Scotland, an extract of the judgment must be obtained, which a Sheriff Officer may use to enforce payment. Thus, a further investment of time and legal action may be required before a payment of money is actually made.

The reality, however, is that a trafficked migrant worker with an elementary command of English is likely to be unaware of the existence of the employment tribunal mechanism and, even if he or she was, would face significant challenges attempting to navigate the complicated procedural system.

Indeed, the TUC Commission on Vulnerable Employment found that the ability to seek redress and access to rights is very difficult for vulnerable workers in general, regardless of whether they are British or migrant workers.⁷⁰

“Although many breaches of the employment law can only be resolved through the tribunal system, the current tribunal system presents real obstacles to vulnerable workers. DTI survey evidence shows that only half of those who experience problems at work seek advice, and only two in five of these take action. When asked why, people said that it was not worth the hassle and that they did not think they would be treated fairly. Temporary workers, part-time workers and non-union members were less confident of achieving justice. One survey of unorganised workers found that fewer than one in forty of those who had a problem at work took an ET claim.”⁷¹

The use of an employment tribunal by trafficked persons is further complicated by the fact that the enforcement of an individual's statutory employment rights presupposes the existence of a legally valid and

⁶⁷ In Northern Ireland, employment tribunals are called 'industrial tribunals.' Additionally, a separate tribunal, known as the 'Fair Employment Tribunal,' specifically handles religious discrimination and political belief claims.

⁶⁸ Employment Tribunals Service, Annual Statistics, 2006-2007, available at http://www.employmenttribunals.gov.uk/publications/documents/annual_reports/ETSASo6-07.pdf.

⁶⁹ *Ibid.*

⁷⁰ *Hard Work, Hidden Lives*. Trades Union Congress, Commission on Vulnerable Employment, June 2008, available at http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf.

⁷¹ *Ibid.*

enforceable contract, which is unlikely between a trafficked person and the employer or trafficker. Even assuming the existence of a legal and valid contract, the worker may have no knowledge of employment rights or sources of legal assistance and thus fail to bring a claim within the appropriate time limit. Additionally, it may be unrealistic to expect the worker to attempt to resolve any issues directly with the employer where, for instance, he or she is working under duress. Many trafficked persons may have had their passports and other identifying information seized by their employer, and thus possess little evidence or no evidence of their employment.

As such, we can assume that in cases of trafficking for forced labour, the ability of the individuals to complain would be minimal. In a situation of total dependence, debt bondage, exposure to violence and threats, it would be extremely difficult for the workers to bring claims without extensive outside support.

The following case study from Ireland illustrates that where legal support is available, employment tribunals could be an effective mechanism for people trafficked for forced labour to seek compensation for their unpaid wages and other violations.

Case Study

In Ireland, a migrant worker from Pakistan represented by the Dublin-based Migrant Rights Centre Ireland was awarded €116,000 by the Labour Relations Commission in February 2008 as compensation for the abusive labour practices of his employer.⁷² In the five years that he worked at the restaurant, the individual received virtually no days off. His employer made weekly deductions of €100 from his €150 salary for accommodation, confiscated his passport and threatened to revoke his work permit and have him deported if he complained.⁷³ The individual's status as a documented worker enabled him to pursue a claim before the employment tribunal.

For undocumented workers in the UK, on the other hand, employment tribunals do not provide any protection. Undocumented workers are excluded from accessing the tribunals because their irregular status precludes the enforcement of the contract as illegal.⁷⁴ Denying undocumented workers the ability to enforce their employment rights further exacerbates their vulnerable status and fails to stem the problem of trafficking and forced labour. In many cases employers knowingly employ undocumented workers in the UK because of the financial advantage of doing so. Unscrupulous employers can also “control” or further abuse undocumented workers by threatening to reveal their immigration status to law enforcement authorities. Without the ability to enforce statutory employment rights, the cycle of illegal working and exploitation of workers will continue unabated.⁷⁵

It was not the aim of this research to provide exhaustive legal analysis. The authors have also taken into consideration elements of the human rights legislation, which is included in Annex A.

⁷² *Restaurant Worker Awarded Damages*, The Irish Times, 6 February 2008, available at <http://www.ireland.com/newspaper/breaking/2008/0206/breaking69.htm>.

⁷³ *Ibid.*

⁷⁴ *Hall v. Woolston Hall Leisure Ltd* [2001] ICR 99, [30].

⁷⁵ Indeed, a U.S. federal court explicitly concluded that if undocumented workers were not entitled to recoup their wages for work already performed, employers would have a continued incentive to hire undocumented workers, who are often willing to work for less than the minimum wage. *Patel v. Quality Inn South*, 846 F.2d 700, 704 (11th Cir. 1988).

5. Obstacles to justice

This section presents the obstacles identified in the research as the reasons why trafficked persons are rarely compensated for their suffering in the UK.

The UK has several legal options in place for victims of crime, including trafficked persons, to pursue compensation through the criminal or civil courts. The fact that very few trafficked persons have received any compensation to date is indicative of a number of deep-seated challenges inherent in the legal system and the Government's anti-trafficking policy. This section analyses these obstacles in greater depth. The obstacles are categorised as either procedural or substantive. Procedural obstacles are those which impair the process of accessing legal remedies. Substantive obstacles, on the other hand, are those which highlight the inadequacy of the substance of the remedy.

Procedural Obstacles

5.1 Compensation for Trafficked Persons is not Mainstreamed in the UK Anti-Trafficking Policy

The issue of compensation for trafficked persons lacks the active attention of the Government. The first UK Action Plan contains only a very brief paragraph listing three of the legal mechanisms through which victims of crime could seek compensation. The updated Action Plan completely omits the issue of compensation for trafficked persons.

Although the Under-Secretary of State in the Home Office is clearly aware of the legal remedies available to crime victims, the Government has not formulated concrete actions to ensure that trafficked persons are able to access these options:

“There are various avenues for victims of crime to claim compensation. Victims of violent crime can apply to the Criminal Injuries Compensation Authority, which has granted awards for victims of human trafficking. Additionally, prosecutors can request a compensation order following a conviction and the Crown Prosecution Service has issued guidance highlighting the application of this in human trafficking cases. It is also open to a

victim to pursue compensation directly through the civil courts.”⁷⁶

Additionally, the link between combating trafficking, confiscation of assets of traffickers and ensuring the access to compensation to trafficked persons is evident. However, in the Action Plan, the Government fails to highlight the link between asset recovery from the traffickers and using the recovered assets to compensate victims. Furthermore, it fails to explore the restorative justice function of compensation, which could play a key role in the prevention of re-trafficking as well as in the successful rehabilitation of trafficked persons.

The lack of attention paid to the issue of compensation in the anti-trafficking policy mirrors the general apathy to compensation to victims of crime, including victims of trafficking. The mere existence of compensation provisions within the law do not suffice. The issue needs to be mainstreamed into policy and practice as a part of the national referral mechanism.

From the end of 2008, the UK is bound by the Council of Europe Convention. The Convention not only establishes the right of victims of trafficking to compensation, but also places an obligation on the Government to ensure that measures are in place for victims to access the right. The Government must ensure that compensation to trafficked persons is considered equally important as support provisions such as accommodation or counselling. It is commonly known that a lack of financial stability perpetuates the vulnerability of the victims. An anti-trafficking policy that strives to be comprehensive should include concrete and measurable action points to ensure compensation is a priority that it is actively pursued.

5.2 Inability of Trafficked Persons to Remain in UK to Pursue Compensation

Until the end of 2008, the UK has not had any specific residence procedure or permit scheme for trafficked persons. Trafficked persons subject to immigration control are not entitled to remain in the UK purely on the basis of their status as a victim of trafficking.⁷⁷ Women who are accepted onto the POPPY Project are not subject to any removal action during an initial four week period whilst they consider whether they wish to

⁷⁶ House of Commons Hansard Written Answers, Answer of Vernon Coaker, Secretary of State for the Home Department, 15 July 2008, available at <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080715/text/80715w0010.htm>.

⁷⁷ Memorandum by the Home Office, Response to JCHR's Sixth Progress Report, July 2006, available at <http://www.parliament.uk/documents/upload/BILLS%2006-07%2097%20Response%20to%20JCHR%20Report.pdf>.

remain on the scheme and assist the authorities by providing information about their situation. Those who do testify against their trafficker may be granted discretionary leave to remain on either a limited or permanent basis. The previous lack of a formalised reflection period, however, denied the vast majority of trafficked persons any meaningful opportunity to seek support, protection and medical care, pursue compensation or assist in bringing the trafficker to justice.

Under the 2008 UK Action Plan, which implements the UK's obligation under the Council of Europe Convention, the Government will introduce specific residence permits for victims of trafficking.⁷⁸ The procedure of granting permits remains unclear, particularly with respect to victims who choose not to cooperate with the authorities but are unable to return to their home countries. Additionally, the option of entitling trafficked persons to the temporary residence permit to pursue compensation is not explicitly addressed by the Action Plan. At a minimum, these permits should be extended to those trafficked individuals at risk, as well as those who wish to pursue compensation in the UK.

At present, a lack of a temporary permit scheme has curtailed the ability of trafficked persons to meaningfully evaluate the legal options available for compensation, much less initiate any action for compensation.⁷⁹ The continued presence of trafficked persons wishing to pursue legal remedies in the UK is often critical to their success. For example, the POPPY Project encountered difficulties contacting some of the women who returned to their countries of origin after initiating CICA applications. Some of the CICA applications that Lovells pursued on behalf of trafficked women collapsed because of difficulties contacting the victim for information.

For obvious practical reasons, the likelihood of a trafficked person pursuing a claim through a civil lawsuit or employment tribunal from outside the UK is virtually nonexistent. In a civil lawsuit, documents must be served, oral and documentary evidence must be gathered, depositions must be attended and, above all, communication with one's lawyer must be

constant. If the plaintiff is not physically present and available, the lawsuit is subject to serious delays and a far diminished chance of success. Similarly, bringing a claim before an employment tribunal requires that the claimant submit the claim within the strict three month time limit, in addition to observing other procedural rules. Most trafficked persons would require some legal advice or assistance in preparing a claim form and would have difficulty identifying appropriate free help from outside the UK.

