

**An Exploration of the deficiencies in the Modern Slavery Act 2015 from an
operational victim-centred perspective**

Lucy Austin lucy.austin@nottingham.ac.uk
The Rights Lab, University of Nottingham, UK

Introduction

The Modern Slavery Act 2015 (MSA 2015), set out to make provisions in four areas centring around the common goal of the prevention of exploitation. The four provisions targeted slavery, servitude and forced or compulsory labour; human trafficking; to make provision for an Anti-slavery Commissioner (IASC); and for connected purposes.¹ The UK did so largely in order to fulfil its international obligations under the Palermo Protocol and European Convention on Action against Trafficking (ECAT).² Additionally, Home Secretary Theresa May placed the issue at the forefront of the Government's policy agenda, highlighting new research in 2013 which revealed the number of potential victims of exploitation in the UK to be between 10,000 – 13,000.³ The MSA 2015 sought to produce a full coverage provision of the area of exploitation. The goals of the Act were to protect victims by increasing prosecutions, which would be achieved by ensuring that law enforcement and the courts have the authority to do so.⁴ Home Secretary Theresa May said “The Bill ... will ensure that we can effectively prosecute perpetrators, properly punish offenders and help prevent more crimes from taking place. Most crucially, it will enhance protection and support for the victims of these dreadful crimes”.⁵ From inception it has been the victims of this crime that have been the driving force, the number of potential victims was both shocking to the public and furthermore a rhetorical tool that was repeated regularly when pushing this Bill

¹ Modern Slavery Act 2015

² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000, entered into force 25 December 2003) 3336 UNTS 319 (Palermo Protocol).; Council of Europe Convention on Action Against Trafficking in Human Beings (adopted 16 May 2005, entered into force 01 February 2008) CETS 197.

³ Broad, Rose and Nick Turnbull. “From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK”. *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.; Silverman, Bernard W. “Modern Slavery: an Application of Multiple Systems Estimation”. *Home Office* (2014).

⁴ HC Deb 8 July 2014, vol584, cols166-167

<https://hansard.parliament.uk/Commons/2014-07-08/debates/14070874000001/ModernSlaveryBill>

⁵ Ibid.

through Parliament and into law⁶. Therefore, if not for the victims, then for whom is this Act for? In approaching this paper, I posed the same question and determined that the victims of modern slavery should be at the centre of my examination of the MSA 2015 from an operational perspective. This research seeks to give a comprehensive view of the operational reality of working with the *MSA 2015* from identification, to support and finally to the judicial process. Despite these aspects being explored individually, this thesis seeks to plug the gap in coalescing these aspects and providing a policy focused thesis that communicates the current literature position which is informed by interviews and surveys from current front line workers.

In this *Introduction*, I will first explain the contextual setting that the MSA 2015 resides within, before setting out the relevant sections of the MSA 2015 that will be covered in depth through the later chapters and finally my methodology.

THE MODERN SLAVERY ACT 2015 IN CONTEXT

Since big Government policy engagement in 2014, the challenges presented by modern slavery in the UK have developed greatly.⁷ For example, we have learnt that the nature of modern slavery requires sophisticated coordination across Government departments and external organisations to facilitate the provisions set out in the MSA 2015. This has meant the issuance of further guidance as a result of ongoing calls of confusion from those working within the area.⁸ Reflecting on the action taken in relation to the issue of modern slavery, the UK's action has

⁶ Broad, Rose and Nick Turnbull. "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK". *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.

⁷ Field, Frank and Elizabeth Butler-Sloss and Maria Miller, *Independent Review of the Modern Slavery Act 2015: Final Report* (2019); Craig, Gary. "The UK's Modern Slavery Legislation: An Early Assessment of Progress". *Social Inclusion* Vol.5 (2) (2017), p.16-27; Haughey, Caroline, Riel Karmy-Jones and Nicola Padfield. "Slavery in the UK today". *Criminal Law Review* Vol.(9) (2019), p.745-747.

⁸ Home Office and UK Visas and Immigration (UKVI). "*National referral mechanism guidance: adult (England and Wales)*"(2020); Cockbain, Ella and Aiden Sidebottom. "War, Displacement, and Human Trafficking and Exploitation: Findings from an evidence-gathering Roundtable in Response to the War in Ukraine". *Journal of Human Trafficking* Vol. ahead-of-print (ahead-of-print) (2022), p.1-29.

been criticised to have been “responsive and reactionary” as opposed to “problem-based inquiry- directed activity”.⁹ This means that it has been driven politically rather than by the research and evidence base.¹⁰ This has been cited to have been problematic in terms of the MSA 2015 as it was born out of a duty to fulfil EU obligations in relation to the Palermo Protocol, ECAT and ECHR as opposed to examining the issue from a UK perspective and providing the best standard practice for the region.¹¹

However, the most impactful hindrance on the MSA’s success and reach has been the significant shift in the policy agenda of the Home Office away from modern slavery and towards immigration and county lines offences.¹² This shift can most notably be marked from a series of announcements made by Home secretary Priti Patel in March 2021. On the 20th March 2021, it was announced that the MSA 2015 was being abused “by child rapists, people who pose a threat to national security and failed asylum seekers with no right to be here” who were “posing as victims in order to prevent their removal and enable them stay in the country.”¹³ These claims were stipulated based on a set of statistics that National Referral Mechanism (NRM) referrals “had doubled between 2017 and 2020 from 5,141 to 10,613 and that in 2019, of those referred into the NRM after being detained within the UK (totalling 1,949), 89% received a positive initial decision which means their referral is considered further with more rigorous assessment”.¹⁴ The NRM is a tool designed to identify victims of modern slavery, while the Single

⁹ Broad, Rose and Nick Turnbull. “From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK”. *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.

¹⁰ Ibid.

¹¹ Ibid.

¹² Thornton, Sara. "Rushed borders bill will fail victims of modern slavery". *thetimes.co.uk*. November 4, 2021 Thursday; Thornton, Sara. "Fears about bill that would take support away from some modern slavery victims". *thetimes.co.uk*. (February 10, 2022 Thursday).; Thornton, Sara. “As the government’s anti-slavery chair, I see the Home Office failing – and victims suffering”. *theguardian.com* (March 17 2022).

¹³ Patel, Priti. “Alarming rise of abuse within modern slavery system”. *Home Office* (20th March 2021). <https://www.gov.uk/government/news/alarming-rise-of-abuse-within-modern-slavery-system>

¹⁴ Ibid.

Competent Authority (SCA) and Immigration Enforcement Competent Authority (IECA) are authoritative bodies located within the Home Office remit to ascertain the status of a potential victim of modern slavery. If these individuals are positively identified, then they will be able to access the relevant support as outlined in the statutory guidance.¹⁵ It is misleading for the Government to problematize the increase in NRM referrals as it is undermining their own systems that positively identify victims of modern slavery. This initial statement from the Home Secretary was followed up four days later with the announcement of the Government's 'New Plan for Immigration'.¹⁶ This was significant as the Home Secretary was directly speaking to issues addressed by the MSA 2015 such as "criminal gangs that facilitate illegal journeys to the UK" without mentioning the Act and instead presenting it as a new issue in its own context of illegal migration and abuse.¹⁷ These two events depict the beginning of an obvious shift in the Home Office policy agenda in its approach towards modern slavery.

Since this period the Government has introduced the Nationality and Borders Act 2022 (NBA 2022) which has been highly criticised by those within the modern slavery sphere as being in direct conflict with the MSA 2015. This conflict was significant enough for the Independent Anti-Slavery Commissioner to remark that it "may make the fight against modern slavery more difficult".¹⁸ The significance of this observed dissidence between the Government and IASC has grown and is reflected by the lack of appointment of a new Independent Anti-slavery Commissioner, a position which has been vacant since April 2022 following the

¹⁵ Home Office and UK Visas and Immigration (UKVI). "National referral mechanism guidance: adult (England and Wales)"(2022).

<https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

¹⁶ Patel, Priti. "Home Secretary's statement on the New Plan for Immigration". *Home Office* (March 24 2021). <https://www.gov.uk/government/speeches/home-secretarys-statement-on-the-new-plan-for-immigration>

¹⁷ Patel, Priti. "Home Secretary's statement on the New Plan for Immigration". *Home Office* (March 24 2021). <https://www.gov.uk/Government/speeches/home-secretarys-statement-on-the-new-plan-for-immigration>

¹⁸ Cherry, Joanna. "Committee Corridor: Modern slavery in the UK". *House of Commons Select Committees* (February 3 2023).

conclusion of Dame Sarah Thorton’s tenure. Further, Home secretary Suella Braverman has formally halted the recruitment process stating that they will be “running a competition for the post”, however the timeline of this is yet to be announced.¹⁹ This has prompted the proposal of the Independent Anti-Slavery Commissioner (Appointment by Parliament) Bill, however its second reading has been repeatedly pushed back. This proposed bill would mean that if the position is still vacant within three months, Parliament will have the power to make the appointment. The lack of urgency to fill this role is alarming, as the provision set out in MSA 2015 Part 4 states that the Home secretary “must...appoint a person as the Independent Anti-slavery Commissioner”²⁰. This duty not being fulfilled means there is no-one to ensure that legislation is being passed in line with “good practice” and provide scrutiny in line with MSA 2015 Part 4 (41). Reassuringly, this point is not lost on Parliament, with Mr. Carmichael posing the rather loaded question to the House of Commons, “The post has been vacant for 10 months already. In the third quarter of last year, no fewer than 4,586 potential victims of modern slavery were referred to the Home Office—38% up on the previous year. What is it about their record on this issue that makes the lack of scrutiny so attractive to the Government?”.²¹ I too would agree with this sentiment, and look to explore this deeper in the following chapters.

Another key contextual element at play is in relation to county lines offending and the MSA 2015. County lines offending is defined by the Government as “gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, using dedicated mobile phone lines or other

¹⁹ HC deb 6 February 2023, Vol727 <https://hansard.parliament.uk/Commons/2023-02-06/debates/8FCA2682-BFC1-4D1E-A2AC-6EF75F1C6A6D/IndependentAnti-SlaveryCommissioner>; Dearden, Lizzie. "Law proposed to appoint anti-slavery watchdog after Suella Braverman leaves post vacant". *The Independent (United Kingdom)* (January 11, 2023 Wednesday). <https://advance-lexis-com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:6795-YCV1-DY4H-K1B8-00000-00&context=1519360>.

²⁰ Modern Slavery Act 2015

²¹ HC deb 6 February 2023, Vol727 <https://hansard.parliament.uk/Commons/2023-02-06/debates/8FCA2682-BFC1-4D1E-A2AC-6EF75F1C6A6D/IndependentAnti-SlaveryCommissioner>

form of “deal line”. They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons.”²² Due to the exploitative element of this crime it has come under the umbrella of the MSA’s definition of exploitation and so there is significant inter-play between the two issues²³. However, the Government has allocated considerable funds (25 million) towards a crackdown on this area, while arguing that the Section 45 defence is being overused by county lines offenders²⁴. Again, this is of considerable concern as it risks undermining recognised victims of modern slavery and exploitation, which threatens the potential support that can be delivered as well as hinder non-prosecution of legitimate victims.

²² Home Office, ‘Serious Violence Strategy’. *Home Office* (2018)

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf

²³ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. “Both Sides of the Coin: An Inspection of how the police and National Crime Agency consider vulnerable people who are both victims and offenders in 'county lines' drug offending”. *HMICFRS*. (2020).

²⁴ Ibid; Patel, Priti. “Home Secretary backs county lines crackdown”. *Home Office* (2020).
<https://www.gov.uk/Government/news/home-secretary-backs-county-lines-crackdown>

THE MODERN SLAVERY ACT 2015

SECTION 1- SLAVERY, SERVITUDE AND FORCED OR COMPULSORY LABOUR

(1) *A person commits an offence if—*

(a) *The person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or*

(b) *The person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.*²⁵

The first offence that the MSA 2015 introduces is slavery, servitude and forced or compulsory labour in *Section 1*.²⁶ It states that it is an offence to “hold another person in slavery or servitude” or “another person to perform forced or compulsory labour; require someone to perform forced and compulsory labour.”²⁷ S1(1) and 1(4) provide that regard must be had to the person's circumstances. S1(5) declares that consent to any of the offending acts does not compromise the legitimacy of the individual's victimhood.²⁸ Comparing this with the definition referenced from the 1926 Slavery Convention in Article 4 of the European Convention on Human Rights (ECHR), ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’ there is much more room for a broader concept of slavery in the MSA 2015.²⁹ Mantouvalou elaborates that the use of the word ‘servitude’ in addition to ‘slavery’ incorporates wider concepts of prohibiting a people's freedom and argues that it includes an “obligation to provide certain services for someone and to live

²⁵ Modern Slavery Act 2015

²⁶ Ibid.

²⁷ Modern Slavery Act 2015

²⁸ Ibid.

²⁹ Council of Europe. “European Convention on Human Rights”. (1951)
https://www.echr.coe.int/documents/convention_eng.pdf

in another person's property along with the impossibility of changing this condition".³⁰ Therefore there are notable differences between the MSA 2015 and the regional legislation.

SECTION 2- HUMAN TRAFFICKING

- (1) *A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited.*
- (2) *It is irrelevant whether V consents to the travel (whether V is an adult or a child).*
- (3) *A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.*
- (4) *A person arranges or facilitates V's travel with a view to V being exploited only if—*
 - (a) *The person intends to exploit V (in any part of the world) during or after the travel, or*
 - (b) *The person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.*
- (5) *"Travel" means—*
 - (a) *Arriving in, or entering, any country,*
 - (b) *Departing from any country,*
 - (c) *Travelling within any country.*
- (6) *A person who is a UK national commits an offence if the person under this section regardless of—*
 - (a) *Where the arranging or facilitating takes place, or*
 - (b) *Where the travel takes place.*
- (7) *A person who who is not a UK national commits an offence under this section if—*

³⁰ Mantouvalou, Virginia. "The Modern Slavery Act 2015 three years on". *Modern Law Review* Vol.81 (6) (2018), p.1017-1045.

- (a) *Any part of the arranging or facilitating takes place in the United Kingdom, or*
- (b) *The travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.*³¹

Section 2 pertains to human trafficking. An individual is seen to be participating in human trafficking if they arrange or facilitate the travel of another person with a view to them being exploited. It is irrelevant whether consent has been given for the travel, the distance of the travel itself or where the travel intends to take place. However, under Section 4, they are guilty of the offence under Section 2 only if the person knows or ought to know that another person is likely to exploit them in any particular part of the world during or after travel.³² This final part makes this offence one of intention. The inclusion of Section 4 widens the definition of trafficking further to include that “ person commits an offence under this section if the person commits any offence with the intention of committing an offence under Section 2 (including an offence committed by aiding, abetting, counselling or procuring an offence under that section)”.

SECTION 3- MEANING OF EXPLOITATION

Section 3 deals specifically with the meaning and definition of exploitation in regard to Section 2. It outlines that exploitation includes sexual exploitation, organ removal, subjection to force, threats or deception in order to provide services from children and/or a vulnerable persons or a family member which if they were not a member of the aforementioned the person would be likely to refuse.³³ The definition provided here was reviewed in the ‘Independent Review of the Modern Slavery Act: Final Report’ and it was found to be ‘sufficient’ to incorporate all forms of modern slavery.³⁴

³¹ Modern Slavery Act 2015

³² Modern Slavery Act 2015

³³ Modern Slavery Act 2015

³⁴ Frank Field and Elizabeth Butler-Sloss and Maria Miller, *Independent Review of the Modern Slavery Act 2015: Final Report* (Home Office May 2019)

PART 5- PROTECTION OF VICTIMS

Part 5 of the MSA 2015 provides for the protection of victims and comprises Sections 45-53. I have outlined Section 45 and 49 below, and have summarised the other provisions in *Part 5* where relevant. Due to Chapter 3 dealing entirely with Section 45, I have provided an introductory commentary however it is further discussed in more comprehensive detail later in the thesis. The other provisions in this section cover protection of witnesses, civil legal aid, child advocates, regulations surrounding identification and support, legal presumptions, duty to notify and finally overseas and domestic workers. Although this paper does not touch on all these sections, I would like to highlight a few key other sections here collectively as they have been impacted by the introduction of the NBA 2022.

Section 50(A) has been added to Part 5 of the MSA 2015 by Section 64 of the NBA 2022. This new section outlines the “necessary assistance and support to be secured for potential victims during the recovery and reflection period”.³⁵ Under the new section, support must be considered and decided to be “necessary” in order to recover “from any physical, psychological or social harm arising from the conduct which resulted in the positive reasonable grounds decision in question”. This affords discretion in providing support to victims which has raised concerns in regards to compliance with the ECAT as well as concerns that victims may not be afforded the care they need.³⁶

Section 53 outlines the position and protection that is afforded to overseas domestic workers who have been victims of offences listed in the MSA 2015, stating that immigration rules must make provision for leave to remain in the United Kingdom. Sections 60-63 of the NBA 2022 have the following impact on

³⁵ Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. “Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper”. *The University of Nottingham Rights Lab* (November 2022).

³⁶ *Ibid.*

this part of the MSA 2015.³⁷ Firstly, Section 60 changes the threshold for reasonable grounds decision-making from “believe a person may be a victim,” to “believe a person is a victim”. In addition, it codifies the standard of proof for conclusive grounds decisions to be on the ‘balance of probabilities’, and moves regulatory power to define ‘victim of slavery’ and ‘victim of trafficking’ to the NBA 2022 rather than the MSA 2015. Section 61 changes the recovery and reflection period from 45 days down to 30 days, placing it on a statutory footing.

SECTION 45

The first protective provision of the MSA 2015 is Section 45. This outlines defences for persons who have committed offences while being a victim of an offence themselves, under Section 1, 2, 3 of the MSA 2015. It was determined in *R v MK; R v Gega [2018] crim 667*, that although it is the responsibility of the defendant to raise the defence, the burden of proof is on the prosecution³⁸.

Mennim and Wake argue that reversing the persuasive burden would undermine Parliament's intention to not criminalise victims of trafficking and go against the UK's international obligations and Palermo Protocol.³⁹ For people aged 18 or over, a person is not guilty of an offence if the person does that act, because the person is compelled to do it and that the compulsion is attributable to slavery or to relevant exploitation⁴⁰. Furthermore, it applies the reasonable person test in so far as a reasonable person in the same situation as the person and having the persons relevant characteristics would have no realistic alternative to doing the offending act. Compulsion is attributable to slavery or to exploitation only if it is, or is part

³⁷ Garbers, Kate, Catherine Meredith, Dr Katarina Schwarz and the Human Trafficking Foundation. “Nationality and Borders Bill Part 5: Modern Slavery; Consideration paper”. *The University of Nottingham Rights Lab* (October 2021); Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. “Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper”. *The University of Nottingham Rights Lab* (November 2022).

³⁸ *R v MK and Persida Gega [2018] EWCA Crim 667*

³⁹ Mennim, Sean and Nicola Wake, “Burden of Proof in Trafficking and Modern Slavery Cases: *R v MK; R v Gega [2018] Crim 667*”. *Journal of Criminal Law (Hertford)* Vol.82 (4) 2018, p.282-286.

⁴⁰ Modern Slavery Act 2015; Knight, Stephen. “The Trafficking Defence in Criminal Law: Nexus and Compulsion”. *Journal of Criminal Law (Hertford)* Vol. 0 (2023), p.2201832311519.

of, the conduct which constitutes an offence under Section 1, or conduct which constitutes relevant exploitation and is a direct consequence of the person being or having been a victim of slavery or victim of relevant exploitation. The difference for those under the age of 18 is that the element of compulsion is not included for a minor at the time of the offence under Section 45(4). Section 45(5) outlines ‘relevant characteristics’ as “age, sex, and any physical or mental illness or disability”.⁴¹ This defence has been compared greatly to the common law defence of duress.⁴² For example subsection (1)(d) replicating the objective limb of the defence of duress set out in *Graham* and approved in *Howe* that:

*“A sober person of reasonable firmness, sharing the defendants characteristics, would have responded in the same way as the defendant”*⁴³

The ‘relevant characteristics’ listed in Section 45(5) mirror those that are set out in relation to duress in the case of *R v Bowen* 1996.⁴⁴ However, it is argued that the new defence is more accommodating of the vulnerabilities related to the situations that victims of slavery may be presented with which the common law defence does not have the ability to include.

Section 45(7) applies to both sub-sections 1 and 4 and states that the defence does not apply to those who have committed an offence listed in Schedule 4. Schedule 4 lists over 100 offences including theft, offences against the persons, robbery, sexual offences and illegal immigration to name a few. The reason for its inclusion was related to concerns that the defence would “create loopholes that [would] allow serious criminals to escape justice”.⁴⁵

SECTION 49

⁴¹ Ibid.;Knight, Stephen. “The Trafficking Defence in Criminal Law: Nexus and Compulsion”. *Journal of Criminal Law (Hertford)* Vol. 0 (2023), p.2201832311519.

⁴² Bethany Simpson, ‘The Reasonable Victim of Modern Slavery’ [2019] 83 J Crim L, 508; Karl Laird, ‘Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defence of duress: an opportunity missed?’, [2016] 6 Crim LR, 395;

⁴³ *R v Graham* [1982] 1 W.L.R. 294; *R v Howe* [1987] AC 417.

⁴⁴ *R v Bowen* [1997] 1 WLR 372.