Research shows that trafficked women suffer from numerous coexisting physical and mental health problems immediately after leaving or escaping a trafficking situation and face a lengthy recovery process.⁸⁰ A study of 207 trafficked women revealed that multiple mental health symptoms endured much longer than physical symptoms suffered as a result of their trafficking experience. Only after 90 days did symptoms appear to decrease significantly.⁸¹ Consequently, it is unrealistic to expect that many women would be in a state to consider compensation during the first weeks of their recovery. Women must first be supported through the recovery process before they can realistically consider legal remedies. Granting trafficked persons definite immigration status contributes greatly to their ability to recover, desire to cooperate with the authorities and ability to access compensation. A sufficient reflection period and temporary residence permit is an essential first step to ensuring that compensation is accessible to trafficked persons.

5.3 Disproportionate Focus on Immigration Status of Trafficked Persons

A significant number of trafficked persons are denied access to justice from the outset on the basis of their immigration status. The Government has consistently approached trafficking in human beings as organised immigration crime rather than a human rights violation, thus thwarting its ability to develop and execute a victim-centred response. The organised

⁷⁸ "Under existing arrangements victims of crime (including victims of trafficking) can have their temporary leave extended if they choose to co-operate with the authorities in a criminal investigation or it is open to them to apply for humanitarian protection or asylum. Recognising that many victims may eventually choose to return to their home country but want to remain for a temporary period of time (e.g., for the duration of a criminal investigation and prosecution) the UK Government will introduce specific temporary residence permits for a renewable period of one-year for eligible victims of trafficking. This will provide them with recourse to public funds, access to legitimate work, education and health services for the duration of the permit. It will be an additional measure to complement, rather than replace, the existing humanitarian and asylum protection arrangements for these individuals." Update to UK Action Plan on Tackling Human Trafficking, Home Office, July 2008, p.29, available at <http://www.crimereduction.homeoffice.gov.uk/humantrafficking004.pdf>.

⁷⁹ The 45-day reflection period during which removal actions are held in abeyance is similarly insufficient to permit trafficked persons to consider seeking compensation.

⁸⁰ Zimmerman, C. et al., *Stolen Smiles: a Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*, The London School of Hygiene & Tropical Medicine, 2006, p.12.

⁸¹ *Ibid.*

immigration crime approach is reflected in the actions, policies and attitudes of authorities. For example, the Government's major concern in allowing the provision of a longer reflection period and residence permit for trafficked persons has been the possibility that it may act as a "pull" factor to the UK, leading to fraudulent claims that would impede the Government's ability to respond to genuine claims.⁸² Although the new policy purports to apply a victim-centred approach, there are still contradictions between the migration and anti-trafficking policies that adversely affect victims with irregular status in the UK. Some trafficked persons still remain unidentified, are detained by law enforcement and immigration officials and deported without access to assistance.

There is particular cause for concern in cases where trafficked individuals may have been forced to use false documents to gain entry into the UK and are consequently subject to criminal penalties. In such cases, unless a forced labour trafficking victim has made an application for asylum, he or she would be treated as a criminal rather than as a victim and would immediately be subject to deportation proceedings. It is essential that the operation of the new reflection period account for the right to compensation for trafficked persons under the Council of Europe Convention regardless of the individual's immigration status.

Effect on Remedies Under Employment Law

The ramifications of the UK's immigration-oriented approach are also readily apparent in the context of employment law, which affords little protection to trafficked persons regardless of their immigration status. According to the TUC's Commission on Vulnerable Employment, many employers believe they have little chance of being caught for any employment violations and that even if caught they would likely face minimal punishment. As a result, exploited workers, particularly those in forced labour, find themselves in very vulnerable circumstances. If they are irregular workers, they are more likely to be a target of prosecution than their employers.

The problem that vulnerable workers face in accessing legal remedies is amplified among trafficked persons. Exploitation and abuse at the hands of employers

provides a breeding ground for the perpetuation of human trafficking and forced labour.

- **Undocumented workers**

Undocumented workers in the UK have very limited rights under employment law. Under British contract law, the doctrine of illegality precludes the enforcement of a contract made for an illegal purpose or one that is expressly or impliedly prohibited by law.⁸³ Also unenforceable are contracts where the employee actively participates in the illegal performance of a contract.⁸⁴ Employment of irregular migrant workers—including those trafficked to the UK—falls squarely under the category of illegally formed contracts. The illegality doctrine bars these workers from making any claim for unpaid wages, unauthorised deductions or a right to national minimum wage.⁸⁵

The current state of employment case law, particularly as it affects irregular and vulnerable workers, provides little assurance of an accessible remedy. Recent court and employment tribunal decisions have failed to resolve the breadth of the illegality defence; thus, even those individuals who are legally working in the UK may face obstacles in pursuing remedies against an unscrupulous employer. For example, a worker who acquiesces to his employer's fraud out of fear of losing his job or attempts to bring the situation to his employer's attention may nevertheless be barred from receiving the national minimum wage under the illegality doctrine.⁸⁶ In *Wheeler v. Quality Deep Ltd (t/a Thai Royale Restaurant)*, a Thai national with a limited command of English and little knowledge of the English tax and national insurance system was precluded by the Employment Tribunal from enforcing her employment contract.⁸⁷ The tribunal found that she had received her wages for the past three years without any deduction being made for tax and national insurance. In reversing the order of the Employment Appeal Tribunal, the Court relied upon the Hall test of 'active participation' but declined to elaborate further upon it. Instead, the Court cautioned that the case was 'very unusual' and that the appellant 'may well not have succeeded' had she had more knowledge of the English language and laws.⁸⁸ As noted by two commentators, "the emphasis [in *Wheeler*] on the employee's degree of knowledge of

⁸² *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, Home Office and Scottish Executive, January 2006, pp. 17-18, available at <http://www.homeoffice.gov.uk/documents/cons-2006-tack-human-trafficking/cons-2006-tackling-trafficking?view=Binary>.

⁸³ *Hall v. Woolston Hall Leisure Ltd* [2001] ICR 99, 30. The test is whether the worker's claim is "so inextricably bound up with her illegal contract that the court cannot permit her to recover compensation without appearing to condone her conduct."

⁸⁴ *Ibid.*, p. 38.

⁸⁵ Several employment law decisions, however, suggest that discrimination claims may survive the illegality defence because of several European Directives that have been integrated into English law (e.g., Equal Treatment Directive).

⁸⁶ Fraser, S. and Sher, A., *The National Minimum Wage: Under Threat From an Unlikely Source?* (2006) 35 ILJ 289. But see *Kaid v Gruppo Ltd*, EAT/0005/07, which makes clear that both knowledge and active participation (i.e., some active choice on the employee's part) are required.

⁸⁷ [2005] ICR 265.

⁸⁸ *Ibid.*, [71].

the tax system, and therefore of the fraud, sits uneasily with Hall,” as it seems to indicate that ‘active participation’ requirement may be satisfied by the worker’s mere knowledge of his employer’s fraud (i.e., not making tax and national insurance deductions) if the individual has some knowledge of the tax system.⁸⁹

Particularly troubling in the recent employment law decisions is the lack of recognition of the inequality of bargaining power inherent between an employer and a vulnerable worker. Those bold enough to protest their working conditions risk the loss of their jobs and their ability to support themselves. The situation is also problematic for exploited individuals whose visas are tied to their employer. The workers’ power to complain is severely restricted given the employer’s total control over their immigration status.

The exclusion of irregular migrants from the protection of employment law has the perverse effect of providing incentive to traffickers to continue their exploitation of vulnerable migrant individuals lacking work authorisation. Traffickers or employers will continue to underpay and mistreat trafficked persons with little fear of facing sanctions under employment law while the worker is denied a form of legal redress.

The UK position excluding undocumented workers from employment law protections is particularly harsh when compared with the practices of other countries. A number of other European countries permit undocumented workers to bring a claim under employment law against their employers for withheld wages. These include Belgium, France, Germany, Greece, Italy, the Netherlands and Spain.⁹⁰ In Belgium, if an undocumented worker goes independently to the labour inspection service to file a complaint against his or her employer, the labour inspection is not obliged to report the worker’s irregular status to the Foreigner Office. However, if the labour inspection apprehends the worker at the workplace, there is a duty to report the irregular status.⁹¹

In Belgium, Germany or Greece, an individual who has been deported or voluntarily returned to her home country may still initiate a claim against her employer from abroad.⁹² Indeed, in one Belgian case, the Social Inspection Unit of the Federal Public Service of Employer, Labor and Social Dialogue of the Brussels Capital Region succeeded in settling a recent case

Case Study

Eliana, an undocumented woman from Brazil, was hired as a domestic worker for a family in Brussels to work approximately 13 hours a day for 5½ days per week.⁹³ Her employer offered her a salary of €800 per month and accommodation and food. However, her working days often lasted nearly 17 hours but Eliana was never paid any overtime.

During the year that she worked for the family, Eliana developed a sore shoulder due to the strenuous physical work and long hours. As a result, she had to take 15 days off to seek medical care and asked her employer to provide financial compensation for the days she missed work due to her work-related injury. She also requested that her employer cover the costs of her health care, as she did not have health insurance because her employer did not pay social security contributions. Her employer refused.

Eliana became very angry and decided to leave her job. Because her employer had withheld hundreds of hours of pay in overtime, she sought assistance from O.R.C.A., a Brussels-based organisation defending undocumented workers’ rights, to recover her lost wages. O.R.C.A. contacted the employer’s wife, who subsequently denied Eliana’s claims. After mediation with the employer failed, Eliana filed a complaint with the labour inspection service. Eliana provided the labour inspection with a detailed description of her former employer’s house and family, which enabled the inspector to locate the employer who eventually admitted to employing Eliana. After denying the length of time of employment, the employer finally agreed to pay Eliana €5,000 in back wages, which compensated for the unpaid overtime hours. He was also required to pay outstanding social security contributions and taxes.

brought by an undocumented construction worker against his employer, which enabled the worker to obtain his unpaid wages in Brazil after he had been deported from Belgium.⁹⁴

⁸⁹ Fraser, S. and Sher, A., *The National Minimum Wage*, p. 294.

⁹⁰ *Ten Ways to Protect Undocumented Workers*, PICUM, 2005, p.75, available at

<http://www.picum.org/LABOR/PICUM%20Ten%20Ways%20to%20Protect%20Undocumented%20Migrant%20Workers.pdf>.

⁹¹ ENARgy: An Analysis of the Employer Sanctions Directive, European Network Against Racism, August 2008, p.16, available at http://cms.horus.be/files/99935/MediaArchive/pdf/ENARgy_o8_2008_version_EN_final.pdf.

⁹² *Ten Ways to Protect Undocumented Workers*, PICUM, p. 75..