⁴⁵ HC Deb 8 July 2014, vol584, cols166-167

<https://hansard.parliament.uk/Commons/2014-07-08/debates/14070874000001/ModernSlaveryBill>

Section 49 provides for “guidance and identifying and supporting victims”. Section 49(1) originally set out that “the Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate” regarding identifiers of victims, assistance and support for potential victims, and arrangements for determining whether someone is a victim of slavery or not. However, it was only in March 2020 that statutory guidance was first published pursuant to this provision.⁴⁶

More recently, with the introduction of the NBA 2022, this provision has been extended significantly. Firstly, in light of concerns surrounding abuse of the support on offer for victims of modern slavery, Section 60 of the NBA 2022 has strengthened the threshold for reasonable grounds decision-making. This has been outlined within Section 49 of the MSA 2015 from “believe a person may be a victim” to “believe a person is a victim”.⁴⁷ Secondly, Section 60 sets out the standard of proof for conclusive grounds decision-making by the SCA or IECA “to be made on the balance of probabilities”. Finally, Section 60 of the NBA 2022 “shifts regulatory power to define ‘victim of slavery’ and ‘victim of human trafficking’ from the Modern Slavery Act (2015) to the Nationality and Borders Act”.⁴⁸ However, this is yet to be enacted as stated in Section 69 of the NBA 2022 as the regulations are currently still in the draft stage.⁴⁹ Finally, it is of note that in

⁴⁶ Brotherton, Vicky. “Class Acts? A comparative analysis of modern slavery legislation across the UK.” In *The modern slavery agenda: Policy, politics and practice*, edited by Gary Craig, Alex Balch, Hannah Lewis and Louise Waite, 1st ed., 97–120. Bristol University Press, (2019).; Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 24 2020).

⁴⁷ House of Commons. (2021). Nationality and Borders Bill (Thirteenth sitting) Debated on Tuesday 2 November 2021. Craig Whittaker. Column 509. Available at: [https://hansard.parliament.uk/commons/2021-11-02/debates/c531a49a-d066-4009-bcef94b03bf3fc67/NationalityAndBordersBill\(ThirteenthSitting\)](https://hansard.parliament.uk/commons/2021-11-02/debates/c531a49a-d066-4009-bcef94b03bf3fc67/NationalityAndBordersBill(ThirteenthSitting))

⁴⁸ Garbers, Kate, Catherine Meredith, Dr Katarina Schwarz and the Human Trafficking Foundation. “Nationality and Borders Bill Part 5: Modern Slavery; Consideration paper”. *The University of Nottingham Rights Lab* (October 2021); Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. “Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper”. *The University of Nottingham Rights Lab* (November 2022).

⁴⁹ The Slavery and Human Trafficking (Definition of Victim) Regulations 2022 *Draft*

January 2023, new statutory guidance was published under Section 49 that required potential victims of modern slavery to provide objective evidence of their trafficking at the pre-reasonable grounds decision stage causing much concern for those working and practising in the sector. However as of June 2023, the Secretary of State has agreed to withdraw, reconsider and revise parts of the Modern Slavery Statutory Guidance in line with recent case law.⁵⁰

METHODOLOGY

Unpacking this thesis title, I am examining whether the professional actors involved with the MSA 2015 feel as though they are able to fulfil their operational duties to protect victims of modern slavery with the tools provided for them in the Act and other statutory guidance. Victims are at the centre of this issue and therefore analysing what good practice looks like for them is essential to any engagement with modern slavery. The intention set out by parliament when discussing the Act was to reduce the number of victims through identification, support, and justice.⁵¹ Success in these three areas require that the professionals tasked with these roles are given the tools and support to be able to do this accurately and effectively. Assessing this will be an important aspect of this paper and shall be explored deeply in three associated chapters.

Each chapter examines the present climate in each of the areas stated. They will engage with both the literature and responses from key informant interviews and surveys that I have conducted from a range of sectors. Further, I have taken a qualitative approach to this research looking at the empirical evidence into the three key failing areas identified from a practical perspective.⁵² A qualitative approach was the most appropriate for this study as the data which I am trying to

⁵⁰Matrix Chambers. (27th June 2023) <https://www.matrixlaw.co.uk/news/sshd-withdraws-new-evidential-test-for-reasonable-grounds-decisions-in-modern-slavery-statutory-guidance/>

⁵¹ House of Commons Deb 8 July 2014, vol584, cols166-167
<https://hansard.parliament.uk/Commons/2014-07-08/debates/14070874000001/ModernSlaveryBill>

⁵² Given, Lisa M. “Empirical Research”. *The Sage Encyclopedia of Qualitative Research Methods* (2012).

obtain is not necessarily ‘measurable’ in a quantitative format; we are not able to fully articulate the issues that are being presented through numbers alone.⁵³ An example of this would be if the reader were to look solely at the number of victims identified through the NRM. Here they would see an increase in the number of potential victims year on year, which would tell a story numerically, however the increasing statistic ignores the anecdotal evidence that comes with each individual victim of modern slavery.

Hence, a qualitative empirical approach through interviews with people who work in the area every day will go further in being able to gauge the complexity and the prevalence of the issues which can’t be quantified reliably in numbers.⁵⁴

Qualitative empirical analysis is more reflective of the area as it speaks to what is actually happening from the people that work in the system and with the MSA 2015 daily.⁵⁵

Ethical approval was sought and reviewed by the research ethics committee (REC) in the University of Nottingham and was received from the School of Sociology and Social policy Ethics Committee. In approaching this thesis ethical considerations included the sensitivity of the topic, potential for a data breach and potential harm to participants. The nature of the topic of modern slavery/human trafficking is extremely sensitive and therefore there is a potential risk of harm to myself or participants. Although distress was not considered to be a likely result of participation for any participants, it was a possible outcome and steps were taken to mitigate and address such issues. These steps included not prompting discussion or asking any questions specifically about personal experiences. All of the research participants were professional actors (and therefore not particularly

⁵³ Ibid.

⁵⁴ Mantouvalou, Virginia ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) MLR, 1017; Given, Lisa M. “Empirical Research’. *The Sage Encyclopedia of Qualitative Research Methods* (2012);

⁵⁵ Mantouvalou, Virginia ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) MLR, 1017; Given, Lisa M. “Empirical Research’. *The Sage Encyclopedia of Qualitative Research Methods* (2012).

vulnerable), working in civil society organisations, government (policy and civil service), or intergovernmental roles with a connection to the issue of modern slavery/human trafficking. In relation to the protection of personal data, interviews were conducted and recorded either by encrypted audio recorder or MS teams, with access restricted to myself. All data was gathered and uploaded to a secure cloud solution (MS teams shared folder) before transferring to a master folder on the University of Nottingham's OneDrive for longer-term storage. Any files held on local machines were deleted as soon as successful upload to the OneDrive storage was confirmed. Data was organised using Microsoft programmes such as Word and Excel. Furthermore all files were labelled and saved under a pseudonym, with lists of respondents kept in a separate, password protected folder, and retained only as required by the research. Transcription was undertaken using secure services approved by the University of Nottingham. The handling of personal data conformed to the requirements of the Data Protection Act 2018/GDPR, including the use of safeguards such as secure data capture and storage solutions and anonymisation techniques.

I combined purposive and snowball sampling to identify research participants. Through the Rights Lab list of stakeholders and my own professional contacts relevant to the project inquiry, based on pre-existing knowledge, networks and contacts. Invitations to participate in the survey and interviews were circulated throughout this list, and an invitation for those contacted to identify additional potential respondents included in advance information. Interview participants were also invited to identify potential respondents at the conclusion of the interview. As a result of this method, participants were from across the UK. These professional actors/key informants included: legal, police, medicine, education, social services, first responders and NGOs. In total I conducted 12 long form semi-structured interviews over Microsoft Teams and I received 16 responses to a short ten question survey created through Microsoft Forms and distributed via email.⁵⁶ I

⁵⁶ Given, Lisa M. "Semi-structured Interviews". *The Sage Encyclopedia of Qualitative Research Methods* (2012).

structured my interview guide and survey by taking a victim centred approach in critically evaluating the application of the MSA 2015 through the process which a modern slavery victim would have to navigate, highlighting the current issues that are hindering the MSA 2015 success. The key themes covered in the interviews and surveys were victim identification, victim support and victims and justice. The process I have identified that a victim navigates is as follows: first identification, access to support, and finally adequate legal protection. The process in which I have followed is extensive investigation of archival and academic materials, key informant interviews and survey and finally synthesis of within this thesis.

In order to assess the ‘deficiencies’ in the MSA 2015, it must be established what success would look like under the MSA 2015 and how to measure these markers. It has been widely documented that measuring success is a difficult task, made more challenging due to the “hidden nature” of its victims⁵⁷. Unfortunately, there is currently no system to track progress or collate data on the provisions set out, however multiple independent bodies do provide data which helps gauge the landscape that the MSA 2015 seeks to address. Examining the aims that the MSA 2015 set out to address, I suggest that the ideal result would be three-fold; to provide effective identification of potential victims; to increase investigations; to increase prosecutions. Mantouvalou suggests measuring achievement by taking all three of these markers together which I have done and presented in *Table 1*.⁵⁸ This mirrors the approach laid out by the Office for National Statistics in 2020 which looked at monitoring indicators known to be linked to modern slavery to track progress.⁵⁹ In doing this we see that year on year, although the number of victims identified by the NRM and police recorded crime relating to modern slavery have both risen, prosecutions are disproportionately low. Mantouvalou in her article

⁵⁷ Virginia Mantouvalou ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) MLR, 1017; Landman, Todd. “Measuring Modern Slavery: Law, Human Rights, and New Forms of Data”. *Human Rights Quarterly* Vol.42(2) (2020), p.303-331.

⁵⁸ Ibid.

⁵⁹ Office for National Statistics, ‘Modern Slavery in the UK: March 2020’ (Office for National Statistics, March 2020)

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/modernslaveryintheuk/march2020>

‘The UK Modern Slavery Act 2015: Three years on’ argues that there is a heavy reliance on the NRM by the Government as the primary tool to measure achievement and that looking at this alone reveals that the MSA 2015 has not achieved its key focus of increasing prosecutions.⁶⁰

However Parosha Chandran, leading barrister and advisor to the UN, criticises the focus on prosecutions rather than on victims’ support and protection, which she suggests has been the biggest mistake in the implementation of the MSA 2015.⁶¹ While she recognises the importance of prosecution, she argues that “without a more comprehensive regime of protection for victims, meaningful justice will not be achieved”.⁶² Furthermore, Chandran stipulates that the focus on prosecution rather than victims will risk them being “used as tools” and therefore suffering re-traumatisation through the criminal proceedings in order to progress the MSA 2015 goal of prosecutions.⁶³ Now eight years on from its implementation, it is clear from the data of identified victims vs prosecutions that this approach has, if not ‘failed’, not been successful.⁶⁴ This argument is supported by *Table 1*, however I would suggest that the issue is too complex to measure simply by looking at statistics. I encourage the reader to take the legislation in the broader context it sits in, as simply looking at these statistics suggests ‘improvement’ across all areas mentioned. Therefore I will examine three critical issues along the pathway that the MSA 2015 sets out for a victim. These are victim identification, victims and support and finally victims and justice. It is therefore the purpose of

⁶⁰ Virginia Mantouvalou ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) MLR, 1017

⁶¹ Sands, Matthew. “UDHR and Modern Slavery: Exploring the Challenges of Fulfilling the Universal Promise to End Slavery in All Its Forms”. *The Political Quarterly* (London. 1930) Vol.90 (3) (2019), p.430-438.

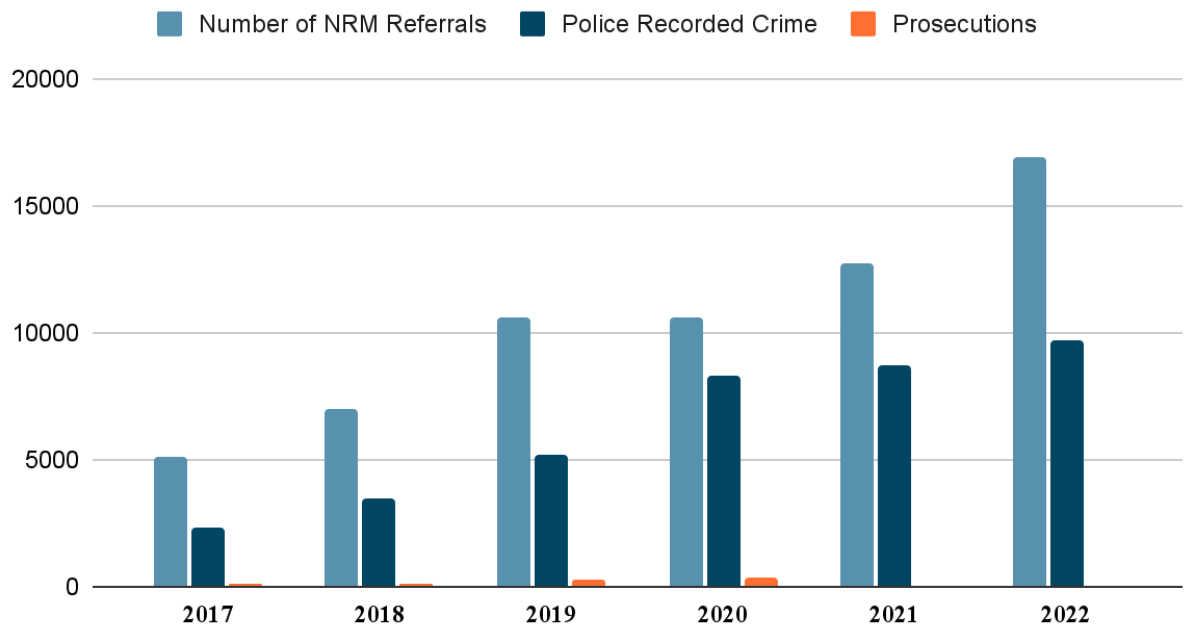
⁶² Sands, Matthew. “UDHR and Modern Slavery: Exploring the Challenges of Fulfilling the Universal Promise to End Slavery in All Its Forms”. *The Political Quarterly* (London. 1930) Vol.90 (3) (2019), p.430-438.

⁶³ Ibid.

⁶⁴ Home Office. “Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2022-July to September”. *Home Office* (2022); Home Office. “Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2022-April to June”. *Home Office* (2022); Home Office. “Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 1 2022-January to March”. *Home Office* (2022).

this paper to examine these areas and expose the deficiencies of the MSA 2015 from an operational perspective. Furthermore, I will conclude each chapter by offering realistic and practical recommendations to policy holders on how to improve upon the MSA 2015 and therefore improve the lives of victims of modern slavery.

Table 1: Modern Slavery Statistics Comparison 2017-2022



*Number of NRM Referrals - National Referral Mechanism Statistics UK, End of Year Summary 2019; Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2021

*Police Recorded Crime – Home Office Data Hub/national statistics appendix

*Prosecutions – 2021 UK Annual Report on Modern Slavery (Data on prosecutions has not been released for 2021 and 2022)

Chapter One

Identifying Victims of Modern Slavery

INTRODUCTION

From a victim perspective, identification is the first step that needs to be taken in order to embark on the pathway that the MSA 2015 sets out. Accurately modelling the number of victims of modern slavery is particularly challenging due to its ‘hidden nature’ within society.⁶⁵ As a result of this ambiguity, the NRM data is essential in assessing both the progress and scale of modern slavery as it provides some valuable evidence to support the projected figures.⁶⁶ The NRM was originally rolled out in 2009 as a tool to identify victims of trafficking in line with international obligations.⁶⁷ With the passing of the MSA 2015, its purpose was expanded to encompass all victims of modern slavery.⁶⁸ In 2013 it was estimated that there were potentially 10,000-13,000 victims of modern slavery. More recently in 2020, the Center for Social Justice reported that the number of potential victims could be “at least 100,000... or even greater”, an increase of 669% from previous estimation.⁶⁹ This new estimation signals the issue of identification is still as pressing as there are potentially even more victims than previously thought. However despite this even more alarming statistic, the

⁶⁵ Silverman, Bernard W. “Multiple-systems analysis for the quantification of modern slavery: classical and Bayesian approaches”. *Journal of the Royal Statistical Society. Series A, Statistics in Society* Vol.183 (3) (2020), p.691-736; Binette, Olivier and Rebecca C. Steorts. “On the reliability of multiple systems estimation for the quantification of modern slavery”. *Journal of the Royal Statistical Society. Series A, Statistics in Society* Vol.185 (2) (2022), p.640-676.; Chan, Lax, Bernard W. Silverman and Kyle Vincent. “Multiple Systems Estimation for Sparse Capture Data: Inferential Challenges When There Are Nonoverlapping Lists”. *Journal of the American Statistical Association* Vol.116 (535) (2021), p.1297-1306; Burland, Patrick. “The Victims of ‘Unknown Exploitation’ Hiding within the UK National Referral Mechanism”. *OpenDemocracy* (Jan 27, 2021).

⁶⁶ Interview 3,4,6.

⁶⁷ Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combatting Trafficking and in Human Beings and Protecting its Victims (adopted 5 April 2011) Official Journal of the European Union L101/1.

⁶⁸ Southwell, Philippa, Michelle Brewer and Ben Douglas-Jones. *Human Trafficking and Modern Slavery Law and practice*. London: Bloomsbury Publishing, 2020.

⁶⁹ Modern Slavery Policy Unit. “It still happens here: fighting UK slavery in the 2020s”. *The Center for Social Justice and Justice and Care* (2020); Mantouvalou, Virginia. “The Modern Slavery Act 2015 three years on”. *Modern Law Review* Vol.81 (6) (2018), p.1017-1045.;

government is reportedly concerned about the growing number of individuals being reported to the NRM suggesting that this increase in referrals could indicate the abuse of the system.

The new estimation of over 100,000 potential victims of modern slavery puts the government and research body at odds as the CSJ suggests that an extremely small proportion of victims of modern slavery are being captured compared to the whole pool. Furthermore, analysing NRM data, the rate of positive decision at the RG and CG stage average 88% meaning that the overwhelming majority of those being referred to the NRM are found to be actual victims. This suggests that the government's claims of abuse are unsubstantiated.

Therefore the question I am seeking to investigate in this Chapter is, from a practical operational perspective, what is inhibiting the identification of victims? From both the literature and my key informant interviews, the issue is ironically clear. There is great confusion across the board as to what a victim of modern slavery is. Throughout this chapter I will summarise the driving factors behind this confusion which includes inadequate training, the nature of the mischief itself being nuanced, and finally misalignment with the goals of the first responders themselves. To conclude, I will offer some recommendations which will help to improve the identification of modern slavery victims.

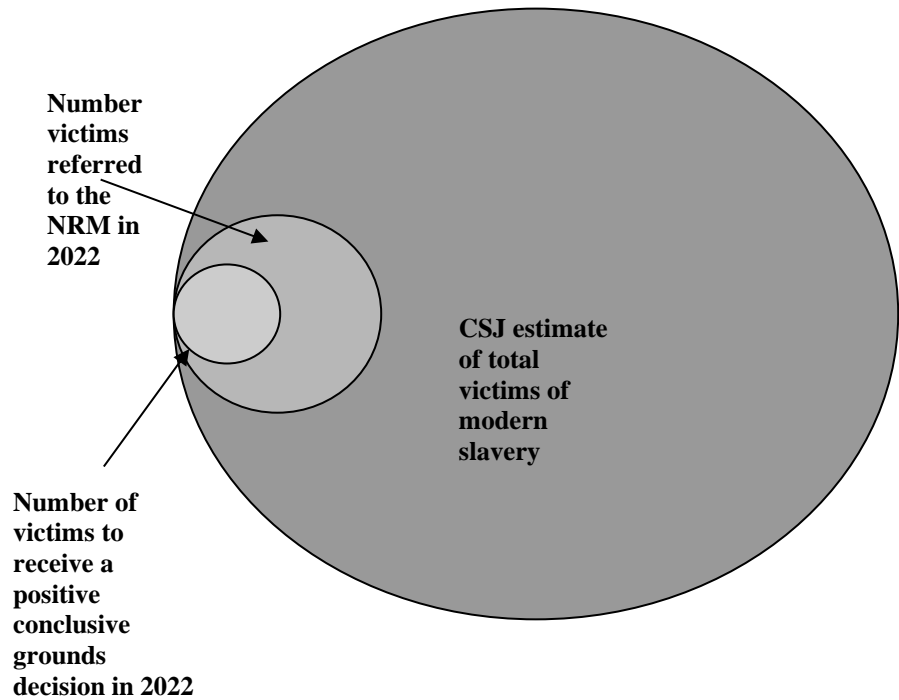


Figure 2- A visualisation of identified victims vs estimations (not drawn to scale).

TRAINING

Front line workers and first responders are critical for the process of identification of victims. Therefore, it is equally critical that the training that they receive is adequate. The purpose of training is two-fold, firstly to ensure understanding of the proper mechanisms that are in place to refer potential victims, and secondly to ensure awareness of the general issue of modern slavery. Through this research, I have ascertained that both aspects of training are necessary for improved identification. These two forms are not distinct and there is interplay, however it is important to discuss both as even within first responders that are outlined in the statutory guidance, not everyone is responsible for making NRM referrals within these organisations. Furthermore, something that I wish to highlight, is that it seems specific roles have been carved out within organisations specifically to deal with the NRM and identification of victims giving the impression of specialisation which means front line workers perceive themselves to have a lack of understanding and thereby reduced confidence in identifying and reporting

potential victims.⁷⁰ This initial first step is working out the practicalities of the provisions as they lift off the proverbial page and into the real world and it is fair to say it has been less than ‘smooth’. The list of designated first responders is a diverse group of Government and non- Government organisations (*Shown in Figure 3*).

FIGURE 3- CURRENT FIRST RESPONDER ORGANISATIONS (AS OF MARCH 2023)

Statutory Agencies	Non-statutory Agencies
Police Forces	The Salvation Army
Certain parts of the Home Office	Migrant Help
UK Visas and Immigration	Medaille Trust
Border Force	Kalayaan
Immigration Enforcement	New Pathways
National Crime Agency	Barnado’s
Local Authorities	Unseen
Gangmasters and Labour Abuse Authority (GLAA)	NSPCC (CTAC)
	BAWSO
	Refugee Council

NRM TRAINING

“Such is the police, it's just thrown in at the deep end and kind of deal with whatever you find, unfortunately. And yeah, I wouldn't say we have a great deal of

⁷⁰ Arulrajah, Poojani and Sarah Steele.. “UK medical education on human trafficking: assessing uptake of the opportunity to shape awareness, safeguarding and referral in the curriculum”. *BMC Medical Education* Vol.18 (1) (2018), p.137-137;Machura, Stefan, Fay Short, Victoria Margaret Hill, Catherine Rhian Suddaby, Ffion Elena Goddard, Sophie ELisabeth Jones, Emma Louise Lloyd-Astbury, Luke Richardson et.al. “Recognizing Modern Slavery”. *Journal of Human Trafficking* Vol.5 (3) (2019), p.201-219.;Metcalf, Elizabeth P. and Camilla Selous. “Modern Slavery Response and Recognition Training”. *The Clinical Teacher* Vol.17 (1) (2020), p.47-51.

input, whether that's from, you know, guest speakers, training days where people come in and talk to us about it. I would say it's very poor.” - Police Officer⁷¹

As set out in the *Introduction*, Section 49 provides for guidance and the identification of victims. The first statutory guidance under Section 49 was published 24 March 2020, with updates added 3 March 2023.⁷² The statutory guidance is a 230 page document and, in relation to the identification of victims, exists alongside further resources and guidance such as the ‘Modern Slavery training resource’, ‘Report Modern Slavery as a first responder’, ‘Support for victims of modern slavery’, ‘Modern slavery victims: referral’, ‘Recovery needs assessment: process guidance’ and ‘Claim a subsistence rates back payment: victims of modern slavery’.⁷³ The sheer volume of material aimed at first responders and front line workers is vast and potentially overwhelming. Furthermore, the statutory guidance provides a total of 78 indicators for identification which fit into areas such as general, physical, mental health, psychological, situational and environmental fields. From a training perspective this list is tremendously extensive and therefore potentially counterproductive. As one key informant suggested, “How can we simplify? Where are the common signs and symptoms, so to speak? What can we deliver to people like teachers in some cases, children services that actually will make them focus on one group of indicators rather than loads of different ones? Because I think in some ways... bearing in mind, particularly with teachers this is not their day job. This is, you know, this is a bolt on”.⁷⁴ It is clear that the expectation of the sheer volume of

⁷¹ Interview 7.

⁷² Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 24 2020); Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 3 2023).

⁷³ Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

⁷⁴ Interview 3.

knowledge we are expecting the front line workers and first responders to hold, many of whom have many different responsibilities away from identification of victims, is unrealistic. Clearly, the training guidance needs to be refined in order for it to be more engaging and digestible for first responders and front line workers.

Since it was first published, the statutory guidance has received a total of 25 updates to provide for good practice, changes to law and the list of first responders. When asked in interviews the steps a front line worker would take when they thought they had identified a potential victim of modern slavery, the answers varied greatly and included terms like “I guess” and “I would probably”.⁷⁵ This language demonstrates the uncertainty that front line workers experience in identifying potential victims. Furthermore, it was stated by several participants that as front line workers they would not have the confidence themselves to make an assessment of the situation and therefore pass it on to a designated safeguarding lead to be assessed more thoroughly.⁷⁶ This supports the notion that identifying potential victims is not common knowledge within the field of first responders and front line workers. In part I would argue that this is due to the constant modification and lack of consistency in the actions that front line workers are required to take in passing the identification on to the relevant designated first responders. Therefore, while updates are obviously necessary to maintain good standard practice in the area and reflect current law, from a training perspective it can feel overwhelming and unachievable to keep on top of persistent modifications. Therefore, I suggest having either annual or bi-annual updates to provide a more stable footing for practitioners without compromising the integrity of the material itself.

Reflecting on the past eight years since this legislation was first introduced, it is disappointing that the training for first responders and front line workers remains

⁷⁵ Interview 2,4,5,7.

⁷⁶ Interview 4,5,7; survey 3,4,5,7,8,9,10,13.

inadequate, as this lies within the remit of the Home Office. As the guidance is further modified and updated in line with new legislation, including the proposed Illegal Migration Bill, it is important that the Home Office not only consult with relevant agencies, but listen and consider their concerns also. Further, the Home Office should try to maintain the training documents as consistent as legally possible to avoid confusion and frustrations from within the sector.⁷⁷ More consistency and collaboration within these documents will hopefully lead to overall improvement of understanding and thereby identification of victims. As has been demonstrated in the positive outcomes as a result of training led by the Modern Slavery and Organised Immigration Crime Unit (MSOIC).⁷⁸

AWARENESS

“So it's a growing and challenging area, and I don't think we as practitioners, nor the police, nor those magistrate and judges are clear in how we deal with the NRM”- Legal Practitioner⁷⁹

It was identified in ‘*The Modern Slavery Act Review: One Year on*’, that awareness is a key issue that needed to be raised in order to fulfil the provisions set out in the Act.⁸⁰ It found that although there was an increase in victims being identified, protections in place, number of police investigations, prosecutions and convictions; slavery on the whole was still underreported due to a lack of awareness.⁸¹ Despite awareness initially being associated with the very newness of the legislation and the lack of rollout of sector wide training, 8 years on and the

⁷⁷ Sharp, Avril. “The National Referral Mechanism: Near Breaking Point”. *Kalayaan* (February 2023)

⁷⁸ Modern Slavery and Organised Immigration Crime Programme. “Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22” *Modern Slavery and Organised Immigration Crime* (2022) Available here:

<https://policingslavery.co.uk/media/3003/annual-report-final-v27-2-8-22.pdf>

⁷⁹ Interview 2.

⁸⁰ Haughey, Caroline. ‘The Modern Slavery Act Review: One Year On’. *Home Office* (2016).

⁸¹ Ibid.;Machura, Stefan, Fay Short, Victoria Margaret Hill, Catherine Rhian Suddaby, Ffion Elena Goddard, Sophie Elisabeth Jones, Emma Louise Lloyd-Astbury, Luke Richardson et.al. “Recognizing Modern Slavery”. *Journal of Human Trafficking* Vol.5 (3) (2019), p.201-219.;Metcalf, Elizabeth P. and Camilla Selous. “Modern Slavery Response and Recognition Training”. *The Clinical Teacher* Vol.17 (1) (2020), p.47-51.

implementation of training is still repeatedly identified as an issue year on year.⁸² The Elmore report evidenced that identification was being compromised by “agencies not knowing about the NRM, or not being sure enough of their modern slavery concern”.⁸³ This was further reflected in my interviews with one participant sharing “it still amazes me when I stand up in front of social workers and policing and you're talking about the national referral mechanism and support services, and they're like looking at you going, I know we should know about this, but we don't, you know. And that is like nine years on and that's just sort of some of the concern really”.⁸⁴ This clearly exemplifies that the general level of awareness from a practical operational perspective is significantly lower than where it would need to be in order to provide significant impact on victim identification.⁸⁵ It is worth signalling that there is notable positive action in the area, despite general lack of awareness. For example, the MSOIC conducted a one-day Modern Slavery and Human Trafficking (MSHT) CPD training day in the Eastern region, with the Crown Prosecution Service (CPS) assisting in the presentation of evidence-based investigations. It has been delivered to DIs and DCIs across the region. Furthermore, a MSHT presentation to the Eastern Region judiciary was also held, with over 130 people in attendance, including lawyers and judges. The MSOIC also reported it had trained 119 Police officers and staff trained as Victim Liaison Officers. The largest training program has been Operation Innerste which “is a multi-agency response by police, local authorities, and Immigration Enforcement to unaccompanied asylum-seeking children.” This

⁸² Thornton, Sara. “Independent Anti-slavery Commissioner Annual Report 2021-2022”. *Independent Anti-Slavery Commissioner's Office* (2022).; Sharp, Avril. “The National Referral Mechanism: Near Breaking Point”. *Kalayaan* (February 2023); Elmore Community Services. *Researching the extent and Nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022); Metcalf, Elizabeth P. and Camilla Selous. “Modern Slavery Response and Recognition Training”. *The Clinical Teacher* Vol.17 (1) (2020), p.47-51.

⁸³ Elmore Community Services. *Researching the extent and Nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022).

⁸⁴ Interview 3.

⁸⁵ Machura, Stefan, Fay Short, Victoria Margaret Hill, Catherine Rhian Suddaby, Ffion Elena Goddard, Sophie Elisabeth Jones, Emma Louise Lloyd-Astbury, Luke Richardson et.al. “Recognizing Modern Slavery”. *Journal of Human Trafficking* Vol.5 (3) (2019), p.201-219.

operation has been embedded in 39 out of the 43 police forces in the country and the remaining forces are working to implement the process by the end of 2023.

However despite these promising initiatives, the survey responses collected as part of this research were less encouraging. When asked to select the appropriate answer to describe the training they received in relation to the MSA 2015 and posed with the answers, ‘poor’, ‘fair’, ‘good’, ‘very good’, ‘exceptional’ and ‘excellent’, only 30% selected good and above meaning that 70% of responses fell within the bottom two tiers.⁸⁶ If awareness is going to improve, training must be adequate in supplying front line workers and first responders the information they require to have a prominent awareness of the issue at hand.⁸⁷

Furthermore this lack of awareness is a point of real concern as it has been shown to be the cause of serious harm and injustices. One such example is the case of *R v N* [2019] where the defendant was not initially identified as a victim of slavery.⁸⁸ In appeal *N* submitted that the conviction should be found to be unsafe for the fact that as a victim of trafficking he should have never been convicted and the defence provided in S45 should have been raised by his representation.⁸⁹ Lady Justice Davies found that evidence was sufficient to make a conclusive decision that *N* was a victim of trafficking. Had the correct CPS guidance been followed *N*’s case would have been referred to the NRM which would have meant *N* could have used the defence under S45. This case demonstrates failures to identify *N* as a victim of trafficking at multiple levels, namely by the police at initial arrest and then by prosecutors, and furthermore by his own counsel to raise the S45 defence. Had any of these front line workers been aware and recognised *N*’s position as a victim of slavery, he would have been protected from a number of mental harms.⁹⁰

⁸⁶ Survey 1-16.

⁸⁷ Metcalf, Elizabeth P. and Camilla Selous. “Modern Slavery Response and Recognition Training”. *The Clinical Teacher* Vol.17 (1) (2020), p.47-51.

⁸⁸ *R v N*, [2019] EWCA Crim 984, [2019] 6 WLUK 337

⁸⁹ *Ibid.*

⁹⁰ Simpson, Bethany. “The Reasonable Victim of Modern Slavery”. *Journal of Criminal Law (Hertford)* Vol.83 (6) (2019), p.508.

More recently, in *MS (Pakistan)*, it was observed that because of the defective NRM decision as to whether the appellant was a trafficked victim, he was denied the protective measures required by ECAT, including the immigration status necessary for him to co-operate in the investigation and prosecution of the perpetrators.⁹¹ This reflects comments from interviews with criminal practitioners whereby in response to the question of the level of training they receive and general understanding in the legal sector, one particular criminal practitioner stated that it was “absolutely terrible or has been historically because nobody has understood what identification means and what the obligations on people are as identification...I think there's a yawning gap in understanding between understanding in identification at stage one and whether or not to prosecute in the public interest at stage four. That gap is closing, people are beginning to understand it but again the training has been deficient in terms of investigation pointers and in terms of prosecution pointers”.⁹² Therefore awareness needs to continue to be a key outcome of training. This includes awareness of sector specific responses to identification of victims in order to provide a high level of provision no matter who identifies them.

THE NATURE OF MODERN SLAVERY

“ A victim of robbery will know that they’re a victim of robbery, or a victim of rape will, more often than not, know that they’re a victim of rape, but often the trauma and damage of modern slavery offending means that people either don’t want to admit they’ve been a victim of it, can’t admit they’ve been a victim of it because they don’t see themselves as victims and so linking back to what is the role of the NRM, the victim identification starts when first responders identify or when the victim themselves is prepared to identify. So it’s much harder for the NRM to do its job, and I think its job is a very very difficult one, do I think it’s fit

⁹¹ *MS (Pakistan) v Secretary of State for the Home Department*, [2020] UKSC 9, [2020] 1 WLR 1373

⁹² Interview 2.

for purpose? Not in its current set up but I think the intention is right.” - Legal Practitioner⁹³

The nature of modern slavery and exploitation is nuanced. It is not clear-cut and therefore makes identification of victims deeply challenging.⁹⁴ As was pointed out by participants, modern slavery is a complex crime that requires a high level broad understanding to accommodate its many hues and subtleties.⁹⁵ I have identified two difficulties that this nature presents in identifying victims of modern slavery, namely the lack of self-identification from victims and ambiguity as to what a victim of modern slavery is.

SELF-IDENTIFICATION

If victims are not identified then there is no way to help them unless they come forward themselves, which is highly unlikely taking into account the trauma experience and vulnerability of victims of modern slavery.⁹⁶ Therefore unlike other crime areas, awareness is essential in safeguarding victims who are often vulnerable and at risk as a group.⁹⁷

⁹³ Ibid.

⁹⁴ Elmore Community Services. *Researching the extent and Nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022).

⁹⁵ Interview 1-6.

⁹⁶ Cockbain, Ella and Helen Brayley-Morris. “Human trafficking and labour exploitation in the casual construction industry: An analysis of three major investigations in the UK Involving Irish Traveller offending groups.”. *Policing : A Journal of Policy and Practice* Vol.12 (2) (2018), p.129-149; Elmore Community Services. *Researching the extent and Nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022); Hunt, Jane, Rachel Witkin and Cornelius Katona. “Identifying human trafficking in adults”. *British Medical Journal British Medical Journal* Vol. 371 (2020).

⁹⁷ Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland>; David, Keren and Michael Salter. “‘They Are Here Without Chains, but With Invisible Chains’: Understandings of Modern Slavery Within the New South Wales Settlement Sector”. *Social & Legal Studies* Vol.31 (1) (2022), p.50-71.

Since 2020, the number of child victims being referred to the NRM has dramatically increased. Compared to other groups of victims, this is of particular worry as children are deemed to be vulnerable. This is a result of the relationship being established between county lines crime and exploitation. As reported by HMICFRS, forces should pursue modern slavery offences whenever possible in county lines cases, because they better reflect how vulnerable people are being exploited.⁹⁸ Despite an increased awareness around practitioners as to the relationship between county lines offending and modern slavery, this awareness does not seem to have extended to the children involved themselves.⁹⁹ A recent report from the Elmore Community Service, denoted that this is one of the “main barriers to identifying modern slavery with children [as] self-identification is often very difficult for victims. They often do not view what they have experienced as exploitation and may see it as a social norm. They struggle with understanding the difference between choice and coercion”.¹⁰⁰ The influence that criminal networks can hold over young people is significant with financial and social ramifications. Furthermore it was concerning that those not involved in county lines were “being berated by others, and not being included into a social circle because they haven’t lived the same experiences as others”.¹⁰¹ Young people's social networks are complex and with the increase in the understanding of the relationship between county lines crime and modern slavery, more needs to be done in order to raise awareness for young people so they can better understand their position and vulnerability.

⁹⁸ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. “Both Sides of the Coin: An Inspection of how the police and National Crime Agency consider vulnerable people who are both victims and offenders in 'county lines' drug offending”. *HMICFRS*. (2020).

⁹⁹ Arthur, Raymond and Lisa Down. “Preventing the Criminalisation of Children Who Have Been Victims of Group-Based Sexual Exploitation Involving Grooming Tactics—Understanding Child Sexual Exploitation as Enslavement”. *Journal of Criminal Law (Hertford)* Vol.83 (5) (2019), p.370-380.

¹⁰⁰ Elmore Community Services. *Researching the extent and Nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022).

¹⁰¹ Ibid; Bonning, John and Karen Cleaver. ““There is no “war on drugs””: An investigation into county line drug networks from the perspective of a London borough”. *Police Journal (Chichester)* Vol.94 (4) (2021), p.443-461.

It is not just children that risk exploitation, perpetrators of modern slavery often seek out “vulnerable adult targets: soup kitchens; homeless shelters/hostels; day centres; job centres; parks; and streets”.¹⁰² Control over victims is assured through a “mixture of violence, threats, psychological coercion, and emotional manipulation” which leads to complex trauma “compounded by their pre-existing vulnerabilities (homelessness, alcoholism, marginalisation, etc.)” meaning that they had difficulty identifying as a victim as their experience was cumulative and complex in nature.¹⁰³ Therefore more needs to be done in order to safeguard vulnerable adults. This was something repeated in interviews with one participant suggesting that “we've ended up with a system that although provides data doesn't give any real narrative or insight in terms of informing people” and therefore through conducting more qualitative insight into the trends and changes first responders are seeing, it could help in providing more narratives which will in turn assist first responders in identifying potential victims.¹⁰⁴

It has been established that self-identification is uncommon for victims of modern slavery for the reasons discussed above, which in turn puts greater pressure on first responders and front line workers to identify potential victims. This is further exacerbated by Sections 58 and 59 of the Nationality and Borders Act 2022 which requires victims to disclose their victimhood as soon as possible. This is incompatible with the nature of modern slavery, and was of great concern to many participants I interviewed. One participant stated that this “immediately shows that whoever drafted it had no idea how the trauma and psychological psycheli of trafficking impact on individual victims, it shows real ignorance.” It was highlighted to me in my interviews that awareness was currently a lottery with one participant describing “if you encounter a first responder who is an expert

¹⁰² Cockbain, Ella and Helen Brayley-Morris. “Human trafficking and labour exploitation in the casual construction industry: An analysis of three major investigations in the UK Involving Irish Traveller offending groups.”. *Policing : A Journal of Policy and Practice* Vol.12 (2) (2018), p.129-149.

¹⁰³ Ibid.

¹⁰⁴ Interview 3.

organisation with a real awareness of what trafficking might look like in the nuance and the subtlety, and also the kind of coercion mechanisms and spend time to build up that rapport before going through this assessment with people, they're much more likely to have a really thorough and very effective [NRM] form that's probably more likely to get a successful, reasonable grounds decision and then conclusive grounds decision.”¹⁰⁵ It is important that through training this ‘postcode lottery’ is changed to full coverage of awareness across the field in order to assist potential victims in coming forward and not being inhibited by Sections 58 and 59 of the NBA 2022.

WHAT IS A VICTIM?

The first hurdle of modern slavery is that every victim presents a different amalgamation of ‘symptoms’ and so there is no archetypal victim of modern slavery. For practitioners, this represents a challenge when identifying potential victims. As the Elmore Report noted, “Cases are often complex. Sometimes there is no evidence of coercion or threat, and the client denies there has been any, but the support worker remains concerned that their client is under duress or threat not to speak out.” This diversity of victims was highlighted across all the interviews and surveys I undertook, as being a difficulty in identifying victims. As one participant put it, “we always fall back to one thing and it's one of my pet hates, is the indicators that are quite often rolled out, you know, and the reason for that is because you know, you could have one indicator in one out, you know one indicator that and you could be heavily exploited where you may have five or six and actually you're not necessarily being exploited within a sort of a recognized definition of modern slavery”. Despite the Statutory guidance indicators being too vast and exhaustive, which I have already explored, I am concerned that these indicators may have missed the mark in being too broad. For example, some particularly vague indicators include ‘show fear or anxiety’, ‘be distrustful of the authorities’, ‘be unfamiliar with the local language’, ‘allow others to speak for them when addressed directly’. While these may very well be indicators of

¹⁰⁵ Interview 1-12; Survey 1-16.

modern slavery, they also may be indicators of all sorts of other things too. Therefore, these indicators are too non-specific to the crime itself. As one participant articulated “You know, some of those indicators are very much cultural indicators that you could probably pick up in specific communities. You know, you've got a say and I'll pick this as a generalisation. You know, you may have a female family member within a Muslim home and actually they won't talk to you. You know, they won't shake hands and probably won't give you eye contact. The man will do all the talking. That's a cultural thing that isn't necessarily an indicator of modern slavery and human trafficking”. Furthermore, a common motif that arose in response to my question "How would you describe the functioning of the National Referral Mechanism as a tool for identifying victims of modern slavery?" was that there was confusion/ a lack of understanding about ‘what’ and/or ‘who’ a victim of modern slavery is.¹⁰⁶ This is the reality of scoping indicators, where front line workers are left to rely purely on instincts to individually define for themselves who is a victim of modern slavery and who is not. This is an obvious problem as it does not standardise the identification process and as such, provides opportunity for potential bias. In order to address this confusion, I would recommend simplifying the list of indicators with a focus on making them more directly applicable and specific.

Neither the MSA 2015, the statutory guidance, nor case law defines what slavery or human trafficking is and thereby practitioners are unable to extrapolate who the victim at the centre of the harm is. It has been argued that cementing definitions within the Act would be problematic due to the diverse nature of modern slavery.¹⁰⁷ Furthermore, although having a legal definition may assist in identification for front line workers and first responders, it may also risk not capturing all victims leading to some being barred from access to the support provided under the MSA 2015, not because they are not a victim but because they

¹⁰⁶ Interview 3,4,5,7.