⁹³ *Ibid.*

⁹⁴ *PICUM’s Comments on the Communication from the Commission on “Policy Priorities in the Fight Against Illegal Immigration of Third-Country Nationals,”* PICUM, 12 February 2007, available at <http://www.picum.org/HOME/PAGE/CommentsCOM2006402%20final.pdf>.

In the United States, under the federal Fair Labor Standards Act undocumented workers are entitled to recover unpaid minimum wages and overtime pay for work already performed.⁹⁵ Entitling undocumented workers to enforce their rights under employment law would be the first step to reducing exploitation of vulnerable workers and trafficked persons in the UK.

- **Documented workers**

The combination of restrictive employment and immigration laws makes it difficult for even documented workers to escape the cycle of exploitation. For example, migrant domestic workers who enter the UK legally with an employer on a domestic worker visa have limited remedies at their disposal should they fall into exploitative circumstances. These workers have no recourse to public funds and limited support services available to them. As such, in order to support themselves financially, exploited workers routinely find themselves desperate for new employment immediately after leaving their previous employer.

In a position of limited bargaining power and no alternatives, many migrant domestic workers accept low-paying jobs and often work significantly longer hours than previously agreed with their new employer, thus making them vulnerable to exploitation all over again.

Because many migrant domestic workers work six days a week and have only Sundays off, they have little opportunity or physical or emotional energy to seek legal help from a solicitor or to provide information necessary for a grievance letter to an employer seeking unpaid wages. Some workers who eventually do wish to seek compensation find their claims barred for having failed to submit their claims within the three-month time limit required by employment tribunals.⁹⁶ Pursuing compensation through employment law consequently becomes an unrealistic pursuit even for documented workers whose primary priorities are to secure work that will provide an income, address their immigration status, and reclaim their passports.

Case Study

Lucy, an Indonesian domestic worker in her late thirties, worked for a diplomat in the UK for two years, having previously worked for diplomat's family in his home country. Lucy incurred significant debts in obtaining her original work and was prevented from returning home to Indonesia. In the UK Lucy was only paid £250 a month but was forced to sign papers saying she was receiving much more than this. Lucy slept on the floor in a corridor, as she had no room of her own. Her employer's family verbally abused her and she finally escaped when they became threatening. The UK Government has recognised Lucy as a trafficking victim but there is little she can do to claim compensation. She only has temporary leave to remain as a victim of trafficking for between 30 and 90 days, which is not nearly long enough to make a CICA claim or a claim under employment law.⁹⁷

Effect on Remedies Under the Criminal Injuries Compensation Scheme

Irregular migrants are not just excluded from access to employment tribunals. In some cases, they may also be barred from the receiving compensation through the Criminal Injuries Compensation Scheme. Because the CICS considers the conduct and character of the applicant in determining whether to award compensation, claims may be denied if the applicant is deemed to have acted inappropriately or engaged in a bad act before, during or after the incident giving rise to the application.

At least in several cases, the CICA appears to have interpreted unfavourable character evidence in part to include the applicant's illegal entry into the UK.⁹⁸ Similar obstacles to claiming compensation have been encountered in cases where individuals were trafficked and coerced to perform illegal activities, such as cultivation of cannabis, credit card fraud or petty crime.

The Government must implement specific measures in its anti-trafficking policy to raise awareness about the patterns of trafficking among relevant law enforcement and immigration bodies. In particular, it should be highlighted that trafficked persons may acquire

⁹⁵ U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers*, available at <http://www.dol.gov/esa/regs/compliance/whd/whdfs48.pdf>. In addition to protection under federal law, undocumented workers in the United States are also entitled to remedies under state labour and employment laws, such as state minimum wage, workers' compensation and wage claims.

⁹⁶ Interview with Kalayaan, 9 June 2008.

⁹⁷ Information from Kalayaan, 23 September 2008.

⁹⁸ Information from Deirdre O'Leary, Lovells, Assistant Pro Bono Manager. At least two cases have been rejected by the CICA on the grounds that the trafficking victims failed to show sufficient evidence that their injuries were directly attributable to the trafficking crime. The CICA asserted that the individuals were aware of the circumstances prior to travelling to the UK, entered the country unlawfully, were not held against their will, lived independently, were not subject to a direct threat of immediate physical harm, and failed to cooperate with the police. Both individuals, however, testified at the trials of three defendants, two of whom were convicted of trafficking into the UK for the purpose of sexual exploitation.

irregular status or become implicated in an illegal activity through no fault of their own.

Substantive Obstacles

5.4 Compensation Orders Remain an Ineffective Remedy for Trafficked Persons

Compensation orders remain unused as a means of compensating trafficked persons. In theory, compensation orders have the potential to be a powerful punitive and deterrent measure against traffickers and a restorative measure for trafficked persons. In some cases, requiring the perpetrator to compensate the victim directly, rather than resorting to compensation through a government-funded scheme, can provide him or her with a sense of satisfaction and justice. In practice, however, compensation orders are made only in a minority of all eligible cases. An extensive examination of 41 UK human trafficking cases involving 95 individuals who were convicted of trafficking or trafficking-related offences revealed that not a single compensation order had been made for the benefit of the victim. The lack of compensation orders in human trafficking cases is more broadly indicative of their limited use and success in the criminal justice system overall. Even where compensation orders are made, the average amounts are generally quite low, particularly

when viewed in light of the gravity of the crime. A Ministry of Justice report indicates that in 2006 compensation orders were made in only 25% of Crown Court cases where an individual was convicted of an offence of “Violence Against the Person” and the average amount of the compensation order was £695.⁹⁹ In Sexual Offences cases before the Crown Court, the percentage of compensation orders made was far lower, issued in only 1.5% of eligible cases with the average compensation order amounting to £763.¹⁰⁰ (See table 2)

Reasons Compensation Orders are Not Made

Compensation orders remain underutilised for a number of reasons. Firstly, compensation orders are infrequently sought because of the defendant’s lack of adequate assets to satisfy such an award. Traffickers may genuinely be destitute or they may conceal their assets—e.g., depositing them in an account under a false name or transferring money out of the UK—making them difficult to trace.¹⁰¹ Where the court has imposed a substantial custodial sentence on a convicted offender, it may feel that the offender is unable to pay a financial penalty upon completion of his sentence.¹⁰² Additionally, police may lack the expertise, training and resources needed to carry out successful financial investigations resulting in the recovery of assets. Whilst some police units have been highly successful in recovering criminal finances, such success does not appear to be uniform throughout the

Table 2

	Crown Court		Magistrates Court	
	% of cases where compensation granted	Average amount	% of cases where compensation granted	Average amount
Sexual offences	1.5%	£763	19%	£174
Violent offenses	25%	£695	29%	£254

⁹⁹ Ministry of Justice, Criminal Statistics 2006: England and Wales, Table S2.8(A), November 2007, available at

<http://www.justice.gov.uk/publications/criminalannual.htm> 2,650 compensation orders were made out of 10,657 individuals convicted before a Crown Court of an offence under the category of “Violence Against the Person.” This category includes the following offences: (1) Murder, (2) Attempted Murder, (3) Threat or Conspiracy to Murder, (4) Manslaughter, (5) Infanticide, (6) Causing Death by Dangerous Driving, (7) Manslaughter Due to Diminished Responsibility, (8) Causing Death by Careless Driving When Under the Influence of Drink or Drugs, (9) Causing Death of a Child or Vulnerable Person, (10) Causing Death by Aggravated Vehicle Taking, (11) Wounding or Other Act Endangering Life, (12) Endangering Railway Passenger, (13) Endangering Life at Sea, (14) Other Wounding, (15) Cruelty to or Neglect of Children, (16) Child Abduction, (17) Concealment of Birth.

¹⁰⁰ *Ibid.* Forty-four compensation orders were made out of 2890 individuals convicted of a crime under the category of “Sexual Offence.” Offences under this category include: (1) Buggery, (2) Sexual Assault on a Male, (3) Rape of a Female, (4) Rape of a Male, (5) Sexual Assault on a Female, (6) Sexual Activity With a Child Under 13, (6) Sexual Activity With a Child Under 16, (7) Familial Sexual Offences (Incest), (8) Exploitation of Prostitution, (9) Bigamy, (10) Sexual Activity With a Person With a Mental Disorder, (11) Abuse of Children Through Prostitution and Pornography, (12) Trafficking for Sexual Exploitation, (13) Abuse of Trust – Sexual Offences, (14) Gross Indecency with Children, (15) Miscellaneous Sexual Offences.

¹⁰¹ In the case of convicted Albanian trafficker Taulant Merdanaj, police were able to trace a bank account for Merdanaj under a false name of a different nationality.

¹⁰² *Compensation and Support for Victims of Crime*, Home Office, 2004, p. 11, available at

<http://www.homeoffice.gov.uk/documents/cons-compensation-support-victim/victimscompensationconsulta.pdf?view=Binary>

UK. However, even in the cases where the court issued a confiscation order, which occurred in at least 29 of the cases reviewed in the course of this research, there was no accompanying compensation order.

Second, the low number of compensation orders reflects the general perception among the criminal bar and policymakers that compensation for crime victims is a low-priority issue. From the prosecution's standpoint, compensation is not a relevant issue until late in the criminal proceedings—notably, after an offender has been convicted. Several prosecutors indicated that their first priority in a criminal case was securing the conviction of the offender. Primary among their concerns included building a strong case against the trafficker and overcoming challenges presented by the complexity of trafficking investigations, such as identifying willing witnesses and gathering sufficient and credible evidence from them. One prosecutor also stated that applying for a compensation order on behalf of a crime victim rarely came to mind unless the case involved property damage where the loss was readily quantifiable. Additionally, according to another prosecutor, if a trafficked person leaves the UK to return to his or her home country, the issue of compensation may quickly become one of “out of sight, out of mind”.