¹⁰⁷ Mantouvalou, Virginia. “The Modern Slavery Act 2015 three years on”. *Modern Law Review* Vol.81 (6) (2018), p.1017-1045.

do not fall within the definition. Although there is salience to this concern, I would posit that this is merely the nature of the law itself. It is forever encapsulated in the time it was published which is why statutory instruments and guidance exist to update the law as and when appropriate to do so. For example, the MSA 2015 clearly defines the meaning of ‘exploitation’ in section 3, listing six sub-sections that apply. In doing so, there is the risk that they have missed or not encapsulated the nature of exploitation for all victims. However for those that it does provide for, it offers clear identifiable features. One criminal practitioner argued “that sections 1-3 could be really simplified so that you had an offence of criminal exploitation which would include slavery, slavery type practices and trafficking, would be far more straightforward to apply and would focus people's minds on how to investigate”. I think this is an interesting concept and as long as exploitation provides for slavery and human trafficking, this could be a way of identifying the victim of modern slavery more easily as exploitation is a much more familiar term than slavery or trafficking as the threshold is significantly lower. It would then place the onus on the NRM to make a more specialised assessment rather than first responders or front line workers. Alternatively, providing definitions of terms such as ‘victim of slavery’ and ‘victim of human trafficking’ and in Section 1 and Section 2 would shed welcomed clarity for those responsible for identifying potential victims of slavery and so long as relevant it was overseen by the IASC to ensure it maintained good practice, I think the value it would add to victims that are currently not being identified due to this confusion surrounding definitions would be substantial.¹⁰⁸

MISALIGNMENT

“The fact that, uh, you need the specified first responder to refer the person to the NRM, can be very, very tricky. For organisations or institutions such as local authorities, it should have a designated Community Safety Partnership or Adult Social Care, or a clear team that should be involved, because you will always find

¹⁰⁸ Joint Committee on Human Rights. “Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery”. *House of Commons and House of Lords* (15 December 2021).

people in local authorities, and they have no clue what is Modern Slavery. They don't know that they are first responders. A little bit together for police and local police as well. It's not always that you have police that know about modern slavery, and I mean for rape, you don't need to contact the first responder for a first responder to report on a rape. So why can't we do the same thing? The DNR should not sit within the Home Office - or if it's sit with the Home Office - it should be an independent body and I'm comparing it to other countries in the European Union.” - NGO¹⁰⁹

One year after its enactment, Haughey attributed inconsistencies in “how law enforcement and criminal justice agencies deal[t] with modern slavery” to so-called ‘training wheel’ issues, such as lack of guidelines and operational frameworks between relevant agencies, departments and organisations.¹¹⁰ Disappointingly for experts, 8 years on this is still a recognised issue. The inconsistency in how law enforcement are dealing with modern slavery results in the misidentification of victims as either criminals or illegal immigrants.¹¹¹ The cause of this misidentification is a combination of political misalignment and organisational misalignment. There is a conflict of interest that arises as a result of the agenda being set by the Government for law enforcement agencies, which leads to the criminalisation of victims of modern slavery.¹¹² In this section, I will be taking cause and effect separately, examining the impact of the Government's policy agenda on the identification of victims of modern slavery as well as examining the criminalisation of victims.

POLITICAL CLIMATE

¹⁰⁹ Interview 4.

¹¹⁰ Haughey, Caroline. ‘The Modern Slavery Act Review: One Year On’. *Home Office* (2016).

¹¹¹ Broad, Rose and Nick Turnbull. “From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK”. *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.; Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. “Both Sides of the Coin: An Inspection of how the police and National Crime Agency consider vulnerable people who are both victims and offenders in 'county lines' drug offending”. *HMICFRS*. (2020).

¹¹² *Ibid*.

“There's clearly a conflation between immigration decision making and priorities and victim care, decision making and priorities. And there's clearly a bias. Our data shows, actually the Government's data shows that there are problems with the way decisions are being made based on people's country of origin. I think there are a number of NGOs who are diverting people from the NRM” - Academic Researcher¹¹³

In 2014, under Home Secretary Theresa May, modern slavery was a standalone aspect of the Government's policy agenda and the policy was being rhetorically led with the victims at the heart of it. This resulted in the creation of legislation specially aimed at the issue and included significant funding into support agencies, research and the creation of an Independent Anti-Slavery Commissioner to ensure the Government was acting in line with ‘good practice’. There was clear alignment between the Government’s policy agenda and the needs of victims of modern slavery. This was echoed in interviews with the repeated use of the phrase ‘the intention was right’ in relation to the MSA 2015.¹¹⁴

However since 2017, concerns have been raised in regard to the “conflation of modern slavery and migration” and the impact of this on victim identification.¹¹⁵ In 2021 the introduction of the Governments ‘New Plan for Immigration’ elicited concerns from both the IASC and prominent actors within the modern slavery field that this was infringing upon the scope of the MSA 2015.¹¹⁶ The predominant

¹¹³ Interview 6.

¹¹⁴ Interview 2,3,4,6; Maroukis, Thanos. “Keeping Up Appearances: The British Public Policy Response to the Trafficking of Domestic Workers in a Changing Regime of Social Protection”. *Journal of Immigrant & Refugee Studies* Vol.15 (2) (2017), p.155-170.

¹¹⁵ Broad, Rose and Nick Turnbull. “From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK”. *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.;

¹¹⁶ Thornton, Sara. “Letter to Priti Patel regarding the Nationality and Borders Bill”. *Independent Anti-Slavery Commissioner's Office* (September 7 2021); Thornton, Sara. “Letter to Home Secretary responding to the New Plan for Immigration”. *Independent Anti-Slavery Commissioners Office* (May 6 2021).; Cockbain, Ella and Aiden Sidebottom. “War, Displacement, and Human Trafficking and Exploitation: Findings from an evidence-gathering Roundtable in Response to the War in Ukraine”. *Journal of Human Trafficking* Vol.ahead-of-print (ahead-of-print) (2022), p.1-29.; Crane, Andrew, Genevieve LaBaron, Jean Allain and Laya Behbahani. “Governance gaps in

concern was that there was a misalignment between the positive action that needed to be taken in order to identify and protect victims of modern slavery and the Government's new 'hostile' immigration policy.¹¹⁷ This noted shift is of particular concern because although 25% of NRM referrals are UK nationals, the majority of victims identified by the NRM are foreign nationals (75%).¹¹⁸ This concern has only been inflamed further as the Government's approach to the area has become more and more adverse. It can be observed from the introduction of the 'New Plan for Immigration', to the creation of the Immigration Enforcement Competent Authority to partially handle NRM referrals, to the introduction of the Nationality and Borders Act 2022 with Part 5 dealing entirely with modern slavery, to the lack of appointment of a new Independent Anti-Slavery Commissioner not conforming to section 40(1) of the MSA 2015, and finally the proposed Illegal Migration Bill which will potentially violate Article 4 of the ECHR and remove the right for people to identify as a victim of modern slavery if they have arrived through irregular entry. Although when taken individually, each one of these shifts can be framed as an alternative pathway towards the same means, when taken collectively the result is incredibly worrying for the identification of victims of modern slavery. There is a clear misalignment between the Government's policy agenda of creating a 'hostile environment' for illegal migration' and the necessary environment to identify victims of modern slavery.

This conflation of victims of modern slavery with immigration has led to calls for the separation of NRM from the Home office. By grouping victims of modern slavery with 'illegal migrants' there is obvious potential for misidentification of

eradicating forced labor: From global to domestic supply chains". *Regulation & Governance* Vol.13 (1) (2019), p.86-106.; Joint Committee on Human Rights. "Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery". *House of Commons and House of Lords* (15 December 2021).

¹¹⁷ Ibid.

¹¹⁸Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022". *Home Office* (2023).

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>; Charles Hymas, Home Affairs Editor. "Home Office should be stripped of responsibility for modern slavery victims". *telegraph.co.uk*. February 28, 2022 Monday.

victims of modern slavery.¹¹⁹ More directly Lord Coaker criticised clause 61 and 62, saying that ‘victims of modern slavery are being conflated with immigration offenders, and it will lead to the undermining of the Modern Slavery Act... and the modern slavery system that they have put in place, of which they should be proud’.¹²⁰ As one participant framed the issue, so long as the decisions sit within the Home Office, “It will always depend then on the political trend that the Home Office is following and that is unfair for the victims.”¹²¹ This political rhetoric has extended so far as to lead to the erosion in confidence of front line workers and first responders in the NRM. One of the most concerning findings across my interviews and surveys was that front line workers are cautious about making NRM referrals for individuals they believe to be victims of trafficking, as their primary focus is protection of that individual not identification. It was felt that “With the national referral mechanism, if you are from a particular nation. For if you're an Albanian male for example, we know that you're almost certainly gonna get a ‘no we don't believe you're a victim of trafficking’. You don't get a conclusive grounds decision simply because that's the narrative the Government are pushing”.¹²² This clearly demonstrates how the Government's policy agenda is having a direct impact on the identification of victims by first responders as “if there is a better service for an individual they will make an assessment about what is in the best interests of the individual”, and the message I have heard is that the NRM is not in alignment with the best interests of victims of modern slavery.¹²³ It is clear that front line workers' confidence in the NRM needs to be restored if victims of modern slavery are going to be identified. Therefore, from an

¹¹⁹ The United Nations and European Union have condemned the use of the term ‘illegal’ in relation to people crossing the borders as inaccurate. (Panos Europe Institute and United Alliance of Civilizations (UNAOC). “Media Friendly Glossary on Migration”. *Open Society Foundations*, (2015). <https://www.unaoc.org/resource/media-friendly-glossary-for-migration/>; United Nations General Assembly resolution 3449, 2433rd plenary meeting, 9 December 1975.); Maroukis, Thanos. “Keeping Up Appearances: The British Public Policy Response to the Trafficking of Domestic Workers in a Changing Regime of Social Protection”. *Journal of Immigrant & Refugee Studies* Vol.15 (2) (2017), p.155-170.

¹²⁰ House of Lords deb. 10 Feb 2022, Vol 818, column 1867.

¹²¹ Interview 4.

¹²² Interview 5.

¹²³ Interview 6.

operational victim centred perspective, I would recommend separating the NRM from the Home Office. This would send a strong message to front line workers and first responders that the NRM is being de-politicised and therefore future proofing the integrity of the mechanism against current and future hostilities. Ultimately, this will create a more consistent environment for the identification of victims, which in turn will increase confidence in the system.

CRIMINALISATION OF VICTIMS

The final hindrance to victim identification is the misidentification and criminalisation of victims of modern slavery. Continuing the victim centred approach I have taken, I believe that modern slavery is misplaced in immigration policy. Rather, it should be treated as a standalone issue due to the complexities surrounding the issue.. The ‘New Plan for Immigration’ has bled like an oil spill polluting the waters which the MSA 2015 set out for victims. In muddying the waters, confusion has spread to front line workers regarding who is a victim versus who is an illegal migrant. Simpson raises concerns that we are ‘losing’ victims as they are misidentified and instead of being protected by the state, subjected to further victimisation through either the criminal justice process or immigration most prominently.¹²⁴ This was echoed by interview participants who reported concern of biases against foreign nationals that “risked them being popped into a detention centre where they will have a high chance of being deported” and therefore “ a number of NGOs who are diverting people from the NRM”.¹²⁵ This demonstrates how the Government's conflation of victims of modern slavery and immigration is increasing the risk of victims being misidentified.¹²⁶ Therefore in order to mitigate the risk of victims being misidentified as illegal migrants, there needs to be a clear distinction made to

¹²⁴Simpson, Bethany. “The Reasonable Victim of Modern Slavery”. *Journal of Criminal Law (Hertford)* Vol.83 (6) (2019), p.508.

¹²⁵ Interview 5 and 6.

¹²⁶ Sands, Matthew. “UDHR and Modern Slavery: Exploring the Challenges of Fulfilling the Universal Promise to End Slavery in All Its Forms”. *The Political Quarterly (London. 1930)* Vol.90 (3) (2019), p.430-438; Hadjimatheou, Katerina and Jennifer Lynch. “UK anti-slavery policy at the border: Humanitarian opportunism and the challenge of victim consent to assistance”. *European Journal of Criminology* Vol.17 (5) (2020), p.678-698.

alleviate confusion. However this would require an inter- Governmental and organisational approach in prohibiting the conflation between the two crime areas.

Section 53, read in line with the NBA 2022, recognises and addresses that many victims of modern slavery are foreign nationals and states that victims who have been identified with a positive conclusive grounds decision must have the right to remain in the UK.¹²⁷ In 2017 the Work and Pensions Committee directed an inquiry into ‘Victims of Modern Slavery’ and specifically examined the issues surrounding immigration. It was this report that recommended that all victims of modern slavery should be granted an “automatic” right to remain in the UK. This recommendation has received much resistance from the Government with fears that this avenue will encourage people to make false trafficking claims and ultimately abuse immigration controls. Mantoulavou argues that this fear of deportation is a contributing factor to victims being reluctant to contact authorities.¹²⁸ The IASC further stressed the issue in stating that it can be incredibly difficult for victims to ‘get back on their feet’ as there are multiple obstacles in meeting residency standards as they have no way to provide the necessary evidence of work.¹²⁹ This concern has again been stressed in the case law with it being recognised that it is “far from straightforward for [victims] to complain about the way they were being treated, let alone to report their plight to the authorities so that the offenders might be brought to justice” with the risk of deportation looming over them.¹³⁰ *The Independent review of the Modern Slavery Act 2015: Final Report* suggested the collection of what they called ‘move-on’ data to fully analyse what is happening to victims after they leave the NRM. This has been collected by the Salvation Army since 2020 and referred to as ‘exit’ data

¹²⁷ Modern Slavery Act 2015; Nationality and Borders Act 2022

¹²⁸ Mantoulavou, Virginia. “The Modern Slavery Act 2015 three years on”. *Modern Law Review* Vol.81 (6) (2018), p.1017-1045; Mantoulavou, Virginia. “Structural Injustice and the Human Rights of Workers”. *Current Legal Problems* Vol.73 (1) (2020), p.59-87.

¹²⁹ Thornton, Sara. “Independent Anti-slavery Commissioner Annual Report 2021-2022”. *Independent Anti-Slavery Commissioner’s Office* (2022).

¹³⁰ Mennim, Sean. “Sentencing Appeals and the Modern Slavery Act 2015: Evaluating the Status Quo”. *Journal of Criminal Law (Hertford)* Vol.83 (6) (2019), p.519.

tracking services that victims of modern slavery use upon exiting the victim support. However, it is porous and repeats key findings that are reported in the NRM, as opposed to important information relating to individual stories. Therefore, it is my recommendation that the Government uses exit data such as the number of victims who voluntarily return to their country of origin, receive discretionary rights to remain or the portion of foreign nationals who go missing to create the tools needed in identification of victims who are foreign nationals and ensure the prevention of misidentification.¹³¹

¹³¹ Salvation Army. “Supporting survivors of Modern Slavery; Report on The Salvation Army’s Modern Slavery Victim Care Contract July 2021 to June 2022”. *Salvation Army* (2022)

RECOMMENDATIONS

- Consolidate all guidance documents into a single digestible training document for front line workers and designated first responders.
- Annual or bi-annual updates to guidance and training materials to provide a more stable footing for practitioners without compromising the integrity of the material itself.
- If awareness is going to improve, training must be adequate in supplying front line workers and first responders with the information they require to have an informed awareness of the issue at hand.
- Awareness needs to continue to be a key outcome of training. This includes awareness of sector specific responses to identification of victims in order to provide a high level of provision no matter who identifies them.
- Simplifying the list of indicators in the Statutory Guidance, with a focus on making them more directly applicable and specific.
- Provide detailed definitions of terms for section one and section two.
- The misalignment between the Government's policy agenda of creating a 'hostile environment' for illegal migration' and the necessary environment to identify victims of modern slavery needs to be reconciled with victims in mind.
- It is clear that front line workers' confidence in the NRM needs to be restored if victims of modern slavery are going to be identified. Separating the NRM from the Home Office would send a strong message to front line workers and first responders that the NRM is being de-politicised and independent thereby, creating a better environment for the identification of victims.
- With the increase in the understanding of the relationship between county lines crime and modern slavery, more needs to be done in order to raise awareness for young people so they can better understand their position and vulnerability in relation to county lines crime and modern slavery.

- More protections in order to safeguard vulnerable adults. Through conducting more qualitative insight into the trends and changes first responders are seeing, it may help in providing more narratives which will in turn assist first responders in identifying potential victims.
- It is important that through training this ‘postcode lottery’ is changed to full coverage of awareness across the field in order to assist potential victims in coming forward and not being inhibited by Sections 58 and 59 of the Nationality and Borders Act 2022.
- In order to mitigate the risk of victims being misidentified as illegal migrants, there needs to be a clear distinction made to alleviate confusion. However this would require an inter- Governmental and organisational approach in prohibiting the conflation between the two crime areas.
- The use of exit data such as the number of victims who voluntarily return to their country of origin, receive discretionary rights to remain or the portion of foreign nationals who go missing to create the tools needed in identification of victims who are foreign nationals and ensure the prevention of misidentification.

Chapter Two

Victims and Support

INTRODUCTION

The second step for victims once they have been identified, is continuing on the pathway the MSA 2015 sets out, and accessing the relevant support that they need. By support, I am referring to the protection and resources offered to victims while they are being ‘processed’ by the NRM and after they receive a CG decision from the SCA or IECA respectively, pursuant to Section 49 and 50(A).¹³² It is one thing to be identified as a victim, but another to have the resources, strength and courage to see the process through to rehabilitation and recovery.¹³³ Furthermore, concerns have been raised surrounding the support of victims of modern slavery in light of the Nationality and Borders Act 2022.¹³⁴ It has been raised that Section 64, which creates Section 50A of the Modern Slavery Act, “decreases the support previously available to victims as outlined in guidance...[and] places support on a discretionary basis, makes the provision of support subject to several qualifications or exemptions, and allows for the cessation of support completely”.¹³⁵ Support is particularly essential to victims of modern slavery as the risk of re-trafficking for victims due to their vulnerability and dependence on their perpetrators is significant.¹³⁶

¹³² Modern Slavery Act 2015; Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 3 2023). <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

¹³³ Mantouvalou, Virginia. “The Modern Slavery Act 2015 three years on”. *Modern Law Review* Vol.81 (6) (2018), p.1017-1045.

¹³⁴ Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. “Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper”. *The University of Nottingham Rights Lab* (November 2022).

¹³⁵ Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. “Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper”. *The University of Nottingham Rights Lab* (November 2022).

¹³⁶ Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 3 2023). <https://www.gov.uk/government/publications/modern-slavery-how-to-identify->

This research has identified three areas that are hindering victim support from an operational victim centred perspective. These are the length of NRM wait times, the lack of a right to work for foreign nationals whilst awaiting an NRM decision, and finally the limited number of designated first responder organisations. In this chapter I examine each of these areas while offering recommendations for improvements.

NRM WAIT TIMES

“what we're finding in our research is that actually at the point of entering the NRM, survivors obviously gain a lot of confidence and support and then as the NRM progresses because the delays and the time making for decision is so long and we've seen in the data that corresponding asylum applications are also delayed significantly where somebody is also going through the NRM, compared to those who are going through an asylum application alone. What we're seeing is a decline over their time in the NRM from confidence and support to basically the NRM, basically what's happening, they're going through the NRM, they're losing confidence, they're losing independence, they're losing agency and by the time they exit the NRM, they're in a poorer place than when they started, psychologically, so they lose the capacity without additional NGO support, they're losing the capacity to live independent, confident lives.” - Academic¹³⁷

In 2022, the average time taken from being referred to receiving a conclusive grounds decision was 505 days.¹³⁸ Whilst awaiting a conclusive grounds decision many victims' lives are placed on hold and therefore the longer this period is

[and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe#about-this-guidance](#); Thornton, Sara. “Independent Anti-slavery Commissioner Annual Report 2021-2022”. *Independent Anti-Slavery Commissioner's Office* (2022).

¹³⁷ Interview 6

¹³⁸ Home Office. “Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022”. *Home Office* (2023).

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

extended the bigger the impact on their rehabilitation and recovery.¹³⁹ This section identifies two core issues that NRM wait times present to victim support. Firstly the holistic burden it places on victims while they are waiting for a decision and secondly the Government response to addressing these wait times.

THE EFFECT OF WAIT TIMES ON VICTIMS

The NRM is clogged due to being overwhelmed by the sheer volume of referrals being made, impacting the effectiveness of the care and support victims receive. Despite the Home Office recruiting over 240 new staff to join the SCA in 2021 to address this issue, wait times are continuing to increase with the reforms falling short.¹⁴⁰ The most recent NRM data suggests that there are currently, as of 26th January 2023, 33,076 cases still awaiting a decision, which is an increase of 8,577 from 26th January 2022.¹⁴¹ Analysis of the number of reasonable grounds decisions and conclusive grounds decisions shows that it is the conclusive grounds decision that is having the most significant negative impact on wait times.¹⁴² The impact on victims' mental health and capacity to engage with the process cannot be understated.¹⁴³ NRM wait times are affecting victims' mental health, the availability of the services on offer and victims susceptibility to being re-trafficked, which is increasing the pressure and compromising the standard of care

¹³⁹

¹⁴⁰ Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2020-2021". *Independent Anti-Slavery Commissioner's Office* (2021); Modern Slavery Policy Unit. "It still happens here: fighting UK slavery in the 2020s". *The Center for Social Justice and Justice and Care* (2020); Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2021-2022". *Independent Anti-Slavery Commissioner's Office* (2022).