Third, the lack of sufficient uniform guidance and training to the police, prosecution and judiciary on the legislation and procedure for pursuing compensation orders has also hampered its effectiveness. The level of familiarity with the legislation and procedure varied widely among individuals interviewed. Some of the police and prosecutors interviewed expressed only passing familiarity with the Powers of Criminal Court (Sentencing) Act or were unaware of the court's power to order compensation to the victim to be paid out of a confiscation order under section 13 of the Proceeds of Crime Act. In one case, the prosecution reported applying for a confiscation order against a trafficker in the amount of several thousand pounds but not a compensation order because it did not occur to them to apply for one. Another barrister who prosecuted four separate trafficking cases reported that neither the court nor the police raised the issue of pursuing compensation orders in any of the cases, despite the fact that the victims would have benefited from receiving compensation. Some judges also lack the appropriate level of familiarity with the legislation on compensation and confiscation orders and, in one instance, this has led to an erroneous legal decision by a Crown Court judge.¹⁰³

Further concerns were also raised about the lack of

guidance concerning the practical administration of compensation orders. For example, one challenge expressed by judges and prosecutors is quantifying a trafficked person's injuries where the harm suffered is largely psychological or physical rather than financial or where the harm is particularly egregious (e.g., trafficked woman who has endured multiple rape). Another challenge is determining compensation in a trafficking case involving multiple victims. Where women have been subject to the traffickers' control for different lengths of time and subject to varying degrees of abuse and exploitation, the challenge is to determine equitably the amount of compensation to which each victim is entitled. Further complicating the equation are instances where women have been exploited by the trafficker but not necessarily coerced into prostitution in the UK. The absence of clear and detailed guidance for the judiciary in such cases has led at least one judge to conclude that the compensation order scheme is unworkable and makes it almost impossible to decide who should get what.

On a similar note, judges also found the calculation of compensation orders often required a complicated and tedious accounting exercise. There was no consensus as to the best approach to address this challenge. One suggestion was to transfer the task of calculating compensation orders to a master in the Queen's Bench Division rather than a Crown Court judge. Another suggestion was to maintain the status quo based on the belief that Crown Court judges are better suited than anyone else within the criminal justice system to make these determinations.

Some interviewed felt that the Crown Court lacked sufficient guidance as to the level of compensation which may be appropriate where a victim has sustained personal injury. One judge stated that determining the amount of a compensation order was left to their discretion and the amount of assets available from the defendant. Section 130 of the Powers of Criminal Court (Sentencing) Act 2000 states the general obligations of the court to consider compensation but does not provide a schedule of tariffs, such as the one used by the Criminal Injuries Compensation Scheme (CICS), to assist in the practice and procedure of actually making compensation orders. The Sentencing Guideline Council's Definitive Guideline for the Sexual Offences Act 2003 similarly fails to offer specific instruction on compensation orders in sex trafficking cases, recognising only that such orders may be particularly suitable.

Fourth, eligible victims may not be informed of their right to apply for a compensation order. In one 2005

¹⁰³ See e.g., *Faithfull v Ipswich Crown Court*, [2007] EWHC 2229 (Admin), para. 3, in which the Crown Court judge erroneously believed that imposing a compensation order on the defendant in addition to a confiscation order would be unduly oppressive and a result that Parliament could not have intended and would not be in the interests of the public.

trafficking case, police did not inform two trafficked women of their right to pursue compensation because they were quickly returned to their home country once they were rescued. Alarmingly, police also arrested the women for immigration offences despite the fact that they were identified as trafficked persons, as police knew of no support services to assist the women. On the other hand, several police forces reported that they informed trafficked persons of their right to seek compensation through the CICS as a matter of course, but did not raise the option of applying for a compensation order during criminal proceedings. Reasons given by the police include belief that the trafficked person did not meet the criteria of personal injury, loss or damage required to be eligible for a compensation order; futility of the process due to the trafficker's lack of assets; imposition of a lengthy prison sentence upon the offender; and simple failure or lack of knowledge about the option.

Fifth, compensation orders are not applied for by the prosecution in some cases because they are deemed inappropriate. In some cases, prosecutors found compensation orders to be inappropriate where trafficked women knowingly came to the UK "with their eyes wide open" to engage in prostitution. The women were viewed as willing participants rather than crime victims and therefore considered ineligible for compensation. Some women came for economic reasons, attracted by the opportunity to earn more money in the UK than they could in their home countries. Several prosecutors and police in London reported that only a small proportion of trafficked women they encountered were actually coerced into prostitution, whilst the majority came to the UK as willing sex workers. In such cases, where a woman may have violated laws by her own conduct or wrongdoing, prosecutors stated that they declined to pursue a compensation order, finding that the principle of equity bars an individual with "unclean hands" from receiving any compensation.¹⁰⁴

In other cases, application for a compensation order may be inappropriate because the prosecution feels that it may be highly offensive to the victim, particularly in a case involving sexual assault. According to some prosecutors and police, not all trafficked women they encountered expressed an interest in receiving any compensation from their traffickers because it served as a reminder of traumatic experiences.

Measures for Improvement

Improving the use of compensation orders in criminal proceedings requires a multi-faceted response. As a preliminary matter, it is recognised that the application for a compensation order on behalf of a trafficked person may not be an appropriate or available course of action in every case. Nevertheless, compensation orders could be more vigorously pursued in some trafficking cases. First, the Government should recognise compensation as a crucial element of assistance to trafficked persons and highlight it as a key financial deterrent for traffickers and should seek to mainstream the use of compensation orders in human trafficking cases. The Government must first address compensation in its anti-trafficking policy and follow through on raising awareness among all responsible governmental agencies as well as within the criminal justice system. Although the Definitive Guideline on the Sexual Offences Act 2003 explicitly recognised that compensation orders are particularly relevant in sexual exploitation and trafficking cases, it has failed to bring about any change in practice with respect to the use of compensation orders.¹⁰⁵ The Government must make compensation a priority, starting with collection and analysis of data to identify viable measures and a timeline for improvement.

The Government should amend the Action Plan on Tackling trafficking in Human Beings by including and tasking of the relevant bodies by the following:

1. Provide training to police and prosecutors to ensure that compensation orders are applied for in every appropriate trafficking case where traffickers' assets are available. Training should include the types of loss that compensation orders cover (not just financial loss but also personal injury). Training should also be provided on the Proceeds of Crime Act 2002, specifically section 13, which enables Crown Courts to require that a compensation order be paid out of a confiscation order.
2. The Code of Practice for Victims of Crime should be revised to require police to inform victims of all compensation mechanisms available through the criminal justice system. At present, the onus is on the victim to inform police if he/she would like to receive compensation from the offender, and neither the police nor the Crown Prosecution Service are obligated to inform crime victims of their rights regarding compensation measures.¹⁰⁶ Placing the burden on the victim does not facilitate the victim's ability to receive compensation. For example, a victim may be uninterested or loath to

¹⁰⁴ The unclean hands defence is a legal doctrine that embodies the principle that a person who has acted wrongly, either morally or legally — that is, who has "unclean hands" — will not be helped by a court when complaining about the actions of another.

¹⁰⁵ Sentencing Guidelines Council, *Sexual Offences Act 2003: Definitive Guideline*, April 2007, para. 6.9, p. 106, available at http://www.sentencing-guidelines.gov.uk/docs/82o83-COI-SCG_final.pdf

- request compensation, fearing that it may reflect poorly on him/her or even be used to discredit him/her as a witness at the offender's criminal trial.
3. Ensure that police ask trafficked persons whether they wish to have the prosecution apply for compensation order on their behalf. If the victim indicates that he or she would like the prosecution to apply for a compensation order, the police and Crown Prosecution Service should work closely together to share victim statements, documentary evidence and other necessary information for the application. Police should also liaise with support workers to ensure that trafficked persons understand the compensation alternatives available to them.
 4. Police should be provided with clear and uniform guidance as to the appropriate time to raise the issue of compensation in order to minimise the risk that the defence would portray the issue as inducement to the victim to testify at trial. For this reason, some police officers found the guidance notes on the compensation claim form MG19 to be unrealistic, as it states that the crime victim should be given the form "as soon as possible after the defendant has been charged or the offence has been listed as TIC".¹⁰⁷ Police interviewed reported a wide range of current practice. Some police raise the issue at the interview stage of the investigation, while others found that the issue was not appropriately raised until after the offender was charged. Still others found that the subject should only be broached with the victim well after the conclusion of the case. Standardising the procedure and instructing police to raise the issue of compensation only after the defendant has been convicted would also reduce the exposure of trafficked persons to unfair bias at trial.¹⁰⁸
 5. Provide formal guidance to prosecutors and police to improve information sharing with victims about compensation orders. Victims should be informed of the process of applying for a compensation order, average amounts of orders and enforcement procedures for unpaid orders.
 6. Prioritise financial investigations in human trafficking cases and provide law enforcement with sufficient resources to enable them to identify and freeze assets quickly. Standardise the use of the MG17 form throughout police forces in the UK.
 7. Ensure coordination among police, support workers and interpreters to ensure that trafficked persons understand information communicated to them about compensation orders. Where an individual has indicated a desire to pursue compensation, the prosecutor should ensure that adequate details and information are included on any compensation forms.
 8. The prosecution and Crown Courts should be provided with more concrete guidelines on quantifying injuries suffered by trafficked persons to increase confidence in the fairness of the compensation order scheme. Guidelines on damages from personal injury cases are already a useful starting point used by courts. Additionally, the tariff schedules of the Criminal Injuries Compensation Authority (CICA) (see Table 3 overleaf) and the Magistrates' Association Sentencing Guidelines should also be consulted. The CICS tariff schedule includes both physical and mental injury, with the lowest award set at £1,000.¹⁰⁹ The Magistrates' Association Sentencing Guidelines provides a compensation tariff table, which is replicated below, which may also be a helpful guidance on appropriate starting points for general damages for personal injuries.¹¹⁰
 9. Regular training should be conducted on the legislation and procedure for applying for compensation orders. It should also be emphasized that compensation takes precedence over confiscation. The police, prosecution and courts should be fully instructed and aware of the legislation and the inter-relationship of compensation and confiscation orders, as this bears directly on the interests of the victim. Thus, where traffickers' assets are confiscated, application for a compensation order should be the default process in appropriate cases. Training should also be focussed on equipping officers with efficient processes and procedures to investigate, freeze, and confiscate traffickers'

¹⁰⁶ Criminal Justice System, Compensation for Victims of Crime, available at <http://www.cjsonline.gov.uk/victim/compensation/index.html> ("[A victim of crime] cannot apply for a compensation order yourself so it is important that you tell the police if you would like to receive compensation. You should give them accurate details of your losses with documentary evidence for example receipts where possible. The police will then pass this information on to the CPS who will make sure that the court knows about it.")

¹⁰⁷ Prosecution Team Manual of Guidance (2004 Edition), Home Office, p. 175, available at

<http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/prosecution-manual-section3?view=Binary>.

¹⁰⁸ This would be feasible given that compensation is addressed at a separate hearing only after an offender has been convicted.

¹⁰⁹ The Criminal Injuries Compensation Scheme 2001, p. 27, available at

<http://www.cicap.gov.uk/Documents/FormsGuidance/TheScheme/TheCriminalInjuriesScheme2001.pdf>.

¹¹⁰ The Magistrates' Association Sentencing Guidelines are now included in section 2 of the Judicial Studies Board Adult Court Bench Book and can be accessed electronically at http://www.jsboard.co.uk/downloads/acbb/complete_o6v2.pdf.

assets early on in the criminal investigation in order to preserve the possibility of using the seized assets to compensate victims later.

Table 3

Type of injury	Description	Starting point
Graze	Depending on size	Up to £75
Bruise	Depending on size	Up to £100
Black eye		£125
Cut: no permanent scar	Depending on size and whether stitched	£100-£500
Sprain	Depending on loss of mobility	£100-£1,000
Finger	Fractured little finger, recovery within month	£1,000
Loss of non-front tooth	Depending on cosmetic effect	£500-£1,000
Loss of front tooth		£1,500
Eye	Blurred or double vision	£1,000
Nose	Undisplaced fracture of nasal bone	£1,000
Nose	Displaced fracture of bone requiring manipulation	£1,500
Nose	Not causing fracture but displaced septum requiring sub-mucous resection	£2,000
Facial scar	However small, resulting in permanent disfigurement	£1,500
Wrist	Closed fracture, recovery within month	£3,000
Wrist	Displaced fracture, limb in plaster, recovery in 6 months	£3,500
Leg or arm	Closed fracture of tibia, fibula, ulna or radius, recovery within month	£3,500
Laparotomy	Stomach scar 6-8 inches (resulting from operation)	£3,500

5.5 Confiscated Assets of Traffickers Not Used to Compensate Trafficked Persons

The Government has seen vast improvement in its efforts to confiscate criminal assets since the introduction of the Proceeds of Crime Act 2002 (POCA). In 2006, financial investigations recovered approximately £125 million of criminal assets, a five-fold increase in performance from the last five years. The Government has committed to doubling its performance by 2009-10 through the recovery of £250 million in criminal assets. The Government also hopes to mainstream the issue of asset recovery, as it remains “very much a minority speciality amongst the judiciary, and is still not seen as a core part of Criminal Justice System work in England and Wales.”¹¹¹ Forcing the offender to pay back the illegal profits is not included or required by the five principles of sentencing in the Criminal Justice Act 2003, which are punishment, reduction of crime, rehabilitation and reform, public protection and reparation.¹¹²

The POCA simplified the existing criminal legislation and introduced new powers of cash seizure and civil recovery. Police interviewed unanimously agreed that the Act has facilitated the ability of law enforcement to recover criminal finances. To calculate the amount of the confiscation order, the Act places the burden on the defendant to show that the amount available for confiscation is less than the defendant's benefit from his criminal conduct and to show the extent of the available amount.¹¹³ The introduction of the MG17 form, which is intended to encourage asset recovery through an early assessment of the offender's assets, also appears to be a useful tool, although reports varied as to how widely it is used within police forces.

Asset seizure may be accomplished in several different ways. First, under the Act, a court may make a confiscation order against a convicted defendant to deprive him of the financial benefit that he has obtained from his criminal conduct.¹¹⁴ If the court has also made a compensation order, it may direct that the compensation order be paid out of a confiscation order where the offender lacks sufficient assets to satisfy both.¹¹⁵ Second, a court may make a

deprivation order pursuant to section 143 of the Powers of Criminal Court (Sentencing) Act, thereby divesting an offender of property that he used, or intended to use, to commit or facilitate the commission of any crime.¹¹⁶ The court may order the proceeds of forfeited property to be paid to anyone who has suffered personal injury, loss or damage as the result of an offence.¹¹⁷ Third, a court may also impose a fine upon the offender.¹¹⁸

These provisions, which could potentially be used to compensate trafficked persons, remain underutilised. In many of the cases surveyed, traffickers appear to have the means to pay significant compensation awards to their victims, as indicated by the large amount of confiscation orders imposed on traffickers in some courts. The following examples on page 32 indicate some of the trafficking cases where significant confiscation orders were imposed on the convicted defendants.

The data suggests that compensation orders could be vigorously pursued in a number of cases where confiscation orders are high and reflect the availability of the trafficker's assets to satisfy such an order. A number of judges and prosecutors interviewed felt that the usual practice was for the prosecution to apply for either a confiscation order or compensation order but not both at the same time. In some cases, this appears to be the result of the failure to challenge the status quo or a lack of awareness of the legislation and the ability to compensate crime victims out of confiscated criminal assets.

The Asset Recovery Action Plan Consultation indicates that the Government is aware of the current weaknesses concerning compensation to victims in criminal proceedings and is seeking to address them.¹¹⁹ The Home Office has acknowledged the validity of the criticism that it has received for focusing criminal asset recovery efforts solely on receipts to Government, with targets that do not cover payments to compensate victims.¹²⁰ Improving compensation for victims is at least a stated priority, yet no timeline has yet been set in place, as “current data is so poor it would not be realistic to set a target at present”.¹²¹

¹¹¹ *Asset Recovery Action Plan: A Consultation Document*, Home Office, May 2007, p.28, available at http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/strategy/asset_recovery.pdf.

¹¹² *Ibid.*

¹¹³ Section 7(2), Proceeds of Crime Act 2002 (c. 29).

¹¹⁴ Section 6, POCA.

¹¹⁵ Section 13(6), POCA.

¹¹⁶ Section 143, Powers of Criminal Court (Sentencing) Act 2000 (c.6) [hereinafter “PCCSA”].

¹¹⁷ Section 145(1), PCCSA. This is true in a case where the court refrained from making a compensation order against the offender because he lacked the means to pay.

¹¹⁸ Section 127, PCCSA.

¹¹⁹ *Asset Recovery Action Plan: A Consultation Document*, Home Office, May 2007, available at

http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/strategy/asset_recovery.pdf.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

- **Godwin Zammit** was sentenced in March 2007 to five years' imprisonment after pleading guilty to conspiracy to trafficking into the UK for sexual exploitation, conspiracy to control prostitution for gain and conspiracy to facilitate a breach of immigration law. Under the Proceeds of Crime Act 2002, a confiscation order was made against him for £150,000.¹²²
- In September 2006, **Kenny Low** was sentenced to three-and-a-half years' imprisonment after pleading guilty to conspiracy to trafficking into the UK for sexual exploitation. An initial confiscation order of £99,596 under the Proceeds of Crime Act 2002 was increased to £102,271.30 due to the fact that the money was held in a high interest account.¹²³
- Trafficker **Luan Plakici** was convicted of seven counts of facilitating illegal entry, three counts of kidnapping, three counts of living off prostitution, one count of procuring unlawful sexual intercourse, and one count of incitement to rape in December 2003. Plakici, who used his ill-gotten assets to purchase a Ferrari and BMW, was sentenced to 23 years and ordered to pay a confiscation order of £94,262.65.¹²⁴
- **Vullnet Ismailaj** pleaded guilty to trafficking into the UK for sexual exploitation in February 2005, was sentenced to 9 years' imprisonment and ordered to pay a £95,000 confiscation order.¹²⁵
- Ismailaj's co-defendant, **Lorenc Roci**, pleaded guilty to conspiracy to controlling prostitution for gain and was sentenced to 3 years' imprisonment. He was ordered to pay a confiscation order of £44,656.69.¹²⁶
- In November 2005, **Agron Demarku** was convicted of conspiracy to traffic into the UK for sexual exploitation, conspiracy to traffic within the UK for sexual exploitation, conspiracy to cause people to engage in sexual activity without consent, conspiracy to cause prostitution, conspiracy to control prostitution, and controlling child prostitution. He was sentenced to 18 years' imprisonment and ordered to pay a confiscation order of £75,400.10.¹²⁷
- In December 2004, **Taulant Merdanaj** was convicted of 4 counts of trafficking into the UK for sexual exploitation, 2 counts of causing a female to engage in sexual activity without consent, 2 counts of causing or inciting prostitution for gain, 2 counts of false imprisonment and 3 counts of rape. He was sentenced to 18 years' imprisonment and ordered to pay a confiscation order of £36,084.¹²⁸
- Merdanaj's co-defendant, **Elidon Bregu**, was convicted of 2 counts of false imprisonment and one count of trafficking into the UK for sexual exploitation, sentenced to 9 years' imprisonment and ordered to pay a confiscation order of £28,974.¹²⁹
- In November 2005, **Gavril Dulghieru** pleaded guilty to conspiracy to traffic in prostitution, conspiracy to traffic into the UK for sexual exploitation and conspiracy to facilitate unlawful immigration order. He was sentenced to 9 years' imprisonment and ordered to pay a confiscation order of £17,773.77.¹³⁰

Financial investigations should be given high priority within trafficking cases. Current data indicates that confiscation orders are secured in less than 1% of all acquisitive crime cases, with the majority of orders secured in drug cases.¹³¹ An in-depth study of known trafficking cases reflects varying levels of success in asset recovery. Within the Metropolitan Police, for example, the Clubs and Vice Unit has the second highest success rate of confiscating criminal assets despite its small size and has obtained high

confiscation orders in several trafficking cases. Police in several other forces, on the other hand, reported little success in seizing traffickers' assets and difficulties in tracing money abroad. Of the trafficking cases examined, confiscation orders were imposed in 30.5% of these cases, although courts varied in the frequency and amount in which they made the orders. Overall, the amount of the confiscation ordered is significant, even in cases where law enforcement believed that traffickers transferred some of the

¹²² Certificate of Conviction of Godwin Zammit, obtained from Kingston Crown Court on 15 February 2008.

¹²³ Certificate of Conviction of Kenny Low, obtained from Southwark Crown Court on 11 February 2008.

¹²⁴ Judge Winstanley, Wood Green Crown Court, 4 June 2006.

¹²⁵ Certificate of Conviction of Vullnet Ismailaj, obtained from Southwark Crown Court on 19 November 2007. Ismailaj was originally sentenced to 11 years in prison before Southwark Crown Court in February 2005, but on appeal his sentence was reduced to 9 years. See *R v. Roci and Ismailaj*, [2005] EWCA Crim 3404.

¹²⁶ Certificate of Conviction of Lorenc Roci, obtained from Southwark Crown Court on 19 November 2007.

¹²⁷ Certificate of Conviction of Agron Demarku, obtained from Southwark Crown Court on 19 November 2007.