¹⁴¹ Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022". *Home Office* (2023).

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

¹⁴² Ibid

¹⁴³ Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2020-2021". *Independent Anti-Slavery Commissioner's Office* (2021); Modern Slavery Policy Unit. "It still happens here: fighting UK slavery in the 2020s". *The Center for Social Justice and Justice and Care* (2020); Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2021-2022". *Independent Anti-Slavery Commissioner's Office* (2022); Lazzarino, Runa, Nicola Wright and Melanie Jordan. "Mental Healthcare for Survivors of Modern Slavery and Human Trafficking: A Single Point-in-Time, Internet-Based Scoping Study of Third Sector Provision". *Journal of Human Trafficking* Vol. ahead-of-print (ahead-of-print) (2022), p.1-18

on offer by first responder organisations. Although there is limited academic research into the effect of the NRM wait times on victims' mental health, the message from interviewees was sure in its understanding of the effect, "keeping people in that state of limbo where they're waiting and waiting at any minute is a threat state. I mean that's not good for anyone's health and mental health".¹⁴⁴ Despite increases in staffing, the number of days it takes to make a conclusive grounds decision will not dramatically reduce overnight. Therefore, I would recommend further research into the effects of the NRM wait times on victims' health. The current focus of the Government has surrounded the financial aspects of the mechanism, but I would pose that the potential effect on a victim's mental state far outweighs the concern of any budget. Again, it is my recommendation that the Government take a victim centred approach when discussing potential policies which affect the NRM.

The statutory guidance outlines support for victims of modern slavery and addresses how to assist victims while being processed through the NRM system.¹⁴⁵ One of the biggest impacts of NRM wait times is the effect on the support offered to victims while being processed. This care is designed to be emergency short term care to stabilise victims before they are able to fully rehabilitate back into society. However, due to wait times being so long the care that is needed for rehabilitation is being stretched out for years, making it "not fit for purpose".¹⁴⁶ As the recent Kalayaan report stated, the NRM is at "breaking point" and this is stretching services too far.¹⁴⁷ This is largely because there is a difference between the standard of care that is necessary for the responsive nature

¹⁴⁴ Interview 3

¹⁴⁵ Home Office. "Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland". (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

¹⁴⁶ Interview 2.

¹⁴⁷ Sharp, Avril. "The National Referral Mechanism: Near Breaking Point". *Kalayaan* (February 2023); Aspray, Nathaniel and Judith Matsiko. "Primary care for asylum seekers and refugees". *InnovAiT* Vol.14 (4) (2021), p.214-222.

of short term, emergency support and the standard of support needed in the long term that can affect the quality and nature of an individual's life. The difference between these two levels of support was a resounding theme that I found during interviews, “safe houses are really limited. [but] You can't bring your friends you can't say where you live, you have hours to come in and to leave and it's not empowering enough. It's really useful at the beginning. So, this person is telling me it's really when you're really lost and just really unstable and you haven't grounded yet and you're just realising that you've been a victim of a crime, safe house is it's perfect. You meet peers. But not for too long”. This extension of the measures set out in the statutory guidance leads to a lack of self-determination as this emergency support is intended to be short term rather than for years.¹⁴⁸ Therefore the nature of the support offered within the statutory guidance is out of touch with the nature of the support needed on the ground due to NRM wait times. My recommendation is that this support needs to address the current reality that victims and support agencies are facing, not the ideal one. This would require an increased funding model that can sustain longer term care for victims to assist overwhelmed first responder organisations.

Further to this funding issue, the number of suspensions and withdrawals of cases from the NRM is also increasing year on year, which shows a potential problem for victims experiencing a disillusionment in the system.¹⁴⁹ It was reported in 2022 that out of the 16,938 referrals made in that same year, 593 (4%) were suspended or withdrawn. Moreover, this research would suggest that disillusionment does not just pertain to those who withdraw, but stretches much further to the number of victims still within the system, who have not officially withdrawn but are fully disengaged from the process.¹⁵⁰ Through this research I sought to investigate how many victims are being lost due to the delays in NRM

¹⁴⁸ Interview 4.

¹⁴⁹ Home Office. “Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022”. *Home Office* (2023). Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

¹⁵⁰ Interview 3 and 6; Survey 3,4,5,8,11.

wait times. Despite difficulties in finding data, it is thought that the number of victims going missing, being re-trafficked or seeking alternative pathways is significant. Salvation Army reported in June 2022 that out of the 1,724 people that they collected move on data for, 188 absconded or were deemed missing persons. This represents a 7% increase from what the NRM data is showing. Although this increase is significant, what would be more of interest would be to understand the threshold of definitions used by the Salvation Army to determine the number of victims that are being lost. This would allow experts to determine the accuracy of data compared with their own definitions, and estimate the potential scale of the issue.

The risk is high for potential victims to become disillusioned when they are required to wait potentially years in order to access compensation and restorative means in the form of rehabilitation.¹⁵¹ This disillusionment is only aggravated when you are a foreign national who cannot work or access stable financial support. It is not realistic to expect anyone, let alone a highly traumatised, vulnerable individual to put their lives on hold for two years living off the support that is provided under the statutory guidance.¹⁵² Although there are good reasons for the caution surrounding the issue of immigration in relation to victims of modern slavery for policy reasons, this is currently hindering the pathway for victims through the MSA to access justice and of great concern in light of the proposed Nationality and Borders Bill where Dame Sara Thornton has voiced her continued concern in letters to the Home Secretary Priti Patel.¹⁵³ More directly Lord Coaker criticised clause 61 and 62, saying that “victims of modern slavery are being conflated with immigration offenders, and it will lead to the undermining of the Modern Slavery Act... and the modern slavery system that

¹⁵¹ Modern Slavery Policy Unit. “It still happens here: fighting UK slavery in the 2020s”. *The Center for Social Justice and Justice and Care* (2020).

¹⁵² Gledhill, Kris. “The committee on the rights of persons with disabilities and the fight against human trafficking”. *Journal of International and Comparative Law* Vol.8 (1) (2021), p.249-282.

¹⁵³ Thornton, Sara. “Letter to Home Secretary responding to the New Plan for Immigration”. Independent Anti-Slavery Commissioners Office (May 6 2021).

they have put in place, of which they should be proud”.¹⁵⁴ In the case of R (on the application of TDT), the court considered whether Article 4 placed an operational duty to take protective measures towards suspected victims of trafficking.¹⁵⁵ The case was in relation to a Vietnamese national who was released from custody without adequate measures in place to protect him from re-trafficking and went missing while awaiting an NRM decision. The court held that “ the Secretary of State for the Home Department had breached ECHR, Art 4 by releasing from detention a Vietnamese national without adequate measures in place to protect him from re-trafficking”.¹⁵⁶ Therefore, this clearly demonstrates that foreign nationals are exposed to a significant risk of falling back into the environment from which they are trying to escape, and so my recommendation is that those individuals should be receiving further support. I will explore and identify this support in the following sections.

GOVERNMENT RESPONSE TO ADDRESSING WAIT TIMES

“0-45 days is too short for someone to recover. But two years, one year and a half and two years, is definitely too long. What I hear from my clients is that the fact that they can't work - it's very important for people who don't have work permit - this is well too long with not being able to provide assistance to their family back in their countries of origin and this is very, very important. But also, another complaint is that safe houses are really limited. You can't bring your friends, you can't say where you live, you have hours to come in and to leave and it it's not empowering enough. It's really useful at the beginning. So, this person is telling me it's really when you're really lost and just really unstable and you haven't grounded yet and you're just realising that you've been a victim of a crime, safe house is it's perfect. You meet peers. But not for too long.” - NGO¹⁵⁷

¹⁵⁴House of Lords deb. 10 Feb 2022, Vol 818, column 1867.

¹⁵⁵ R (on the application of TDT, by his litigation friend) v Secretary of State for the Home Department & Equality and Human Rights Commissioner intervening [2018] EWCA Civ 1395.

¹⁵⁶ Southwell, Philippa, Michelle Brewer and Ben Souglas-Jones. *Human Trafficking and Modern Slavery Law and practice*. London: Bloomsbury Publishing, 2020.

¹⁵⁷ Interview 4.

The very notion that it is possible for the SCA or IECA to make a decision in 30 days based on the past 8 years wait times is unfounded. Furthermore, it is also problematic to set exact time limits for determining victims of slavery due to the unpredictability of each case. Since the introduction of the *MSA 2015* we have learnt that each victim of modern slavery requires complex and individual care; the current statutory guidance “doesn't understand the complexity of the trafficking experience on survivors that one, it can't because it's a one-size-fits-all” model.¹⁵⁸ This has been acknowledged by the Government in the statutory guidance but the measures that are being introduced do not align.¹⁵⁹ In this section I will first analyse the reality of how the current wait times are affecting victims of modern slavery from an operational victim centred perspective, as well as exploring the pitfalls of having an exact time frame of support for victims of modern slavery as outlined in section 50A(4) MSA 2015.

As discussed in the previous chapter, gaining the trust of victims of modern slavery takes time. It seems highly impractical and incongruous to set time frames on gaining the relevant evidence needed to assess what support is needed in the rehabilitation and recovery process, given that they are individuals who possess high levels of trauma and a complexity of mental health issues. This was a notion repeated in nearly all interviews and surveys I conducted, with one participant summarising the notion:

“This is completely unrealistic. I never, even the best kind of client I ever supported, did not tell me the story in one go. One of the most permanent mental health issues that I see in my client group is memory loss, along with paranoia, delusion and psychosis...It takes time. It takes trust. You can't expect a victim of

¹⁵⁸ Nationality and Borders Bill Part 5: Modern Slavery Consideration paper

¹⁵⁹ Ibid; Home Office. “Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland”. (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

modern slavery...to have a chat with you about Modern Slavery. Asking that from survivors is inhumane. It's completely inhumane. Not only on top of it the stress...-its terrifying. It can go for hours and hours and go very wrong sometimes so I don't think it is realistic at all, it is not trauma informed. It doesn't show any respect of humanity for survivors.” - NGO¹⁶⁰

The decision to reduce the number of statutory support days from 45 to 30 is in direct conflict with the evidence, which suggests that “a minimum of 90 days support is required for trafficked person to be able to make well-considered decisions about their safety and cooperation with the authorities, as well as to offer detailed evidence about past events. Evidence further suggests positive correlations between effective support and improved engagement with authorities”.¹⁶¹ Although it has been commented that any set time period surrounding the assessment of an individual's needs is unhelpful, I understand the importance for an effective mechanism to have a time period due to the need to assess goals and move people through the system. However, neither the Government nor those working in the modern slavery field have previously experienced providing consistent support within the suggested time period. On the contrary, the shortest average support period since 2014 has been over double this, at 97 days. Therefore, the Government has once again weakened the effectiveness of the NRM through unfounded suggestions of assessment time periods. Without empirical evidence as to why the 30 days were chosen, and compared to the average 505 days which it currently takes individuals to receive a conclusive grounds decision, the only logical conclusion for this given time period is that the Government wants to be seen and heard doing something to address NRM wait times, rather than offering an appropriate, evidence-founded fix. Therefore, it is

¹⁶⁰ Interview 4.

¹⁶¹ Garbers, Kate, Catherine Meredith, Dr Katarina Schwarz and the Human Trafficking Foundation. “Nationality and Borders Bill Part 5: Modern Slavery; Consideration paper”. *The University of Nottingham Rights Lab* (October 2021); Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. “Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper”. *The University of Nottingham Rights Lab* (November 2022).

my recommendation that the Government bring the minimum days set out in Section 50(A) in line with the research base, and provide victims a minimum of 90 days support.

RIGHTS TO WORK

“there is a politicisation and this is a politically very sensitive area because of the conflation in language between people smuggling, immigration offending and the conflation with illegal immigration being a trafficking issue, which its not. Umm many of my victims choose to go back to their source destination, or country of origin, and I think that ...is giving them support there, which of course is much more difficult to control. Umm, I think that many are frustrated by their inability to work because, of course, employment is where we all find self-validation and when they’ve had all their validation taken from them as victims of modern slavery and exploitation, not being able to work aggravates that, and i’d like to see a change in that, but I recognise by doing that change we are opening it up to even greater immigration abuse.” - Legal Practitioner¹⁶²

In 2022, a quarter of all victims were UK nationals, meaning that the vast majority of victims are foreign nationals.¹⁶³ The uncertainty that victims who are foreign nationals of trafficking face can lead to individuals being more reluctant to come forward and seek help, risking destitution and re-trafficking.¹⁶⁴ In light of the NBA 2022, IASC Dame Sara Thornton, hoped that by setting out the terms for discretionary leave in Section 64 of the NBA 2022 would increase the number of victims positively granted this leave, however she voiced that she was “not optimistic”.¹⁶⁵ Out of those with a positive CG decision, 123 were granted discretionary leave to remain in 2015. This unfortunately decreased in 2019 to 70,

¹⁶² Interview 2.

¹⁶³ Home Office. “Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022”. *Home Office* (2023). Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

¹⁶⁴ Independent Anti-Slavery Commissioner and the University of Nottingham Rights Lab (2021), ‘The benefits and the barriers to accessing employment: Considerations for survivors of modern slavery’: Available at: https://www.antislaverycommissioner.co.uk/media/1599/rights_lab_access-to-work-pathways_final.pdf.

¹⁶⁵ Thornton, Sara. “Independent Anti-slavery Commissioner Annual Report 2021-2022”. *Independent Anti-Slavery Commissioner's Office* (2022).

and then even further in 2020 to just 8. More recently, the IASC reported that only 8% of discretionary leave requests made in 2021 were granted.¹⁶⁶ This decline is especially troubling when examined in tandem with SCA conclusive grounds wait times, as for foreign nationals they do not hold a right to work in the UK until they have received this decision. Therefore, they are left with either forced unemployment, which has a dramatic impact on an individuals' mental health and ability to live, or to "... work informally, risking exploitation by unscrupulous employers".¹⁶⁷ This section first establishes the scale of victims affected by the lack of a right to work, and secondly the benefit of work for victims of modern slavery.

IMPACT OF RIGHTS TO WORK

For foreign nationals, the impact of not being able to work for the year or two that it takes for them to be processed is significant.¹⁶⁸ As one participant captured, "employment is where we all find self-validation and when they've had all their validation taken from them as victims of modern slavery and exploitation, not being able to work aggravates that, and I'd like to see a change in that".¹⁶⁹ Furthermore, evidence shows that for victims with asylum cases open, this wait time is likely to be even longer and therefore risks these individuals feeling even more invalidated, and as a result risking significant mental health issues.¹⁷⁰

Section 53 recognises and addresses the strong relationship between victims of modern slavery and immigration. It states that victims must have the right to

¹⁶⁶ Ibid.

¹⁶⁷ Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2020-2021". *Independent Anti-Slavery Commissioner's Office* (2021).

¹⁶⁸ Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2021-2022". *Independent Anti-Slavery Commissioner's Office* (2022).

¹⁶⁹ Interview 2.

¹⁷⁰ Independent Anti-Slavery Commissioner. "IASC paper: Asylum decision times for potential victims of modern slavery October 2021". *Independent Anti-Slavery Commissioner Office* (2021); Lazzarino, Runa, Nicola Wright and Melanie Jordan. "Mental Healthcare for Survivors of Modern Slavery and Human Trafficking: A Single Point-in-Time, Internet-Based Scoping Study of Third Sector Provision". *Journal of Human Trafficking* Vol. ahead-of-print (ahead-of-print) (2022), p.1-18

remain in the UK, however only for a minimum period of six months. The Competent Authorities are a trained body of professionals who deal with NRM referrals. It is ultimately through Competent Authorities that victims are processed and where Section 53 is engaged. Competent Authorities grant individuals a minimum of 30 days of Government funded support while their claim is being considered for a final conclusive grounds decision. However after that conclusive grounds decision is made, Competent Authorities are no longer responsible for these victims and they are either considered for discretionary leave to remain and receive 45 days of 'move on support' or, if they receive a negative conclusive grounds decision they receive 9 days of 'move on' support and then are "abandoned".¹⁷¹ Following a conclusive decision, some victims receive a letter informing them that they do not have a right to remain in the UK. Regardless of the different avenues that a victim could be subjected to, they all lead to the very real possibility of being re-trafficked due to the ending of support. In 2017 the Work and Pensions Committee directed an inquiry into 'Victims of Modern Slavery' and specifically examined the issues surrounding immigration. It was out of this report that a recommendation was made to grant all victims of modern slavery with an "automatic right to remain in the UK". This would entitle them to be able to seek out employment in the UK, which not only would contribute to the economy but also the individual's ability to move forward in their life.¹⁷² This recommendation has received much resistance from the Government with fears that it will encourage people to make false trafficking claims and ultimately abuse immigration controls¹⁷³. However, there is no evidence that this abuse is taking

¹⁷¹ Mantouvalou, Virginia. "The Modern Slavery Act 2015 three years on". *Modern Law Review* Vol.81 (6) (2018), p.1017-1045.

¹⁷² Work and Pensions Committee, *Victims of Modern Slavery-Twelfth report* (HC 2016-17, 803) conclusions and recommendations, 6; Grundler, Maja. "Expanding the Right to Remain as a Trafficked Person under Article 4 ECHR and the ECAT". *Modern Law Review* Vol.84 (5) (2021), p.1093-1104.

¹⁷³ Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. "Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper". *The University of Nottingham Rights Lab* (November 2022); Grundler, Maja. "Expanding the Right to Remain as a Trafficked Person under Article 4 ECHR and the ECAT". *Modern Law Review* Vol.84 (5) (2021), p.1093-1104.

place and therefore providing foreign nationals with the security of employment and discretionary leave to remain is critical to providing comprehensive and meaningful support to victims of modern slavery and enabling successful rehabilitation.

BENEFIT OF RIGHT TO WORK FOR VICTIMS

“I also think the UK have implemented, like most, nearly every country in the world of implemented a minimum standard and we know that financially it would be an economic benefit to the Government to increase support. So we did that cost benefit analysis when Lord McColl’s modern slavery victim support was going through Parliament that showed that if they did implement more substantial, specific support for 12 months post positive CGD that actually that would be a financial benefit over the cost of delivering that to the state in terms of employment, and contribution of those individuals and impact on ongoing support from other medical interventions and support.”- Academic¹⁷⁴

The lack of self-determination is exacerbated for victims who are not UK citizens as while they are being processed through the NRM they have no right to work. A question posed to every interview participant was “Do you think the support offered under the modern slavery act and the statutory guidance adequately supports victims of modern slavery?” The answer was a unanimous ‘no’, with one participant capturing the reality for victims as “a lot of people in that time are essentially dependent on others not allowed to work or have some education. They’re not. They’re kept in prolonged states of poverty with tiny amounts of money per week to live off without any sort of agency at all to sort of start even conceptualising what they’ve just experienced”.¹⁷⁵ Additionally, some participants discussed the consultations they participated in with the Government in reforming the statutory guidance in 2021. However, my impression of these consultations was that it left the participants feeling disappointed and disillusioned, with one participant stating “I can see they really don’t listen to us. To the point that we are

¹⁷⁴ Interview 6.

¹⁷⁵ Interview 5.

asking now, ‘is this a consultation?’, because they employ this they organise this consultation groups precisely to hear from us, from work directly on frontline, and they don't they don't. Nowadays it's them talking at us rather than exchange of ideas”.¹⁷⁶ This anecdotal evidence suggests that the misalignment between the Government’s policy and relevant front line workers is not due to a lack of consultations, but rather the willingness and motivation of the Government to listen and address the issues that are being delivered to them.

The benefit of granting a right to work to victims of modern slavery is not only beneficial to their rehabilitation and recovery, additionally it has been found to be more cost effective in terms of Government spending.¹⁷⁷ Rights Lab research found that not only would more comprehensive long-term support benefit victims’ recovery but “estimated a direct financial benefit of between £15.4 and £21.3 million for all conclusive victims referred in 2017 (equivalent to between £12,500 and £15,500 per conclusively identified victim) across two categories: relief of homelessness and improved employability.”¹⁷⁸ It continued to note that allowing potential victims access to employment would only further this cost benefit by “creating safe, durable solutions for survivors of modern slavery”. Therefore I recommend that foreign nationals be assessed to work on a case by case basis, which has been shown above to not only reduce the reliance on the taxpayer, but also to add to the economy through payment of taxes. For the motivation of this paper, it would also improve the livelihood of these victims as their self-worth. This is of great importance as I have taken a victim-centred approach to these issues.

NUMBER OF FIRST RESPONDER ORGANISATIONS

¹⁷⁶ Interview 4,6.

¹⁷⁷Independent Anti-Slavery Commissioner and the University of Nottingham Rights Lab (2021), ‘The benefits and the barriers to accessing employment: Considerations for survivors of modern slavery’: Available at: https://www.antislaverycommissioner.co.uk/media/1599/rights_lab_access-to-work-pathways_final.pdf.

¹⁷⁸ Ibid.

The final element that is compromising victim support is the limited number of designated first responders. This research found that first responders are unevenly distributed across England and Wales, and cannot support the number of individuals that need assistance throughout the NRM process and after they have received a CG decision.¹⁷⁹ It has been notably identified in recent reports that there has been a lack of action on the part of the UK Government to acknowledge the pressing need for an increase in the numbers of First Responder Organisations, together with the requisite resources.¹⁸⁰

It is not uncommon for victims of modern slavery to be completely reliant on their abusers; this includes accommodation, income and other basic needs therefore the magnitude is enormous for victims coming forward through the process.¹⁸¹ This is reflected in the statutory guidance which outlines the wrap-around support that victims may need including emergency accommodation, financial support, material assistance, translation and interpretation services, medical treatment, assistance and counselling, assistance during criminal proceedings, access to labour market, vocational training and education, job seeking and welfare benefits, access to legal aid and representation, assistance in pursuing claims for compensation, travel to appointments, move on support and more.¹⁸² The long list of support offered in Annex F of the guidance reflects the complexity of

¹⁷⁹ Interview 3,4 and 6.