¹²⁸ Certificate of Conviction of Taulant Merdanaj, obtained from Sheffield Crown Court on 26 November 2007.

¹²⁹ Certificate of Conviction of Elidon Bregu, obtained from Sheffield Crown Court on 26 November 2007.

¹³⁰ Information obtained by telephone from Isleworth Crown Court, November 2007.

¹³¹ *Ibid.*

assets out of the UK.

Criminal assets should be recovered from traffickers with a view to compensating trafficked persons through compensation orders. Between 2004 and 2005 multi-agency task force Reflex seized £5.5 million of criminal assets, yet there is no indication that the assets were used, at least in part, to compensate trafficked persons.¹³² Similarly, a 2007 Joint Committee on Human Rights report on human trafficking reported that £250,000 was confiscated from traffickers from Operation Pentameter alone.¹³³ Home Office Under Secretary of State Vernon Coaker MP reported that all receipts from the recovered assets were transferred to the Treasury, with half of the money diverted back to law enforcement and prosecution bodies and the other half used by the Home Office for asset recovery and crime reduction projects.¹³⁴ In the most recent police operation, Pentameter II, which ended in early 2008, police recovered more than £500,000 worth of cash from arrested offenders and court orders are in place to seize further criminal assets amounting to several millions of pounds.¹³⁵ There is no sign that the Government will take any action to ensure that victims receive some of this money in compensation.

5.6 Lack of Attention to Forced Labour Trafficking

Two major obstacles to justice for trafficked persons are the lack of awareness of forced labour cases in the UK and the lack of resources dedicated to combating the crime. The International Labour Organization (ILO) estimates that approximately 12.3 million people worldwide are victims of forced labour and that 2.4 million of these individuals are subjected to forced labour as a result of trafficking.¹³⁶ Industries supplied by forced labour are wide ranging and include agriculture, food packaging, construction, domestic work, care, and the restaurant and hospitality industry.¹³⁷ Labour exploitation and trafficking for forced labour often go undetected because they are largely hidden crimes and remain a low priority for law

enforcement.

According to a recent Home Office report, there are currently no reliable estimates of the number of individuals trafficked to the UK for purposes of forced labour.¹³⁸ However, a 2006 Anti-Slavery International report identified at least 27 individual cases in which migrant workers had been trafficked for forced labour in the UK.¹³⁹ At the time of writing of the report there have been no known convictions for trafficking for forced labour under the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 since the offence came into force on 1 May 2004¹⁴⁰.

The Gangmasters Licensing Act (GLA) was enacted to combat worker exploitation and illegal labour provider activity and its passage through the Parliament is sometimes linked to the tragedy in February 2004, when 21 Chinese cockle-pickers drowned at Morecambe Bay, Lancashire. The Act applies throughout the UK and covers agricultural and horticultural work, shellfish gathering and the processing or packaging of any products derived from these industries. It defines a gangmaster as anyone employing, supplying and or supervising a worker to do work in the sectors outlined and extends the full protection of the law to any individual worker undertaking work to which its provisions apply. The Act establishes the Gangmasters Licensing Authority to run a register of gangmasters and enforce a licensing scheme. The Act and the associated Gangmasters (Licensing Authority) Regulations 2005 apply to work done anywhere in the UK, along the shoreline and in the UK coastal waters.

The Act establishes four offences. First, sections 6 and 12(1) make it an offence for a gangmaster to operate without a license.¹⁴¹ Second, section 12(2) prohibits an individual from obtaining or possessing a false license or false documentation with the intent of deceiving another into believing that he or another person is a licensed gangmaster when neither of them are.¹⁴² Third, it is unlawful to use an unlicensed gangmaster. Fourth, section 18 makes it an offence to intentionally obstruct an enforcement or compliance

¹³² *Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan*, Home Office and Scottish Executive, January 2006, p.13, available at <http://www.homeoffice.gov.uk/documents/cons-2006-tack-human-trafficking/cons-2006-tackling-trafficking?view=Binary>. Reflex was established in 2000 to combat organised immigration crime, including human trafficking.

¹³³ *Human Trafficking: Update*, Joint Committee on Human Rights, Twenty-First Report of Session 2006-7, 18 October 2007, available at <http://www.parliament.the-stationery-office.com/pa/jt200607/jtselect/jtrights/179/179.pdf>.

¹³⁴ *Ibid.*

¹³⁵ Association of Chief Police Officers (ACPO) press release, 2 July 2008, available at http://www.ukhct.org/includes/75_Operation_Pentameter_2_Results.pdf.

¹³⁶ *Forced Labour and Trafficking in Human Beings*, International Training Centre, ILO, 2008, available at <http://www.itcilo.org/en/expertise-services/forced-labour-and-trafficking-in-human-beings>.

¹³⁷ *Ibid.*

¹³⁸ Dowling, S. et al., *Trafficking for the Purposes of Labour Exploitation: A Literature Review*, Home Office Report, October 2007, p.6.

¹³⁹ Skrivankova, K., *Trafficking for Forced Labour: UK Country Report*, Anti-Slavery International, 2006.

¹⁴⁰ At the end of 2008, 4 convictions for trafficking for labour exploitation were noted.

¹⁴¹ Sections 6, 12(2), Gangmasters (Licensing) Act 2004.

¹⁴² Section 12(2).

officer from carrying out his duties under the Act or to give false material information to an officer.¹⁴³

Significantly, the GLA does not cover the construction, care, hospitality, restaurant and cleaning industries, which employ many migrant and low-skilled workers who may be particularly vulnerable to exploitation because of their irregular immigration status, limited command of English, and dire economic circumstances. According to the GLA, the agency has indicators of displacement of the problem, i.e. of movement of the rogue and abusive gangmasters to areas that are not regulated by the authority.

The GLA is also limited in its ability to assist exploited or trafficked individuals in accessing unpaid wages or other forms of compensation. Cases involving underpayment of workers are referred to other government departments to pursue, but the GLA cannot ensure that other agencies act on the information and there is also no provision within the UK Action Plan that would task the relevant governmental agencies with responsibility in this area.

Reasons for Lack of Prosecutions

The lack of convictions for forced labour trafficking crimes can be attributed to several factors.

First, persons trafficked into forced labour may be afraid to seek help from police or pursue criminal charges because they fear threats from their employer, violence or harm to themselves or their families back in their home countries, loss of income, arrest or deportation. Additionally, they may distrust authorities and face language barriers. Even if an individual does seek help, there are limited resources or organisations in the UK that assist persons trafficked for forced labour.¹⁴⁴

Second, the lack of effective victim care and specialised assistance for persons trafficked into forced labour directly impacts the ability of law enforcement and the prosecution to successfully investigate and prosecute a case. Several prosecutors acknowledged that migrant workers who have been trafficked for forced labour are often viewed and treated as potential immigration offenders, rather than as victims, and are quickly sent back to their home countries. In order to improve the likelihood of success in forced labour cases, the

individual's physical and psychological needs and safety and confidentiality concerns must be addressed in an appropriate and timely manner. In addition, a relationship of trust must be established between law enforcement and the trafficked person.¹⁴⁵ In the absence of such provisions, it is unlikely that the trafficked person would be willing to assist in any investigation or cooperate with the police, much less testify at a criminal trial against the trafficker.

Third, police lack sufficient training on the offence of trafficking for forced labour to properly identify potential cases. Police reported that improved training is necessary to develop a better understanding of the nature of the problem as a human rights abuse. Such training would assist in victim identification and the development of effective intelligence-gathering processes with respect to recruitment methods, advertising mediums, forged instruments, travel routes and means, financial intelligence, accommodation of workers, and the extent of the trafficking network.

Fourth, prosecutors familiar with the offence of labour trafficking reported the evidentiary difficulties of proceeding under the trafficking offence as laid out in Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Several prosecutors agreed that it was easier to convict labour traffickers under other offences, such as facilitating illegal entry and false imprisonment, and convictions under these offences yielded even longer sentences in some cases.

The labour trafficking pilot run by the Home Office in summer 2008 is a positive development. Identifying and prosecuting those responsible for labour trafficking, however, must be elevated as a firm priority for law enforcement throughout the UK, and particularly in rural areas where substantial populations of migrant workers are known to work and reside.

¹⁴³ Sections 18(1) and (2).

¹⁴⁴ Kalayaan provides advocacy and support services only to migrant domestic workers who enter the UK on a visa. The two-week labour trafficking pilot run by the Home Office in summer 2008 only provided 5 bed spaces through the POPPY Project to individuals trafficked for labour exploitation.

¹⁴⁵ *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers*, ILO, 2005, pp. 51-52, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_081894.pdf.

6. Conclusions and Policy Recommendations

Conclusions

Trafficked persons in the UK face a number of deep-seated obstacles that hinder their ability to pursue legal remedies. The goal of this research was not to provide an exhaustive analysis of legal remedies in the UK, but rather to examine the crucial elements that affect trafficked persons' ability to pursue compensation.

In seeking answers to the research questions we found that in theory, UK law provides routes for victims of trafficking to seek compensation. The right to compensation for trafficked persons exists through criminal, civil and labour law. However, it could not be concluded that compensation is accessible for trafficked persons in the UK. Only a minority of trafficked persons actually have the opportunity to pursue this right, much less receive compensation. At the time of writing there are only five known successful compensation awards through the Criminal Injuries Compensation Scheme and one known civil suit on behalf of a trafficked person. The early success of obtaining compensation awards from the CICA is promising, although it is unknown to what extent this option will continue to be successful, given the substantial amount of resources needed throughout the process, which have thus far been provided by private and voluntary organisations. The fact that there has not yet been a single compensation order benefiting a trafficked person, even in instances where assets have been confiscated from the trafficker, is indicative of greater challenges inherent in the criminal justice system.

We found that the anti-trafficking policy does not in practice deal with the issue of compensation and that there are a number of obstacles preventing trafficked persons from obtaining compensation. For example: lack of knowledge, guidance and limited Government interest in the issue of compensation are just some of the reasons identified. Other obstacles include insufficient support services, difficulty accessing legal aid, lack of awareness of legal remedies among law enforcement, legal professionals and trafficked persons, and a limited knowledge about the problem of trafficking for forced labour. The recent ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings provides an opportunity for the Government to address a number of these barriers, particularly through the implementation of the reflection period and the residence permit.