¹⁸⁰ Sharp, Avril. "The National Referral Mechanism: Near Breaking Point". *Kalayaan* (February 2023).; Thornton, Sara. "Independent Anti-slavery Commissioner Annual Report 2021-2022". *Independent Anti-Slavery Commissioner's Office* (2022); Harris, Hannah and Justine Nolan. "Outsourcing the enforcement of modern slavery: Overcoming the limitations of a market-based disclosure model". *Journal of Industrial Relations* Vol.64 (2) (2022), p.223-247.

¹⁸¹ Home Office. "Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland". (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

¹⁸² Home Office. "Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland". (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

supporting victims and the case by case nature of what is needed for each individual victim. This sentiment of the individuality of victims' needs was echoed in key informant interviews as it is “very complex to support a victim of modern slavery”.¹⁸³ Unfortunately, the ability to deliver this comprehensive level of support outlined in the statutory guidance from an operation perspective, is not happening. Despite the comprehensive support proffered in the statutory guidance, the literature and this research suggest that it is largely theoretical in many cases. The reality of victim support is porous and inconsistent; “it's literally lottery as to who identifies you and then how they go about it...it could be someone who has absolutely no understanding slavery or it could be someone who's really excellent and fills out [a] thorough form”. It is inappropriate for individuals to receive different levels of support based on who they are being identified by.¹⁸⁴ In order to address this issue, I recommend that the Government should assist with the rehabilitation and recovery of victims through improved infrastructure in first responder organisations. At present, the majority of first responder organisations are limited in their knowledge of modern slavery and therefore compromised in their ability to best support victims of modern slavery. The distribution of those institutions that are fully trained and equipped are concentrated and therefore there needs to be equal coverage for victims across the United Kingdom.¹⁸⁵

¹⁸³ Interview 3,4,5 and 6.

¹⁸⁴ Interview 4 and 6; Craig, Gary and Stephen Clay. “Who is vulnerable? Adult social care and modern slavery”. *The Journal of Adult Protection* Vol.19 (1) (2017), p.21-32.

¹⁸⁵ Elmore Community Services. *Researching the extent and nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022); Ferrell-Schweppenstedde, Samantha. “Day 46; Is there life after the Safe House for Survivors of Modern Slavery?”. *Human Trafficking Foundation* (2016); Gearon, Alinka. "Child Trafficking: Young people's experiences of front-line services in England," *British Journal of Criminology* 59, 2: 481-500 (2019).

RECOMMENDATIONS

- I would recommend further research into the effects of the NRM wait times on victims' health.
- The nature of the support offered within the statutory guidance is out of touch with the nature of the support needed on the ground due to NRM wait times. My recommendation is that this support needs to address the current reality that victims and support agencies are facing, not the ideal one. This would require an increased funding model that can sustain longer term care for victims to assist overwhelmed first responder organisations.
- Despite increases in staff, the number of days it takes to make a conclusive grounds decision is not going to dramatically reduce overnight. Therefore, I would recommend further research into the effects of the NRM wait times on victims' health. The current focus has been the cost effect on the Government but this research would suggest the effect is much more ominous in its effect on victims.
- I recommend that the threshold of definitions used by the Salvation Army to determine the number of victims that are being lost be clarified. This would allow experts to determine the accuracy of data compared with their own definitions, and estimate the potential scale of the issue.
- I recommend that those foreign national individuals should be receiving further support as they are of increased vulnerability.
- I recommend bringing the minimum days set out in Section 50(A) in line with the research base to provide a minimum of 90 days support.
- Therefore from a victim-centred operational perspective, I would recommend increasing support to be more comprehensive in line with research and provide access to employment to increase rehabilitation and recovery prospects of victims of modern slavery.
- I recommend that foreign nationals have the security of employment and discretionary leave to remain, as it is critical to providing comprehensive

and meaningful support to victims of modern slavery and enabling successful rehabilitation.

- It is inappropriate for individuals to receive different levels of support based on who they are being identified by. In order to address this issue, I recommend that the Government should assist with the rehabilitation and recovery of victims through an improved infrastructure in the first responder organisations, At present, the majority of first responder organisations are limited in their knowledge of modern slavery and therefore compromised in their ability to best support victims of modern slavery. The distribution of those institutions that are fully trained and equipped are concentrated and therefore there needs to be equal coverage for victims across the United Kingdom.
- In order to understand the scale of how many victims are being ‘lost’ out of the system after being initially identified, the collection of ‘move on data’ needs to be continued to be collected and reported on.

Chapter Three

Victims and Justice

INTRODUCTION

The final stage that the MSA 2015 sets out is the judicial components. There are two elements to this, firstly pertaining to prosecutions and secondly the legal protections provided to victims of modern slavery. In relation to prosecutions, the MSA 2015 sets out two offences, firstly the offence of slavery in Section 1 and then human trafficking and exploitation in Section 2, as outlined in the introduction. As aforementioned, one of the key aims that was set out from the inception of the modern slavery act was to increase prosecutions. The concept was to protect victims by increasing prosecutions, which would be achieved by ensuring that law enforcement and the courts have the authority to do so.¹⁸⁶ This focus specifically on prosecutions has been returned to repeatedly, most significantly by the Government each year in their annual reports but also by other commentators in prominent reports as a barometer of the MSA 2015's success. Although there has been greater optimism in the upward trend of prosecutions of offences listed in the MSA 2015, the total number still remains disproportionately low when compared to the number of police referrals to CPS and victims being identified.¹⁸⁷ Prosecution numbers are significant as they act as a clear demarcation to perpetrators.¹⁸⁸ The MSA 2015 sought to act as a deterrent to perpetrators providing the courts with the means to dispense harsher sentences specifically designed for this crime area rather than relying on multiple other pieces of legislation which carried much lower sentences.¹⁸⁹ In the first part of this

¹⁸⁶ House of Commons Deb 8 July 2014, vol584, cols166-167

<https://hansard.parliament.uk/Commons/2014-07-08/debates/14070874000001/ModernSlaveryBill>

¹⁸⁷ Modern Slavery and Organised Immigration Crime Programme. "Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22" *Modern Slavery and Organised Immigration Crime* (2022); Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022". *Home Office* (2023).

¹⁸⁸ Modern Slavery Policy Unit. "It still happens here: fighting UK slavery in the 2020s". *The Center for Social Justice and Justice and Care* (2020).

¹⁸⁹ Broad, Rose and Nick Turnbull. "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK". *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.

chapter I will present my findings on the reasons behind these low prosecution rates from an operational victim centred approach.

During the second half of this chapter, I will focus on the legal protections available to victims of modern slavery that have committed a crime. The protection is two-fold comprising of prosecutorial discretion and the Section 45 defence. Under Article 8 of the EU Trafficking Directive 2011/36/EU and the ECAT, the UK is required to provide for the non-punishment of victims of trafficking for offences committed as a “direct consequence of being” a victim.¹⁹⁰ Along with prosecutorial discretion, the Section 45 defence sought to fulfil this directive. However its criticism is extensive and complex, which I intend to explore thoroughly in the second half of this chapter before listing key policy recommendations for both issues identified.

PROSECUTION RATES

In 2021-2022, there has been a 70% increase in charges relating to modern slavery referred to CPS and 53% increase in prosecutions of modern slavery offences, compared to the previous year.¹⁹¹ Although this is a step in the right direction for victims of modern slavery, when compared to the number of charges referred to CPS as well as the number of victims identified by the NRM, these increased percentages are still disproportionately low. Unfortunately, the prosecution data for 2022 has not yet been published. This is due to the annual report for modern slavery in 2022 not being published by the Government, which compared to previous years is very unusual.¹⁹² Therefore, for the purposes of this thesis I have calculated estimates using the data in the Modern Slavery and Organised Immigration Crime Programmes’ “Modern Slavery and Organised Immigration

¹⁹⁰ Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combatting Trafficking and in Human Beings and Protecting its Victims (adopted 5 April 2011) Official Journal of the European Union L101/1.

¹⁹¹ Modern Slavery and Organised Immigration Crime Programme. “Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22” *Modern Slavery and Organised Immigration Crime* (2022).

¹⁹² There has been an annual report published every year since 2017.

Crime Programme- Annual Report 2021-22”.¹⁹³ In 2020, there were 197 successful prosecutions under the MSA 2015 in comparison to 259 charges referred to CPS, and 10,585 victims referred to the NRM. Applying these numbers to the 2021-2022 percentage increases, on charges and successful prosecutions reported in the “Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22”, this would suggest that 437 charges were referred to CPS in this year, with positive convictions increasing to 301 and finally 12,727 victims referred to the NRM.¹⁹⁴ Therefore as already stated, although the reporting is positive in this area it is still disproportionately low when analysing total referrals. Moreover, it would roughly need a 300% increase in charges to cover even 10% of the referrals to be made to the NRM. This proves that charges and prosecutions should remain a target for improvement.¹⁹⁵ Looking specifically at prosecutions, I have identified three key elements that are impacting their low rates. These are confusion around application of relevant law, difficulties in evidence, and NRM wait times.

APPLICATION OF RELEVANT LAW

“I think that the whole regime could be simplified by having an offence of trafficking where the components of trafficking reflected the, well in particularly the EU directive with the expanded definitions of exploitation and abuse of a position of vulnerability, but ultimately if you were to take the definition of trafficking in article three of the palermo protocol or article four of the european convention on action against trafficking, what would be the problem with that? And this is why, in order to assist criminal practitioners it was asked the court of appeal in the crown and HHD which was 2018 EWCA Crim 2996 to reflect on practice and endorse my suggestion that people should be looking at whether or not somebody is a victim of trafficking if they are a suspect who may be one by

¹⁹³ Ibid.

¹⁹⁴ Home Office, ‘2021 UK Annual Report on Modern Slavery’ (Home Office October 2021).

¹⁹⁵ Modern Slavery and Organised Immigration Crime Programme. “Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22” *Modern Slavery and Organised Immigration Crime* (2022).

reference to article two of the EU directive because it simplifies everything and if somebody is a victim of trafficking then if they're a victim of slavery or slavery related practices they will be identified as such by reference to them being a victims of trafficking by that regional instrument.”- Legal practitioner¹⁹⁶

Initially, the Independent review of the Modern Slavery Act: Final Report reviewed whether the definition of trafficking was too narrow in terms of interpretation and whether this impacted low prosecution rates.¹⁹⁷ It concluded that the Acts definition was ‘sufficiently flexible’ however there should be policy guidance to assist in interpretation of the Act for law enforcement and prosecutors.¹⁹⁸ However since this report, the definitions provided in the MSA 2015 have been subject to much criticism. This research identifies that the definitions provided in the MSA 2015 are hindering prosecution rates from an operational victim centred perspective, creating confusion surrounding the application of the law itself. There are clear distinctions in terms of definitions provided in the MSA 2015 and regional instruments that are leading to confusion within the legal sector.¹⁹⁹ Sands states that in relation to the broadness of definitions used, “The review of the MSA should [...] look carefully at the definitions used by professionals in the consideration of victims [as] Language in this area is critical, as ambiguity between terms and a lack of agreement on which forms of exploitation fall within the crimes creates confusion among practitioners and uncertainty among potential victims”.²⁰⁰ Lisa K. E. Hsin argues, in line with earlier remarks, that this broader definition of slavery creates confusion among practitioners and leads to a lack of consensus in regard to what the term actually

¹⁹⁶ Interview 1.

¹⁹⁷ Field, Frank and Elizabeth Butler-Sloss and Maria Miller, *Independent Review of the Modern Slavery Act 2015: Final Report* (Home Office, 2019); Bird, Steven and Philippa Southwell. “Does the new 'slavery' defense offer victims of trafficking any greater protection”. *Archbold Review* Vol.9 (2015), p.7-9.

¹⁹⁸ Ibid

¹⁹⁹ Southwell, Philippa, Michelle Brewer and Ben Douglas-Jones. *Human Trafficking and Modern Slavery Law and practice*. London: Bloomsbury Publishing, 2020.

²⁰⁰ Sands, Matthew. “UDHR and Modern Slavery: Exploring the Challenges of Fulfilling the Universal Promise to End Slavery in All Its Forms”. *The Political Quarterly* (London. 1930) Vol.90 (3) (2019), p.430-438.

means.²⁰¹ Therefore keeping legal definitions tight may limit the scope of the laws and thereby assist practitioners. This position would align with the argument that in order to address modern slavery we really need to have a clear picture of who the intended victim is under the MSA 2015.²⁰² The sentiment of confusion among practitioners was highlighted in interviews with participants stating that the broadness of the definitions “make it very difficult to distinguish between those who might feel influenced to participate and those who are genuinely being trafficked, depending on how you apply that definition”.²⁰³ “People still, even decision makers, don't really understand what a victim of trafficking is, and that is where identification falls down at the first hurdle. I think that these decisions have been made unnecessarily complicated by the consideration of whether or not somebody is a victim of slavery or slavery related practices, as a distinct status separate from victim of trafficking. Whereas actually if identification of victims of trafficking was properly understood by reference to the international and regional instruments you wouldn't need to look at whether or not somebody was a victim of slavery or slavery related practices because they would be caught under the umbrella of the international definition of ‘victim of trafficking’. And I think that that causes problems because it makes everything unnecessarily procrustean.” Moreover, there are inconsistencies between case law and the statutory guidance provided by the Home Office. One notable example of this is the requirement for ‘movement’ in the statutory guidance in order to establish the act of trafficking versus a victim of an ECHR Article 4 breach. However this is inconsistent with case law. In the Court of Appeal in *SP (Albania)* it is established that the definition of trafficking in the ECAT is to be read disjunctively, meaning that the first sentence of the ECAT definition lists a number of independently sufficient acts where only one of which needs to be present for there to have been a trafficking offence.

²⁰¹ Husin, Lisa K.E. “Modern slavery in law: towards continuums of exploitation”. *Australian Journal of Human Rights* Vol.26 (1) (2020), p.165-175.

²⁰² Husin, Lisa K.E. “Modern slavery in law: towards continuums of exploitation”. *Australian Journal of Human Rights* Vol.26 (1) (2020), p.165-175.

²⁰³ Interview 6.

While it is encouraging that the Home Secretary has provided distinctions within the Statutory Guidance, the rationale provided for these misconstrues how trafficking is defined in the regional instruments. The confusion was reported to mean that “somebody who is classic victim of trafficking in terms of international law, who might not be perceived as a victim of trafficking in English and Welsh law because for example there’s no movement involved in their exploitation”. The reason for so much confusion from legal practitioners in relation to international law and the MSA, is that the MSA creates two offences of slavery and human trafficking in Section 1 and Section 2. Furthermore it continues to define exploitation in Section 3. This particular criminal practitioner suggested this is the root cause of the confusion surrounding what a victim is and is not and if you simply put modern slavery under the definition it would simplify the entire identification process as you would not need to attribute a cause or crime. “international legislation regarding modern slavery word ‘exploitation’ arguing “the whole regime could be simplified by having an offence of trafficking where the components of trafficking reflected the, well in particularly the EU directive with the expanded definitions of exploitation and abuse of a position of vulnerability, but ultimately if you were to take the definition of trafficking in article three of the palermo protocol or article four of the european convention on action against trafficking, what would be the problem with that?”²⁰⁴On this basis, I recommend that further guidance be provided to address these concerns as they have been repeatedly reiterated since the MSA 2015’s ascension.

DIFFICULTIES IN EVIDENCE

There are two issues that contribute to low prosecution rates in relation to difficulties in extinguishing the evidential burden presented in a judicial setting. These are the complexity of the crime from a policing perspective and the participation of witnesses. Both of which will be examined below.

²⁰⁴ Interview 1.

Complexity of the Crime

“we've got... police officers, you know, that will have no clue about a modern slavery investigation. They are long, they are protracted, many of them spread over, not just sort of counties or from a Met perspective different boroughs within London. We are talking about international cases and if you are sat in your local CID office and you've got a modern slavery case that lands on your table, that involves a woman that's been trafficked from Romania. I would suggest it, you would be well out of your depth in terms of dealing with that. So you will look at what's the easiest way to make this investigation go away. And if you know, you speak to your victim and they'll say, look, I don't wanna go to court over this. I would suggest quite early on that that case would be written off you know only because a specialist team would say, OK, well we can write that case off but let's look at the individuals involved. What other risk are they? You know, what other risk are they, do they pose into to other people? And actually, you know, is there a need to look at that from a victimless crime point of view and just go proactive on it? Because from a borough CID point of view, you haven't got the resources, definitely haven't got the knowledge and actually you know it's a really complex crime.” - Specialist Advisor²⁰⁵

The Crown Prosecution Services determine whether or not a case has the required level of evidence to prosecute. Their determination comprises two elements. Firstly, whether the “evidence can be used in court and is reliable and credible, and there is no other material that might affect the sufficiency of evidence. Crown Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.”²⁰⁶ The second determination is whether it is in the public interest to prosecute a case or not.²⁰⁷ For this section I will be examining the first element of sufficient evidence to prosecute.

²⁰⁵ Interview 3.

²⁰⁶ Crown Prosecution Services. “The Code for Crown Prosecutors”. (2018); Ramiz, Adam, Paul Rock and Heather Strang. “Detecting Modern Slavery on Cannabis Farms: The Challenges of Evidence”. *Cambridge Journal of Evidence-Based Policing* Vol.4 (3-4) (2020), p.202-217.

²⁰⁷ Ibid.

The MSOIC have reported that since the introduction of the MSA 2015, “there have been almost 38,000 modern slavery crimes recorded within England and Wales”.²⁰⁸ This number has increased year on year (apart from 2020 due to the Covid-19 pandemic). However, it has been widely commented that the crime of modern slavery is “extremely complex and challenging crime type and perpetrators particularly organised crime groups exploit the opportunities that arise from this complexity”.²⁰⁹ This in turn presents significant challenges to law enforcement in compiling their case for CPS. The MSOIC noted “policing will continue to need to dedicate appropriately trained and well supported staff to modern slavery investigations to ensure victims are safeguarded and perpetrators are brought to justice”. When asked what the reasons behind the low-prosecution rates were, the complexity of the crime from a police perspective was a common cause cited as demonstrated in the introduction quote. Legal practitioners were also quick to highlight this as a cause, with one stating “police and CPS still have a problem with understanding the application of the modern slavery act. Inevitably these cases are expensive and challenging because they are challenging victims/witnesses because it's difficult getting corroborating evidence and they are hard work and my profession aren't particularly good at engaging with that”.²¹⁰ This demonstrates the need to increase joint training programs between police and the legal sector, in order to create a more cohesive understanding of the application of this crime.

Witness Participation

“The victims of modern slavery often choose, quite understandably, not to engage with the system because they don't want to, they want to go home, they want to put this behind them, they are ashamed and fearful of what has happened to them or

²⁰⁸ Modern Slavery and Organised Immigration Crime Programme. “Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22” *Modern Slavery and Organised Immigration Crime* (2022)

²⁰⁹ Ibid; Ramiz, Adam, Paul Rock and Heather Strang. “Detecting Modern Slavery on Cannabis Farms: The Challenges of Evidence”. *Cambridge Journal of Evidence-Based Policing* Vol.4 (3-4) (2020), p.202-217.

²¹⁰ Interview 2.

simply, forgive me for sounding pejorative that's not my intention, they are too damaged to give evidence. I have had a number of very strong cases that i have been unable to prosecute because the victim has said if you make me go to court, i will kill myself.” - Legal Practitioner²¹¹

Unlike traditional crimes, the impact of modern slavery on a victim is predominantly psychological, which is similar to cases involving domestic abuse.²¹² The Modern Slavery Police Unit reported that “the biggest challenge they are facing in achieving successful prosecutions and convictions is maintaining continuous engagement with victims, who are inevitably key witnesses in many cases”.²¹³ Participants predominantly criticised the focus on prosecution rates in relation to victims of modern slavery as they did not see it as victim centred. The trauma which victims have experienced in simply being identified has been stated as difficult enough, without having to “stand in front of a court where you will be called a liar and you will face those people that have exploited you”.²¹⁴ It was argued to be a misleading indicator as prosecution rates were not synonymous with victim protection in the plight to support and protect victims of modern slavery. However despite this very valid criticism, witnesses remain one of the most effective elements in securing a conviction in front of a jury, and prosecutions remain to be an effective tool in deterring perpetrators of crime. Ultimately, witnesses and prosecutions do lower the crime area.²¹⁵ Therefore, my two recommendations are based on improved training of individuals who interact with potential victims. Firstly law enforcement must receive improved support and training from legal practitioners, stating what is effective evidence for these types of cases. This will secure more victimless prosecutions thereby protecting both the victims interest and criminal justice

²¹¹ Ibid.

²¹² Wake, Nicola. “Human trafficking and modern day slavery: when victims kill”. *Criminal Law Review* Vol 9 (2017), p.658-677.

²¹³ Modern Slavery Policy Unit. “It still happens here: fighting UK slavery in the 2020s”. *The Center for Social Justice and Justice and Care* (2020).

²¹⁴ Interview 3.

²¹⁵ Brotherton, Vicky. “Class Acts? A comparative analysis of modern slavery legislation across the UK.” In *The modern slavery agenda: Policy, politics and practice*, edited by Gary Craig, Alex Balch, Hannah Lewis and Louise Waite, 1st ed., 97–120. Bristol University Press, (2019).

interest. Secondly, more training in relation to supporting vulnerable witnesses for both law enforcement and legal practitioners will assist in building relationships with victims of modern slavery over a period of sustained time, therefore appropriately support victims who wish to participate in criminal proceedings.