Human trafficking will remain a high-profit, low-risk crime unless robust penal measures are firmly in place. These measures must strengthen efforts to convict traffickers and confiscate their criminal assets. However, equal attention must be paid to the prevention of re-trafficking of vulnerable individuals. Compensation is both a powerful restorative tool for victims, contributing to their financial stability and recovery, as well as a deterrent for traffickers, particularly where the criminal profits are used to compensate their victims.

Based on the results of the research, we found a number of changes needed in the system to improve access to justice, including compensation for trafficked persons. The following key recommendations have been identified to improve access to justice for trafficked persons:

Policy Recommendations

- 1. Mainstream the issue of compensation into the anti-trafficking policy.** In particular, ensure that concrete actions are outlined in the Action Plan to overcome obstacles that prevent trafficked persons from accessing compensation and to facilitate the use of confiscated criminal profits to compensate victims of trafficking.
- 2. Allow for legal aid funding to law centres representing vulnerable and exploited workers before employment tribunals.** In order to maximise accessibility of legal services, conditions on funding should also be relaxed to allow legal aid funding for the provision of interpreters for trafficked persons suing offenders in civil courts and bringing claims in employment tribunals.
- 3. Allow trafficked persons to obtain a temporary residence permit under the Council of Europe Convention to initiate a claim for compensation.** This would enable a trafficked person to evaluate the legal options available to them through criminal and civil proceedings.
- 4. Ensure sustainable funding to qualified nongovernmental organisations (NGOs) engaged in providing support services to trafficked persons.** In particular, specific funding should be earmarked for the creation of services designated for persons trafficked for labour exploitation.

5. **Ensure that competent authorities inform trafficked persons of relevant legal proceedings regarding compensation in a language they understand, as required by the Council of Europe Convention.**
6. **Extend employment law protections to enable all workers to enforce core statutory employment rights, regardless of their immigration status.** For example, all workers should be entitled to receive minimum wage.
7. **Expand the scope of the Gangmaster Licensing Act (GLA) to include a broader range of sectors, particularly those which employ large numbers of migrant and low-skilled workers who may be particularly vulnerable to exploitation.** These sectors include restaurant work and hospitality, care and nursing, domestic workers, contract cleaning and construction.
8. **Mainstream the use of compensation orders in criminal cases against human traffickers.**
9. **Provide detailed guidance to the Crown Courts regarding the practical administration of compensation orders,** including a tariff of injuries.
10. **Ministry of Justice should collect statistics on numbers of compensations orders applied for in trafficking cases and compensation received by victims.**

Recommendations on Concrete Actions to Be Included in the Action Plan on Tackling trafficking in Human Beings :

1. Provide training to police and prosecutors to ensure that compensation orders are applied for in every appropriate trafficking case where traffickers' assets are available. Training should include the types of loss that compensation orders cover (not just financial loss but also personal injury). Training should also be provided on the Proceeds of Crime Act 2002, specifically section 13, which enables Crown Courts to require that a compensation order be paid out of a confiscation order.
2. The Code of Practice for Victims of Crime should be revised to require police to inform victims of all compensation mechanisms available through the criminal justice system. At present, the onus is on the victim to inform police if he/she would like to receive compensation from the offender, and neither the police nor the Crown Prosecution Service are obligated to inform crime victims of their rights regarding compensation measures.¹⁴⁶ Placing the burden on the victim does not facilitate the victim's ability to receive compensation. For example, a victim may be uninterested or loath to request compensation, fearing that it may reflect poorly on his/her or even be used to discredit her as a witness at the offender's criminal trial.
3. Ensure that police ask trafficked persons whether they wish to have the prosecution apply for compensation order on their behalf. If the victim indicates that he or she would like the prosecution to apply for a compensation order, the police and Crown Prosecution Service should work closely together to share victim statements, documentary evidence and other necessary information for the application. Police should also liaise with support workers to ensure that trafficked persons understand the compensation alternatives available to them.
4. Police should be provided with clear and uniform guidance as to the appropriate time to raise the issue of compensation in order to minimise the risk that the defence would portray the issue as inducement to the victim to testify at trial. Standardising the procedure and instructing police to raise the issue of compensation only after the defendant has been convicted would also reduce the exposure of trafficked persons to unfair bias at trial.¹⁴⁷
5. Provide formal guidance to prosecutors and police to improve information sharing with victims about compensation orders. Victims should be informed of the process of applying for a compensation order, average amounts of orders and enforcement procedures for unpaid orders.

¹⁴⁶ Criminal Justice System, *Compensation for Victims of Crime*, available at <http://www.cjsonline.gov.uk/victim/compensation/index.html> ("[A victim of crime] cannot apply for a compensation order yourself so it is important that you tell the police if you would like to receive compensation. You should give them accurate details of your losses with documentary evidence for example receipts where possible. The police will then pass this information on to the CPS who will make sure that the court knows about it.")

¹⁴⁷ This would be feasible given that compensation is addressed at a separate hearing only after an offender has been convicted.

6. Prioritise financial investigations in human trafficking cases and provide law enforcement with sufficient resources to enable them to identify and freeze assets quickly. Standardise the use of the MG17 form throughout police forces in the UK. Training should also be focussed on equipping officers with efficient processes and procedures to investigate, freeze, and confiscate traffickers' assets early on in the criminal investigation in order to preserve the possibility of using the seized assets to compensate victims later.
7. Ensure coordination among police, support workers and interpreters to ensure that trafficked persons understand information communicated to them about compensation orders. Where an individual has indicated a desire to pursue compensation, the prosecutor should ensure that adequate details and information are included on any compensation forms.
8. The prosecution and Crown Courts should be provided with more concrete guidelines on quantifying injuries suffered by trafficked persons to increase confidence in the fairness of the compensation order scheme. Guidelines on damages from personal injury cases are already a useful starting point used by courts. Additionally, the tariff schedules of the Criminal Injuries Compensation Authority (CICA) and the Magistrates' Association Sentencing Guidelines should also be consulted.
9. Regular training should be conducted on the legislation and procedure for applying for compensation orders. It should also be emphasized that compensation takes precedence over confiscation. The police, prosecution and courts should be fully instructed and aware of the legislation and the inter-relationship of compensation and confiscation orders, as this bears directly on the interests of the victim. Thus, where traffickers' assets are confiscated, application for a compensation order should be the default process in appropriate cases.

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Annex A

Scope of Human Rights Legislation Leaves Many Without a Remedy

Human rights legislation in the UK remains untested as a means of remedying the wrongs suffered by trafficked persons.

- **Human Rights Act 1998**

At first glance, the Human Rights Act of 1998 (HRA) appears to be a promising avenue for trafficked persons to vindicate their rights.¹⁴⁸ The Act incorporates into domestic law the European Convention of Human Rights, which, like the International Covenant on Civil and Political Rights, protects basic civil and political rights.¹⁴⁹ Thus, an injured party may seek a remedy in UK courts, including damages, for breach of a Convention right, rather than having to bring a claim before the European Court of Human Rights in Strasbourg. The HRA thus makes it possible for a complainant to address their grievances in a faster and less expensive manner than was previously possible before the Strasbourg-based court.

The Act makes it unlawful for a public authority to act in contravention of Convention rights.¹⁵⁰ A public authority includes a court or tribunal or other body with public functions such as the police and government bodies.¹⁵¹ A private company exercising public functions, such as an organisation running a private prison, or privatised utilities are also considered public authorities.¹⁵² Where a person, body or company is acting as an employer or in a commercial capacity, the entity will be deemed a private authority and a claim under the Human Rights Act will fail.¹⁵³

Among those rights covered by the HRA are the right to be free from torture, inhuman and degrading treatment (Article 3) and the right to be free from slavery or forced labour (Article 4), which are particularly relevant to trafficked persons.¹⁵⁴ Trafficked

persons experience serious violations of these fundamental rights. For example, a trafficked person may often be subject to inhuman treatment, which includes serious physical assaults, the use of psychological interrogation techniques, inhuman detention conditions or restraints, a lack of proper medical help if he or she has a serious illness, and a threat of real and immediate torture.¹⁵⁵ Additionally, he or she may also be subject to degrading treatment.

Whether trafficked persons have recourse under the HRA, however, depends on whether the actor may be appropriately categorised as a public authority. The vast majority of traffickers and gangmasters, however, act as employers in a commercial capacity and, as such, would not meet the required definition of “public authority” for purposes of the HRA. Consequently, pursuing a civil remedy under the HRA is generally not a viable option for trafficked persons.

- **International Covenant on Civil and Political Rights (ICCPR)**

On the international level, the International Covenant on Civil and Political Rights (ICCPR), a United Nations treaty enshrining human rights, prohibits slavery and forced labour.¹⁵⁶ Article 8 of the ICCPR prohibits all forms of slavery and the slave trade, servitude and forced or compulsory labour, as defined in paragraph 3(c).¹⁵⁷ Enforcement measures for Article 8 of the ICCPR are weak. Whilst State parties are obliged to submit regular reports to the monitoring body, the Human Rights Committee (HRC), on their implementation of the Covenant rights, the HRC’s concerns and recommendations to States are non-binding.¹⁵⁸

The First Optional Protocol to the ICCPR creates an individual complaints mechanism that allows the

¹⁴⁸ *Human Rights Act 1998* (U.K.), c. 42 [HRA].

¹⁴⁹ *Convention for the Protection of Human Rights and Fundamental Freedoms* [ETS No. 5] U.K.T.S. No. 071/1953: Cmd. 8969 (entered into force 4 November 1950, accession by UK 8 March 1951).

¹⁵⁰ *Human Rights Act of 1998*, S. 6(1).

¹⁵¹ *Ibid.*, S. 6(3).

¹⁵² *A Guide to the Human Rights Act 1998*, Department for Constitutional Affairs, p. 9, <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/act-studyguide.pdf>

¹⁵³ *Ibid.*

¹⁵⁴ Article 3 of the Convention, as incorporated in the Human Rights Act, states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Article 4(1) of the Convention provides that “No one shall be held in slavery or servitude,” and Article 4(2) states that “No one shall be required to perform forced or compulsory labour.”

¹⁵⁵ See *A Guide to Human Rights Act 1998*, p. 15.

¹⁵⁶ *International Covenant on Civil and Political Rights (ICCPR)*, 19 December 1966, 999 U.N.T.S. 171, art. 8, U.K.T.S. No. 006/1977: Cmd 6702, (entered into force 23 March 1976, accession by UK 20 May 1976).

¹⁵⁷ Art. 8, ICCPR.