NRM WAIT TIMES

“Its catastrophic because, I know we all talk about the massive delays in the criminal justice system and so forth, but in youth courts in particular, speedy fair, effective justice is vital and judges are not prepared to wait for NRM findings. Quite often, and this where there is a lack of understanding and education, there is, um a lack of, um preparedness to wait for an NRM finding because nobody knows the true value and weight they should be given within the court system.”Legal Practitioner²¹⁶

The NRM wait-times are not only affecting victims' mental health and providing issues in terms of support as discussed in Chapter Two, but it is also impacting the criminal justice system where a victim wants to proceed to court. This research posed the question to participants ‘Are NRM wait-times affecting criminal proceedings and prosecutions?’. For those that were involved in criminal proceedings and the judicial system the answer was an emphatic ‘yes’.²¹⁷ Participants reported that judges, police and CPS were not prepared to wait for NRM decisions. Although an NRM decision is not needed for the purposes of establishing whether or not an individual is a victim of modern slavery in criminal proceedings, the effect of not having a NRM decision is often that “ a charging decision is initially made, and the remand decision is often such that they have to be remanded in custody. So everything operates in a way as to be detrimental to a victims of trafficking because a proper decision cannot be made as to whether or not somebody is a victim of trafficking at an early stage, if its in doubt because the NRM is needed and so people are kept waiting whilst in custody, that fosters a

²¹⁶ Interview 2.

²¹⁷ Interview 1,2; Survey 9,8,14,15.

lack of trust between them and the police in circumstance when the police are tasked with investigating the circumstances of offending in reference to their article four duties so its extremely detrimental”.²¹⁸ Unfortunately the research body in relation to this element is insufficient when providing further evidence to support these. Therefore I would recommend further research into the effects of delayed NRM decisions in relation to criminal proceedings in order to gauge the full extent of this issue.

LEGAL PROTECTIONS

Article 8 of the EU Trafficking Directive 2011/36/EU and the ECAT requires the UK to provide for the non-punishment of victims of trafficking for offences committed as a “direct consequence of being” a victim.²¹⁹ The UK fulfils these obligations through the non-punishment principle that can be extinguished by CPS and additionally the creation of the Section 45 defence.²²⁰ This section will examine the Section 45 defence.

SECTION 45 DEFENCE

“ I think section 45 operates well to protect victims of trafficking because they are best placed to adduce some evidence of the fact that they trafficked, they are best placed to adduce some evidence that they are compelled in the case of some adults to commit an offence, and they are best placed to explain why a reasonable person sharing their characteristics and in the same situation would have committed the offence. And in a sense the hurdle there that works to the disadvantage of the prosecutor, who has to disprove those when naturally that evidence would be easier for a defendant to prove.” - Legal Practitioner²²¹

My analysis criticises three key aspects that are hindering victims in relation to the Section 45 defence. Firstly in relation to the reasonable person test Section 45(1)(d) and secondly in relation to Schedule 4. In *VCL and AN v United*

²¹⁸ Interview 1.

²¹⁹ Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combatting Trafficking and in Human Beings and Protecting its Victims (adopted 5 April 2011) Official Journal of the European Union L101/1.

²²⁰ R v AAD, [2022] Crim. L.R. 581

²²¹ Interview 2.

Kingdom, the Strasbourg courts highlighted early identification as of “paramount importance” in order to protect victims from criminalisation and comply with ECHR.²²²

REASONABLE PERSON TEST

The second criticism in relation to protection of victims under section 45 is the inclusion of the objective reasonable person test. The test is used to determine whether a person is excluded from liability for an offence looking at “a reasonable person in the same situation as the person and having the persons relevant characteristics” and whether taking this into account the “reasonable person would have no realistic alternative to doing that [offending] act”.²²³ Laird criticises the concept of comparing a victim of trafficking against the reasonable person as it fails to incorporate recognition of the trauma that the victims have sustained.²²⁴ Fouldavand and Ward further this point in questioning whether the defence recognises the vulnerabilities that the victims bear in including the reasonable person in the defence.²²⁵ It is at this point that I would like to consider who the reasonable person is in these circumstances as John Gardner argues that they have “many faces”.²²⁶ In his article ‘The Many Faces of the Reasonable Person’ he contemplates whom this is and in what circumstances. He concludes that the reasonable person is more a tool which “enables the judge to avoid deciding the case according to law alone. It allows her to pass the buck to the finder of fact”.²²⁷ Looking at the reasonable person from this perspective, it seems appropriate to include it in the defence as it allows for discretion in relation to the breadth of situations the victim may find themselves in. This was echoed in key interviews where it was pointed to that ‘situation’ is yet to be defined in legislation or case

²²² V.C.L. and A.N. v The United Kingdom (Applications nos. 77587/12 and 74603/12).

²²³ Modern Slavery Act 2015.

²²⁴ Laird, Karl. “Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defense of duress: an opportunity missed?”. *Criminal Law Review* Vol 6 (2016), p.395-404.

²²⁵ Fouladvand, Shahrzad and Tony Ward. “Human trafficking, vulnerability and the state”. *Journal of Criminal Law (Hertford)* Vol.83 (1) (2019), p.39-54.

²²⁶ Gardner, John. “The many faces of the reasonable person”. *Law Quarterly Review* Vol.131 (2015), p.563-584.

²²⁷ Ibid.

law with one legal practitioner positing “I think situation must be interpreted by reference to somebody's background as well as the physical literal situation that they are in. Because you can't look at somebody's situation in terms of their personality and in terms of their background. So I think that at that stage you are looking at a reasonable person by reference to the subjective situation somebody is in, because the situation has to be interpreted subjectively”.²²⁸ This idea of a subjective element offers a level of breadth to the reasonable person test and further guidance to solidify this in legislation would provide additional protections to victims which have been established in this thesis to be diverse in the nature of the exploitation and harm they have suffered.

This point is somewhat rebutted by the ‘relevant characteristics’ included in Section 45(5) which mirror those laid out in the case of *Bowen*.²²⁹ Muraszkiwicz contends this inclusion of a closed list risks key characteristic elements of the victim to be ignored.²³⁰ However, the Government again were concerned about the defence being too open to exploitation.²³¹ The reasonable person test alone could be argued not to be problematic however it is evident that the closed list of relevant characteristics could present miscarriages of justice for some victims whom felt they had no choice. There is no such thing as the ‘perfect victim’ but this perfect victim narrative that academics are so aware of, especially in relation to crime and jury perception, is particularly damaging in relation to victims of modern slavery. The way this defence is constructed only plays into troubling understandings we already have about how the average Joe views anyone accused of a crime. Under this defence we first ask this average Joe to see whether the defence is appropriate for the crime committed, insinuating and showing that from a legal perspective this defence is only relevant to a small number of crimes. Then we compare this victim of modern slavery to the reasonable person and finally we

²²⁸ Interview 1,2 and 6.

²²⁹ R v Bowen [1997] 1 WLR 372

²³⁰ Muraszkiwicz, Julia. “Protecting Victims of Human Trafficking from Liability: An Evaluation of the Section 45 of the Modern Slavery Act”. *Journal of Criminal Law (Hertford)* Vol.83 (5) (2019), p.394-405.

²³¹ Modern Slavery Bill Deb 11 September 2014, col 365

ask the jury to scrutinise this individual's characteristics. In light of all of this, Laird questions why this defence was created in addition to duress if it is, in his opinion, more limited.²³² The concerns of exploitation of the defence are loud and clear, and rightly so remain at the forefront of the conversation surrounding this defence. I support calls for data to be compiled on the prevalence of the use of the defence in order to get a full picture of just how and when this is being used.

SCHEDULE 4

Schedule 4 applies to sub-sections 1 and 4 of the defence under Section 45 and removes eligibility to use the defence if the defendant has committed one of over a hundred offences that are listed.²³³ While it is recognised that there are some serious crimes which definitely should be included in this list, it has also been argued that many offences are “somewhat arbitrary” in nature and therefore this undermines the defence by excluding so many victims.²³⁴ The defence was limited intentionally due to apprehension from the Government that it would be exploited by “serious criminals”.²³⁵ This concern is something that has been examined more thoroughly recently after the HMICFRS raised further concerns of exploitation of the defence in their report ‘Both sides of the coin: An inspection of how the police and National Crime Agency consider vulnerable people who are both victims and offenders in ‘county lines’ drug offending’.²³⁶ Off the back of this, the IASC office produced ‘The Modern Slavery Act 2015 statutory defence: A call for evidence’ acknowledging and supporting their claims.²³⁷ This is a really interesting development in the legislation as it is a narrative that runs counter to its

²³² Laird, Karl. “Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defense of duress: an opportunity missed?”. *Criminal Law Review* Vol 6 (2016), p.395-404.

²³³ Modern Slavery Act 2015.

²³⁴ Laird, Karl. “Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defense of duress: an opportunity missed?”. *Criminal Law Review* Vol 6 (2016), p.395-404.

²³⁵ House of Commons Deb 8 July 2014, vol584, cols166-167

<https://hansard.parliament.uk/Commons/2014-07-08/debates/14070874000001/ModernSlaveryBill>

²³⁶ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. “Both Sides of the Coin: An Inspection of how the police and National Crime Agency consider vulnerable people who are both victims and offenders in 'county lines' drug offending”. *HMICFRS*. (2020).

²³⁷ Bristow, Jennifer and Helen Lomas. “The Modern Slavery Act 2015 Statutory Defence: A call for evidence”. *Independent Anti-Slavery Commissioner Office*. (2020).

initial intention of protection of victims from criminalisation and begs the question ‘for whom is this defence designed for?’. Karl Laird argues that this is “false dichotomy [as] an individual may genuinely be a victim of slavery or trafficking and be compelled to commit a serious criminal offence”.²³⁸ He argues that there is a difference between a “serious criminal” and committing a “serious crime” and that victims under the MSA 2015 do not necessarily fit into the former.²³⁹ Julia Muraszkiecwicz takes this argument further, proposing that it is “contrary to the rationalism of having a principle of non-liability”.²⁴⁰ Muraszkiecwicz supports Laird’s argument further in highlighting victims’ lack of agency in being compelled to commit the crime. They therefore should not be held responsible for the crime committed and states that the law and the MSA 2015 are inconsistent with current thinking on victim liability. This was echoed by participants in this research referring to it as “utterly arbitrary” and confusing in relation to the non-prosecution principles outlined in regional instruments such as the ECAT.²⁴¹ It is on this basis that Schedule 4 has been argued to hamper the MSA 2015 in fulfilling its aim of protecting victims as too many are being excluded from protection and falling short of fulfilling international obligations under the Palermo Protocol of non-criminalisation of victims of modern slavery. It is on this basis that Schedule 4 has been argued to hamper the MSA 2015 in fulfilling its aim of protecting victims as too many are being excluded from protection and falling short of fulfilling international obligations under the Palermo Protocol of non-criminalisation of victims of modern slavery.

²³⁸ Laird, Karl. “Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defense of duress: an opportunity missed?”. *Criminal Law Review* Vol 6 (2016), p.395-404.

²³⁹ Ibid.

²⁴⁰ Muraszkiecwicz, Julia. “Protecting Victims of Human Trafficking from Liability: An Evaluation of the Section 45 of the Modern Slavery Act”. *Journal of Criminal Law (Hertford)* Vol.83 (5) (2019), p.394-405.

²⁴¹ Interview 1; Council of Europe Convention on Action Against Trafficking in Human Beings (adopted 16 May 2005, entered into force 01 February 2008) CETS 197.

RECOMMENDATIONS

- Further guidance be provided to address concerns relating to the legal relationship of definitions provided in the MSA 2015 versus wider regional instruments.
- The need for more joint training between police and the legal sector in order to have a more cohesive understanding of the application of this crime from both a policing and judicial perspective.
- Increased training between law enforcement and legal practitioners in relation to the type of evidence which allows for effective, witnessless cases to be heard.
- Increasing training in relation to supporting vulnerable witnesses for both law enforcement and legal practitioners will assist in building relationships with victims of modern slavery over a period of sustained time and therefore appropriately support victims who wish to participate in criminal proceedings.
- Further research into the effects of delayed NRM decisions in relation to criminal proceedings in order to gauge the full extent of this issue.
- Compile data on the prevalence of the use of the defence in order to get a full picture of just how and when this is being used.

Conclusion

This article has examined the Modern Slavery Act 2015 through the pathway a victim would travel through; from initial identification, to the support they would receive and finally the legal remedies. From an operational victim centred perspective the Modern Slavery Act 2015 is buckling. Overloaded with cases, this thesis posits that the NRM is overwhelmed and as such, is leading to a compromised support system. The Government's 'New Plan for Immigration' has impacted identification of victims and hindered needed policy and guidance reform as it does not align with their policy agenda. Support is porous and the statutory guidance does not align with the practical reality of supporting victims of modern slavery. From a judicial perspective, practitioners are confused by definitions and are frustrated with the NRM in regard to the legal status of its decisions and furthermore the wait times impacting court proceedings.

Chapter One explored the identification of victims of modern slavery. From an operational victim-centred perspective the current identification process is currently capturing around 20% of the potential victims of modern slavery in the UK. This research identified three issue areas that were causing confusion in identification, namely training in terms of understanding the definition of a victim, awareness of the very nature of modern slavery itself being so unique to each victim's experience and finally the misalignment of the political climate and criminalisation of victims. The current state of the guidance in relation to training is spread across multiple documents and therefore the need to consolidate this guidance into a single digestible training document for front line workers and designated first responders would seek to address this confusion. Furthermore, the amount of updates to the statutory guidance are unpredictable in their time of publication and so, by creating a structure to update the regulations through annual or biannual reports, practitioners will be able to engage with the changes in a reasonable way without compromising the integrity of the material itself. The level of awareness of the legislation eight years on from its initial introduction in

2015 is disappointing. This research argues that if awareness is going to improve, training must be adequate in supplying front line workers and first responders the information they require to have a prominent awareness of the issue at hand. Additionally, awareness needs to continue to be a key outcome of training. This includes awareness of sector specific responses to identification of victims in order to provide a high level of provision no matter who identifies them. The Statutory Guidance is vast and comprehensive; however, the sheer density of it means that it is not realistic for relevant practitioners working in this field to hold this volume of information. Therefore, I recommend simplifying the list of indicators in the Statutory Guidance, with a focus on making them more directly applicable and specific and provide detailed definitions of terms for Section one and Section two. The current Government's policy agenda is suppressing the effectiveness of the MSA 2015. The misalignment between the Government's policy agenda of creating a 'hostile environment' for illegal migration' and the necessary environment to identify victims of modern slavery needs to be reconciled with victims in mind.²⁴² This has led to a disintegration of front line workers' trust in the NRM which must be restored if victims of modern slavery are to be identified. Separating the NRM from the Home Office would send a strong message to front line workers and first responders that the NRM is being de-politicised and thereby, creating a more stable platform for the long-term identification of victims. Overall identification of victims has come a long way since the creation of the NRM in 2009 and the introduction of the MSA in 2015 however, the research too has come a long way and operational practices have developed significantly. It is clear that the two need to be brought closer together in alignment in order to effectively increase identification of victims of modern slavery.

²⁴² Patel, Priti. "Home Secretary's statement on the New Plan for Immigration". *Home Office* (March 24 2021). <https://www.gov.uk/government/speeches/home-secretarys-statement-on-the-new-plan-for-immigration> ; Hynes, Patricia. "Exploring the Interface between Asylum, Human Trafficking and/or 'Modern Slavery' within a Hostile Environment in the UK". *Social Sciences (Basel)* Vol.11 (6) (2022), p.246.; Hodkinson, Stuart N., Hannah Lewis, Louise Waite and Peter Dwyer. "Fighting or fuelling forced labour? The Modern Slavery Act 2015, irregular migrants and the vulnerabilising role of the UK's hostile environment". *Critical Social Policy* Vol.41 (1) (2021), p.68-90.

Chapter Two examines support of victims of modern slavery. This paper identifies three areas that are leading to the overwhelming number of services set out to provide support to victims of slavery. Firstly the length of NRM wait times, secondly the lack of a right to work for foreign nationals whilst awaiting an NRM decision, and finally the limited number of designated first responder organisations. The current state of support for victims of modern slavery is overwhelming and there is a lack of understanding and research into the effects of this over-saturated system. The NRM wait times are extortionate, leaving victims in limbo for years while they wait for a conclusive grounds decision. Despite increases in staffing, the number of days it takes for an individual to receive a conclusive grounds decision is not going to dramatically reduce overnight. Therefore, I would recommend further research into the effects of the NRM wait times on victims' health, with the aim to implement practical solutions in the medium term while the wait times remain high.²⁴³ The current focus of the Government in relation to victims has been partly financial, but this research would ascertain that the dangers to victims quality of life is of greater importance. Furthermore, the nature of the support offered within the statutory guidance is out of touch with the nature of the support needed on the ground due to NRM wait times. I suggest that the support needs to address the current reality that victims and support agencies are facing, not the ideal one. This will require an increased funding model that can sustain longer term care for victims to assist overwhelmed first responder organisations. Victims of modern slavery are at significant risk of re-trafficking and therefore a better understanding of where we are 'losing' victims of modern slavery will help safeguard against this. This could be achieved by publishing the current threshold of definitions used by Salvation Army to determine the number of victims that are being lost, be clarified and would allow experts to determine the accuracy of data compared with their own definitions, allowing them to estimate the potential scale of the issue. Further, Foreign

²⁴³ Gardner, Alison. "An Idea Whose Time Has Come? Modern Slavery, Multiple Streams Approach and Multilayer Policy Implementation". *Journal of Human Rights Practice* Vol.10 (3) (2018), p.461-481.

Nationals make up 75% of potential victims referred to the NRM and this research identifies their increased vulnerability due to their immigration status amid the current political climate in the UK. Therefore, I would urge the Government to provide further support, security of employment and discretionary leave to remain for these victims, as it is critical to providing comprehensive and meaningful support to victims of modern slavery and enabling successful rehabilitation. The amendments to support in Section 64 of the Nationality and Borders Act 2022 run contrary to the evidence base in supporting victims of modern slavery and therefore I recommend bringing the minimum days set out in Section 50(A) in line with the research base to provide a minimum of 90 days support. From a victim-centred operational perspective, I would recommend increasing support to be more comprehensive in line with research and provide access to employment to increase rehabilitation and recovery prospects of victims of modern slavery. Overall the status of support is overwhelmed by the sheer volume of victims being identified and in need of support, and therefore the Government should assist with the rehabilitation and recovery of victims through an improved infrastructure in the first responder organisations, which are at present limited in their distribution across England and Wales. In basic terms there simply needs to be more first responder organisations.

Chapter Three concerns victims and justice. It critiques the reasons behind consistently low prosecution rates and the legal protections available to victims of modern slavery that have committed a crime in the Section 45 defence. This research identified three hindrances behind the low prosecution rates, namely confusion around application of relevant law, difficulties in ascertaining evidence, and NRM wait times impacting upon court proceedings. This research calls for further guidance to be provided to address concerns relating to the legal relationship of definitions provided in the MSA 2015 versus wider regional instruments, and the need for improved joint training between police and the legal sector in order to have a more cohesive understanding of the application of this crime from both a policing and

judicial perspective. Moreover, increased training between law enforcement and legal practitioners in relation to the type of evidence which allows for effective, witnessless cases to be heard. Increasing training in relation to supporting vulnerable witnesses for both law enforcement and legal practitioners will assist in building relationships with victims of modern slavery over a period of sustained time and therefore appropriately support victims who wish to participate in criminal proceedings. NRM wait times are hindering victims' ability to present decisions as part of their evidence and therefore more research needs to be done to gauge the full extent of this impact on victims in court proceedings. Finally, there is still limited data on the use of the section 45 defence and therefore this research suggests the compilation of data on the prevalence of the use of the defence in order to get a full picture of just how and when this is being used.

Finally, this research sought to investigate the modern slavery act's ability to achieve its goals to protect victims of modern slavery from an operational victim centred perspective. In conducting this qualitative analysis through semi-structured interviews with key informants and surveys and addition to the current literature, it has found that from an operational perspective the modern slavery act is limited in its reach, overwhelmed in terms of services that support it and confused in its legal application. The Act itself and surrounding guidance needs to be continually reviewed in order to maintain good practice in the area which is not currently being seen to. It is my hope that this research will assist in providing key recommendations in informing future policy.

Bibliography

National Legislation

- Modern Slavery Act (2015) (UK).
- Independent Anti-slavery Commissioner Bill (Appointment by Parliament) Bill [HC] (2022-2023) (UK).
- Modern Slavery (Victim Support) Bill [HL] (2019-21) (UK).
- Modern Slavery (Victim Support) Bill [HL] (2017-19) (UK).
- Nationality and Borders Act (2022) (UK).
- The Slavery and Human Trafficking (Definition of Victim) Regulations 2022

International Instruments

- Council of Europe Convention on Action Against Trafficking in Human Beings (adopted 16 May 2005, entered into force 01 February 2008) CETS 197.
- Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combatting Trafficking and in Human Beings and Protecting its Victims (adopted 5 April 2011) Official Journal of the European Union L101/1.
- European Convention for the Protection of Fundamental Rights and Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000, entered into force 25 December 2003) 3336 UNTS 319 (Palermo Protocol).