¹⁵⁸ Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, available at <http://www2.ohchr.org/english/bodies/hrc/index.htm>

claimant to submit a complaint directly to the HRC, a body of 18 independent experts upon exhaustion of all domestic remedies. The victim must be subject to the jurisdiction of a member State (i.e., present within its territory) at the time of the alleged violation of his or her Convention rights. Unlike the HRA, which only covers actions by public authorities, the individual complaints mechanism of the ICCPR allows complainants to seek redress for abuse by private as well as public or state parties.¹⁵⁹ Because the UK has not ratified the Protocol, however, individuals in the UK are not entitled to use this mechanism.

¹⁵⁹ *Ibid.* at 58, quoting Joseph, S. et al, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2000) at 200.

Appendix B:

Extract from Compensation and Support for Victims of Crime

For original in full go to:

<http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/prosecution-manual-section3?view=Binary> :

RESTRICTED – FOR POLICE, PROSECUTION AND COURT ONLY (when complete)

MG 19

COMPENSATION CLAIM

For Police Use

R v

URN:

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Offence:

Date of offence:

COMPENSATION FORM: NOTES FOR GUIDANCE

If you have any queries regarding completion of this form, contact.....

The offence for which proceedings have been instituted may give rise to the question of compensation. The relevant sections of pages 2-4 of this form should be completed clearly in **BLOCK CAPITALS** and then returned to the police in the freepost envelope provided.

It is very important that this form is completed as soon as possible. If sent to you by post it must be returned within 14 days. Failure to return this form on time may lead to the case proceeding without an application for compensation being made on your behalf. If you do find that you require extra time, please contact the case clerk to see if an extension is possible.

COMPLETE ONLY THE SECTIONS WHICH APPLY TO YOU. THIS FORM MUST BE SIGNED AND DATED ON PAGE 3.

PLEASE NOTE: the magistrate or judge will decide whether or not to order compensation. We have no authority over this decision.

Personal injury claims can also be pursued via the Criminal Injuries Compensation Authority – please refer to the enclosed victim of crime leaflet for details.

A. Property stolen (and not recovered) or damaged

(N.B. in the case of road traffic collisions, please complete section D)

Relates to property stolen or damaged that has not been recovered by police. This section does not apply to damage caused in a road traffic collision – please use Section D.

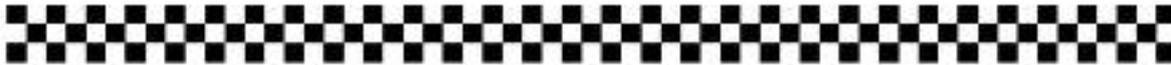
It is important that you provide documentary evidence to support your claim. This means that copies of receipts, estimates or bills should be provided wherever possible. Property recovered by police but not yet returned to you (due to it being used in evidence) should not be claimed for, as this will be restored upon completion of the court case.

Cost of replacement or repair (incl VAT).

Description of item(s):

Amount:

Total:



**RESTRICTED – FOR POLICE, PROSECUTION AND
COURT ONLY (when complete)**

Personal details of claimant

Name:

Address:

Home telephone no.

Business:

E-mail address:

Details of doctor/dentist (personal injury cases ONLY)

1. Did you attend Accident and Emergency as a result of your injuries?

Yes No If 'Yes', please confirm:

Hospital:

Date of attendance:

Doctor's name if known:

2. Were you referred to a specialist / other department?

Yes No If 'Yes', please confirm:

Hospital:

Date(s) of re-attendance(s):

Doctor/dentist's name if known or department:

3. Have you seen your GP/dentist in relation to these injuries?

Yes No If 'Yes', please confirm:

GP/dentist's name:

Surgery address:

Date of attendance(s):



MG19 – COMPENSATION CLAIM

PURPOSE OF THIS FORM

- For the victim/witness to complete details of their loss, injury or damage
- To provide the prosecutor with the details to make an application for compensation in court

See additional Guidance Notes

Tick the box at the bottom of the **MG5** if compensation is required, even if the person seeking compensation has not yet completed the form.

Where possible the form **MG19** should be completed at the same time as the statement of the complainant. **(See Note 2)**

Original documents to be retained by police. Copies to CPS should be edited so as not to disclose victim's address. **(See Note 12)**

Documents to support their claim, e.g. estimates, should be included with their submission. Any delay in receiving details should be recorded on **MG6** **(See Note 10)**

RESTRICTED – FOR POLICE, PROSECUTION AND COURT ONLY (when complete)

COMPENSATION CLAIM

For Police Use

K.A. U.S.N.
 Offence: _____ Date of offence: _____

COMPENSATION FORM: NOTES FOR GUIDANCE

If you have any queries regarding completion of this form, contact _____

The offence for which proceedings have been initiated may give rise to the award of compensation. The relevant sections of pages 2-4 of this form should be completed shortly by **REPORTING OFFICERS** and then returned to the police in the enclosed envelope provided.

It is very important that this form is completed as soon as possible. If sent to you by post, it must be retained in the 14 days. Failure to return this form on time may lead to the case proceeding without an application for compensation being made to court. If you do find that you require additional forms, please contact the case officer for use in an interview or similar.

COMPLETE ONLY THE SECTIONS WHICH APPLY TO YOU. THIS FORM MUST BE SIGNED AND DATED ON PAGE 3.

PLEASE NOTE: The magistrate or judge will decide whether or not to order compensation. He/she will usually refer the details.

Personal injury claims can also be pursued via the Criminal Injuries Compensation Authority – please refer to the relevant section of crime brief for details.

A. Property stolen (and not recovered) or damaged	Total
<p style="font-size: x-small; margin: 0;">(If B, on the basis of your legal claim, please complete section D.)</p> <p style="font-size: x-small; margin: 0;">Full loss to property stolen or damaged, that has not been recovered by police. This section does not apply to damage caused by a road traffic collision – please use Section C.</p> <p style="font-size: x-small; margin: 0;">It is important that you make documentary evidence to support your claim. This means that copies of receipts, estimates or bills should be provided wherever possible. Property recovered by police but not yet returned to you (due to it being used as evidence) should not be claimed for, as this will be returned upon completion of the court case.</p>	<p style="font-size: x-small; margin: 0;">Overall expenditure or repair cost/ RPD</p>
<p style="font-size: x-small; margin: 0;">Description of item(s):</p>	<p style="font-size: x-small; margin: 0;">Amount:</p>
Total	

MG19 – COMPENSATION CLAIM GUIDANCE NOTES

- 1 A defendant may be ordered to pay compensation for any injury, loss or damage resulting from an offence to which he has pleaded guilty or for which he has been convicted, or which he has asked to be taken into consideration (TIC).
- 2 **Where possible, the form MG19 should be completed at the same time as the statement of complaint.** The victim should be given a form **MG19** as soon as possible after the defendant has been charged or the offence has been listed as TIC. If it has not been possible to obtain details before an early hearing, an estimate of the damage or loss should be included in the victim's statement.
- 3 Police should provide assistance to victims who may have difficulty in completing the form **MG19** (e.g. where the victim is elderly, infirm, or illiterate).
- 4 The names and addresses of all claimants must be listed on the **MG6** and marked as restricted, unless **MG19s** have been completed in respect of all of those witnesses.
- 5 The details section of the **MG19** should include details of any doctor, dentist, or other specialist who has attended to the claimant, to enable statements to be obtained where required.
- 6 In road traffic cases, a compensation order can only be made in respect of an offence under the Theft Act 1968, or where the defendant is uninsured and the compensation is not payable by the Motor Insurance Bureau agreement. This means that where a person is uninsured, only the first £300 can be awarded.
- 7 Under the Theft Act, damage must be the subject of the offence(s) charged or TIC whilst the item was out of the possession of the owner.
- 8 The victim can make a claim for loss of no-claims bonus.
- 9 An explanatory leaflet entitled "Victim of Crime" should also be sent to the victim unless one has already been provided.
- 10 The form asks the victim to provide documents to support the claim and supply them to the officer as soon as possible. The victim may ask for more time to provide the necessary details. The submission of the file should not be delayed if a reply has not been received, but reference to the delay should be noted on the **MG6**.
- 11 Details received from the victim after the file has been submitted should be sent to the CPS under cover of form **MG20**.
- 12 Originals of estimates, receipts, bills, etc. in support of the claim should be retained by the police. Copies, edited to ensure that the victim's address is not disclosed, should be provided to the CPS. The originals must not be edited. The CPS must also ensure the copies passed to the defence do not contain details of the victim's address.
- 13 By local agreement, standard agreed lists showing the value of repair or replacement of council/police property (e.g. clothing, equipment, vehicle repair, etc.) may be prepared and used to inform applications for compensation.
- 14 The Magistrates' Association has produced guidelines which suggest the level of awards for personal injury.

RESTRICTED (when complete)

MG-FSP

Laboratory Ref No. (for Laboratory use only):..... URN

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9. Details of Subjects

Subject's full name: M / F D. O. B: Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable) Occupation: *Ethnicity code: Time of arrest:
Subject's full name: M / F D. O. B: Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable) Occupation: *Ethnicity code: Time of arrest:
Subject's full name: M / F D. O. B: Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable) Occupation: *Ethnicity code: Time of arrest:
Subject's full name: M / F D. O. B: Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable) Occupation: *Ethnicity code: Time of arrest:

*16 Point Ethnic Classification System.

10. Circumstances of Incident(s)

Date: Time: Offence:

State briefly:

a) What took place (include location):

.....

.....

.....

.....

b) What account (if any) has been given by the suspect(s):

.....

.....

c) Add any other information you may consider relevant (refer to 'Critical Success Factor Form' where appropriate):

.....

.....

.....

..... Continue on separate sheet if necessary.

If for any reason the circumstances in this case change or the case is discontinued and the forensic evidence is no longer required then the FSP should be immediately informed by facsimile or e-mail

Anti-Slavery International, founded in 1839, is committed to eliminating all forms of slavery throughout the world. Slavery, servitude and forced labour are violations of individual freedoms, which deny millions of people their basic dignity and fundamental human rights. Anti-Slavery International works to end these abuses by exposing current cases of slavery, campaigning for its eradication, supporting the initiatives of local organisations to release people, and pressing for more effective implementation of international laws against slavery. For further information see: www.antislavery.org

Registered charity: 1049160

ISBN: 978-0-900918-71-1



Anti-Slavery International would like to thank the City Parochial Foundation for funding this project.

The views expressed herein are those of Anti-Slavery International and in no way reflect the opinion of the funder.



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