Jurisprudence

- Attorney General's Reference (Nos 2, 3, 4 and 5 of 2013), [2013] EWCA Crim 324, [2013] 2 Cr. App. R. (S.) 71
- Attorney General's Reference (Nos 37, 38 and 65 of 2010), [2010] EWCA Crim 2880, [2011] 2 Cr. App. R. (S.) 31
- DA v Secretary of State for the Home Department, [2021] A.C.D. 11
- DPP v M, [2021] 1 W.L.R. 1669
- MN v Secretary of State for the Home Department, [2021] 1 W.L.R. 1956
- M v Croatia, (2021) 72 E.H.R.R. 1
- MS (Pakistan) v Secretary of State for the Home Department, [2020] UKSC 9, [2020] 1 WLR 1373
- R v AAD, [2022] Crim. L.R. 581
- R (on the application of IJ (Kosovo)) v Secretary of State for the Home Department, [2021] 1 W.L.R. 2923
- R. (on the application of JP) v Secretary of State for the Home Department, [2020] 1 W.L.R. 918
- R (on the application of TDT, by his litigation friend) v Secretary of State for the Home Department & Equality and Human Rights Commissioner intervening [2018] EWCA Civ 1395.

R v Bowen, [1997] 1 WLR 372

R v Brecani (Kevin), [2022] Crim. L.R. 69

R v Graham, [1982] 1 W.L.R. 294

R v GS [2018] EWCA Crim 1824, [2018] 4 WLR 167

R v Hasan [2005] UKHL 22, [2005] 2 AC 467

R v Howe, [1987] AC 417

R v LM, [2010] EWCA Crim 2327, [2011] 1 Cr App R 12

R v MK, [2018] EWCA Crim 667, [2019] Q.B. 86

R v N, [2019] EWCA Crim 984, [2019] 6 WLUK 337

R v O, [2019] EWCA Crim 1389

SP (Albanian) v Secretary of State for the Home Department, [2019] EWCA Civ 951, [2019] 6 WLUK 271

Taiwo v Olaigbe and Onu v Akwiwu, [2016] UKSC 31, [2016] 1 W.L.R. 2653

V.C.L. and A.N. v The United Kingdom (Applications nos. 77587/12 and 74603/12), [2021] Crim. L.R. 586

References

Arthur, Raymond and Lisa Down. “Preventing the Criminalisation of Children Who Have Been Victims of Group-Based Sexual Exploitation Involving Grooming Tactics— Understanding Child Sexual Exploitation as Enslavement”. *Journal of Criminal Law (Hertford)* Vol.83 (5) (2019), p.370-380.

Arulrajah, Poojani and Sarah Steele.. “UK medical education on human trafficking: assessing uptake of the opportunity to shape awareness, safeguarding and referral in the curriculum”. *BMC Medical Education* Vol.18 (1) (2018), p.137-137.

Aspray, Nathaniel and Judith Matsiko. “Primary care for asylum seekers and refugees”. *InnovAiT* Vol.14 (4) (2021), p.214-222.

Binette, Olivier and Rebecca C. Steorts. “On the reliability of multiple systems estimation for the quantification of modern slavery”. *Journal of the Royal Statistical Society. Series A, Statistics in Society* Vol.185 (2) (2022), p.640-676.

Bird, Steven and Philippa Southwell. “Does the new 'slavery' defense offer victims of trafficking any greater protection”. *Archbold Review* Vol.9 (2015), p.7-9.

Bonning, John and Karen Cleaver. ““There is no “war on drugs””: An investigation into county line drug networks from the perspective of a London borough”. *Police Journal (Chichester)* Vol.94 (4) (2021), p.443-461.

Bristow, Jennifer and Helen Lomas. “The Modern Slavery Act 2015 Statutory Defence: A call for evidence”. *Independent Anti-Slavery Commissioner Office*. (2020)

- Broad, Rose and Nick Turnbull. "From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK". *European Journal on Criminal Policy and Research* Vol.25 (2) (2019), p.119-133.
- Brotherton, Vicky. "Class Acts? A comparative analysis of modern slavery legislation across the UK." In *The modern slavery agenda: Policy, politics and practice*, edited by Gary Craig, Alex Balch, Hannah Lewis and Louise Waite, 1st ed., 97–120. Bristol University Press, (2019).
- Bulman, May. "Priti Patel's focus on bolstering borders will lead to more exploitation in UK, warns modern slavery tsar". *The Independent (United Kingdom)*. (December 29, 2021 Wednesday). <https://advance-lexis-com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:64DJ-0261-DY4H-K0MS-00000-00&context=1519360>.
- Burland, Patrick. "The Victims of 'Unknown Exploitation' Hiding within the UK National Referral Mechanism". *OpenDemocracy* (Jan 27, 2021).
- Chan, Lax, Bernard W. Silverman and Kyle Vincent. "Multiple Systems Estimation for Sparse Capture Data: Inferential Challenges When There Are Nonoverlapping Lists". *Journal of the American Statistical Association* Vol.116 (535) (2021), p.1297-1306.
- Cherry, Joanna. "Committee Corridor: Modern slavery in the UK". *House of Commons Select Committees* (February 3 2023). <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/185856/committee-corridor-modern-slavery-in-the-uk/#:~:text=Measures%20in%20the%20Nationalities%20and,much%20harder%20to%20prosecute%20offenders>.
- Cockbain, Ella and Aiden Sidebottom. "War, Displacement, and Human Trafficking and Exploitation: Findings from an evidence-gathering Roundtable in Response to the War in Ukraine". *Journal of Human Trafficking* Vol. ahead-of-print (ahead-of-print) (2022), p.1-29.
- Cockbain, Ella and Helen Brayley-Morris. "Human trafficking and labour exploitation in the casual construction industry: An analysis of three major investigations in the UK Involving Irish Traveller offending groups.". *Policing : A Journal of Policy and Practice* Vol.12 (2) (2018), p.129-149.
- Craig, Gary. "The UK's Modern Slavery Legislation: An Early Assessment of Progress". *Social Inclusion* Vol.5 (2) (2017), p.16-27.
- Craig, Gary and Stephen Clay. "Who is vulnerable? Adult social care and modern slavery". *The Journal of Adult Protection* Vol.19 (1) (2017), p.21-32.
- Crane, Andrew, Genevieve LaBaron, Jean Allain and Laya Behbahani. "Governance gaps in eradicating forced labor: From global to domestic supply chains". *Regulation & Governance* Vol.13 (1) (2019), p.86-106.
- Crown Prosecution Services. "The Code for Crown Prosecutors". (2018)
- David, Keren and Michael Salter. "'They Are Here Without Chains, but With Invisible Chains': Understandings of Modern Slavery Within the New South Wales Settlement Sector". *Social & Legal Studies* Vol.31 (1) (2022), p.50-71.
- Dearden, Lizzie. "Law proposed to appoint anti-slavery watchdog after Suella Braverman leaves post vacant". *The Independent (United Kingdom)* (January 11, 2023 Wednesday). <https://advance-lexis->

com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:6795-YCV1-DY4H-K1B8-00000-00&context=1519360.

- Elmore Community Services. *Researching the extent and Nature of Modern Slavery in Oxford*. Oxford: Oxford: Elmore Community Services, (2022).
- Ferrell-Schweppenstedde, Samantha. "Day 46; Is there life after the Safe House for Survivors of Modern Slavery?". *Human Trafficking Foundation* (2016).
- Field, Frank and Elizabeth Butler-Sloss and Maria Miller, *Independent Review of the Modern Slavery Act 2015: Final Report* (Home Office, 2019)
- Forringer-Beal, Anna. "Why the 'Ideal Victim' Persists: Queering representations of victimhood in human trafficking discourse". *Anti-trafficking Review* Vol.19 (2022), p.87-102.
- Fouladvand, Shahrzad and Tony Ward. "Human trafficking, vulnerability and the state". *Journal of Criminal Law (Hertford)* Vol.83 (1) (2019), p.39-54.
- Garbers, Kate, Catherine Meredith, Dr Katarina Schwarz and the Human Trafficking Foundation. "Nationality and Borders Bill Part 5: Modern Slavery; Consideration paper". *The University of Nottingham Rights Lab* (October 2021). Garbers, Kate, Naomi Williams, Catherine Meredith, Vicky Brotherton, Dr Katarina Schwarz and the Human Trafficking Foundation. "Confirmations, Commitments, Concerns- How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted; Policy paper". *The University of Nottingham Rights Lab* (November 2022).
- Gardner, Alison. "An Idea Whose Time Has Come? Modern Slavery, Multiple Streams Approach and Multilayer Policy Implementation". *Journal of Human Rights Practice* Vol.10 (3) (2018), p.461-481.
- Gardner, John. "The many faces of the reasonable person". *Law Quarterly Review* Vol.131 (2015), p.563-584.
- Gearon, Alinka. "Child Trafficking: Young people's experiences of front-line services in England," *British Journal of Criminology* 59, 2: 481-500 (2019).
- Given, Lisa M. "Empirical Research'. *The Sage Encyclopedia of Qualitative Research Methods* (2012).
- Given, Lisa M. "Semi-structured Interviews'. *The Sage Encyclopedia of Qualitative Research Methods* (2012).
- Gledhill, Kris. "The committee on the rights of persons with disabilities and the fight against human trafficking". *Journal of International and Comparative Law* Vol.8 (1) (2021), p.249-282.
- Gregory, Colin. "VCL and AN v United Kingdom: human trafficking and criminal prosecutions". *European Human Rights Law Review* Vol.3 (2021), p.309-316.
- Gregory, Colin, "The Modern Slavery Defense". *Cambridge Law Journal* Vol.81 (3) (2022), p.470-473.
- Grundler, Maja. "Expanding the Right to Remain as a Trafficked Person under Article 4 ECHR and the ECAT". *Modern Law Review* Vol.84 (5) (2021), p.1093-1104.
- Hadjimatheou, Katerina and Jennifer Lynch. "UK anti-slavery policy at the border: Humanitarian opportunism and the challenge of victim consent to assistance". *European Journal of Criminology* Vol.17 (5) (2020), p.678-698.

- Hargreaves, David and Karl Laid. “Section 45 of the Modern Slavery Act 2015 - victim of trafficking - whether a defendant bears an evidential or legal burden to raise the issue whether they are a victim of trafficking”. *Criminal Law Review*, 2018 Vol.11 (2018), p.922.
- Harris, Hannah and Justine Nolan. “Outsourcing the enforcement of modern slavery: Overcoming the limitations of a market-based disclosure model”. *Journal of Industrial Relations* Vol.64 (2) (2022), p.223-247.
- Haughey, Caroline. ‘The Modern Slavery Act Review: One Year On’. *Home Office* (2016).
- Haughey, Caroline, Riel Karmy-Jones and Nicola Padfield. “Slavery in the UK today”. *Criminal Law Review* Vol.(9) (2019), p.745-747.
- House of Commons Deb 8 July 2014, vol584, cols166-167
<https://hansard.parliament.uk/Commons/2014-07-08/debates/14070874000001/ModernSlaveryBill>
- House of Commons deb 6 February 2023, Vol727
<https://hansard.parliament.uk/Commons/2023-02-06/debates/8FCA2682-BFC1-4D1E-A2AC-6EF75F1C6A6D/IndependentAnti-SlaveryCommissioner>
- House of Commons. (2021). Nationality and Borders Bill (Thirteenth sitting) Debated on Tuesday 2 November 2021. Craig Whittaker. Column 509. Available at:
[https://hansard.parliament.uk/commons/2021-11-02/debates/c531a49a-d066-4009-bcef94b03bf3fc67/NationalityAndBordersBill\(ThirteenthSitting\)](https://hansard.parliament.uk/commons/2021-11-02/debates/c531a49a-d066-4009-bcef94b03bf3fc67/NationalityAndBordersBill(ThirteenthSitting))
- House of Lords deb. 10 Feb 2022, Vol 818, column 1867.
- Heys, Alicia, Craig Barlow, Carole Murphy and Amy McKee. “A Review of Modern Slavery in Britain: Understanding the Unique Experience of British Victims and Why it Matters”. *Journal of Victimology and Victim Justice* Vol.5 (1) (2022), p.54-70.
- HM Government. “2021 UK Annual Report on Modern Slavery”. *Home Office* (October 2021).
- Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. “Both Sides of the Coin: An Inspection of how the police and National Crime Agency consider vulnerable people who are both victims and offenders in 'county lines' drug offending”. *HMICFRS*. (2020).
- Hodkinson, Stuart N., Hannah Lewis, Louise Waite and Peter Dwyer. “Fighting or fuelling forced labour? The Modern Slavery Act 2015, irregular migrants and the vulnerabilising role of the UK’s hostile environment”. *Critical Social Policy* Vol.41 (1) (2021), p.68-90.
- Home Office, ‘2019 UK Annual Report on Modern Slavery’ (Home Office October 2019)
- Home Office, ‘2020 UK Annual Report on Modern Slavery’ (Home Office October 2020)
- Home Office, ‘2021 UK Annual Report on Modern Slavery’ (Home Office October 2021)
- Home Office, 'Modern Slavery Strategy', *Home Office* (2014)
- Home Office, ‘Serious Violence Strategy’. *Home Office* (2018)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf
- Home Office and UK Visas and Immigration (UKVI). “National referral mechanism guidance: adult (England and Wales)”(2022).

<https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2019". *Home Office* (2020).

Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2020". *Home Office* (2021).

Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2021". *Home Office* (2022).

Home Office. "Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, end of year summary 2022". *Home Office* (2023). Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

Home Office. "Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland". (March 24 2020).

Home Office. "Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland". (March 3 2023). Available at: <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#about-this-guidance>

Hoyano, Laura and David Hargraves. "Victim of trafficking: 'R v Breani' (Kevin)". *Criminal Law Review* Vol.(1) (2022), p.69-76.

Hughes, Kirsty. "Human trafficking, 'SM v Croatia' and the conceptual evolution of Article 4 ECHR". *Modern Law Review* Vol.85 (4) (2022), p.1044-1061.

Husin, Lisa K.E. "Modern slavery in law: towards continuums of exploitation". *Australian Journal of Human Rights* Vol.26 (1) (2020), p.165-175.

Hunt, Jane, Rachel Witkin and Cornelius Katona. "Identifying human trafficking in adults". *British Medical Journal* Vol. 371 (2020).

Hymas, Charles. "Priti Patel's 'alarming' asylum seeker plans will harm modern slavery victims, claim watchdogs". *telegraph.co.uk*. (December 28, 2021 Tuesday). <https://advance-lexis-com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:64DC-GMG1-DY4H-K52K-00000-00&context=1519360>.

Hymas, Charles. "Home Office should be stripped of responsibility for modern slavery victims". *telegraph.co.uk*. (February 28, 2022 Monday). <https://advance-lexis-com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:64WK-R211-JBNF-W53J-00000-00&context=1519360>.

Hynes, Patricia. "Exploring the Interface between Asylum, Human Trafficking and/or 'Modern Slavery' within a Hostile Environment in the UK". *Social Sciences (Basel)* Vol.11 (6) (2022), p.246.

- Independent Anti-Slavery Commissioner. “IASC paper: Asylum decision times for potential victims of modern slavery October 2021”. *Independent Anti-Slavery Commissioner Office* (2021).
- Independent Anti-Slavery Commissioner and the University of Nottingham Rights Lab (2021), ‘The benefits and the barriers to accessing employment: Considerations for survivors of modern slavery’: Available at: https://www.antislaverycommissioner.co.uk/media/1599/rights_lab_access-to-work-pathways_final.pdf.
- Jiménez, Erika, Vicky Brotherton, Alison Gardner, Nicola Wright, Hannah Browne, Nancy Esiovwa, Minh Dang, Emily Wyman et.al. “The unequal impact of Covid-19 on the lives and rights of the children of modern slavery survivors, children in exploitation and children at risk of entering exploitation”. *Children & Society* Vol.37 (1) (2023), p.216-234.
- Joint Committee on Human Rights. “Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery”. *House of Commons and House of Lords* (15 December 2021). <https://publications.parliament.uk/pa/jt5802/jtselect/jtrights/964/96402.htm>
- Laird, Karl. “Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defense of duress: an opportunity missed?”. *Criminal Law Review* Vol 6 (2016), p.395-404.
- Laird, Karl and David Hargreaves. “Modern Slavery Act 2015: R. v MK and Gega (Persida)”. *Criminal Law Review* Vol.11 (2018), p.922-925.
- Knight, Stephen. “The Trafficking Defence in Criminal Law: Nexus and Compulsion”. *Journal of Criminal Law (Hertford)* Vol. 0 (2023), p.2201832311519.
- Landman, Todd. “Measuring Modern Slavery: Law, Human Rights, and New Forms of Data”. *Human Rights Quarterly* Vol.42(2) (2020), p.303-331.
- Lazzarino, Runa, Nicola Wright and Melanie Jordan. “Mental Healthcare for Survivors of Modern Slavery and Human Trafficking: A Single Point-in-Time, Internet-Based Scoping Study of Third Sector Provision”. *Journal of Human Trafficking* Vol. ahead-of-print (ahead-of-print) (2022), p.1-18.
- Machura, Stefan, Fay Short, Victoria Margaret Hill, Catherine Rhian Suddaby, Ffion Elena Goddard, Sophie Elisabeth Jones, Emma Louise Lloyd-Astbury, Luke Richardson et.al. “Recognizing Modern Slavery”. *Journal of Human Trafficking* Vol.5 (3) (2019), p.201-219.
- Mantouvalou, Virginia. “The Modern Slavery Act 2015 three years on”. *Modern Law Review* Vol.81 (6) (2018), p.1017-1045.
- Mantouvalou, Virginia. “Structural Injustice and the Human Rights of Workers”. *Current Legal Problems* Vol.73 (1) (2020), p.59-87.
- Maroukis, Thanos. “Keeping Up Appearances: The British Public Policy Response to the Trafficking of Domestic Workers in a Changing Regime of Social Protection”. *Journal of Immigrant & Refugee Studies* Vol.15 (2) (2017), p.155-170.
- Mennim, Sean. “Sentencing and the Modern Slavery Act”. *Journal of Criminal Law (Hertford)* Vol.82 (6) (2018), p.438.

- Mennim, Sean. "Sentencing Appeals and the Modern Slavery Act 2015: Evaluating the Status Quo". *Journal of Criminal Law (Hertford)* Vol.83 (6) (2019), p.519.
- Mennim, Sean. "Admissibility of Conclusive Grounds Decisions and s 45 of the Modern Slavery Act 2015". *Journal of Criminal Law (Hertford)* Vol.85 (3) (2021), p.244-249.
- Mennim, Sean. "The Non-punishment Principle and the Obligations of the State Under Article 4 of the European Convention of Human Rights: V.C.L. AND A.N. v the United Kingdom (applications nos.77587/12 and 74603/12)". *Journal of Criminal Law (Hertford)* Vol.85 (4) (2021), p.311-319.
- Mennim, Sean and Nicola Wake, "Burden of Proof in Trafficking and Modern Slavery Cases: R v MK; R v Gega [2018] Crim 667". *Journal of Criminal Law (Hertford)* Vol.82 (4) 2018, p.282-286.
- Mennim, Sean and Tony Ward. "Abuse of Process and the Modern Slavery Act 2015". *Journal of Criminal Law (Hertford)* Vol.84 (5) (2020), p.502-507.
- Metcalf, Elizabeth P. and Camilla Selous. "Modern Slavery Response and Recognition Training". *The Clinical Teacher* Vol.17 (1) (2020), p.47-51.
- Modern Slavery and Organised Immigration Crime Programme. "Modern Slavery and Organised Immigration Crime Programme- Annual Report 2020-21" *Modern Slavery and Organised Immigration Crime* (2021) <https://policingslavery.co.uk/media/2930/msoicu-annual-report-2021.pdf>
- Modern Slavery and Organised Immigration Crime Programme. "Modern Slavery and Organised Immigration Crime Programme- Annual Report 2021-22" *Modern Slavery and Organised Immigration Crime* (2022) <https://policingslavery.co.uk/media/3003/annual-report-final-v27-2-8-22.pdf>
- Modern Slavery Policy Unit. "It still happens here: fighting UK slavery in the 2020s". *The Center for Social Justice and Justice and Care* (2020).
- Muraszkiewicz, Julia. "Protecting Victims of Human Trafficking from Liability: An Evaluation of the Section 45 of the Modern Slavery Act". *Journal of Criminal Law (Hertford)* Vol.83 (5) (2019), p.394-405.
- Murphy, Carole. "Surviving trafficking, seeking asylum: waiting, status and the state". *International Journal of Sociology and Social Policy* Vol.41 (5/6) (2021), p.627-642.
- Olver, Kristen and Ella Cockbain. "Professionals' Views on Responding to County Lines-Related Criminal Exploitation in the West Midlands, UK". *Child Abuse Review (Chichester, England : 1992)* Vol.30 (4) (2021), p.347-362.
- Panos Europe Institute and United Alliance of Civilizations (UNAOC). "Media Friendly Glossary on Migration". *Open Society Foundations*, (2015). <https://www.unaoc.org/resource/media-friendly-glossary-for-migration/>
- Parpworth, Neil. "Prosecuting Victims of Modern Slavery and Trafficking: Does s 45 of the Modern Slavery Act 2015 Have Retrospective Effect?". *Journal of Criminal Law (Hertford)* Vol.85 (3) (2021), p.236-239.
- Patel, Priti. "Home Secretary backs county lines crackdown". *Home Office* (2020). <https://www.gov.uk/government/news/home-secretary-backs-county-lines-crackdown>

- Patel, Priti. "Alarming rise of abuse within modern slavery system". *Home Office* (March 20 2021). <https://www.gov.uk/government/news/alarming-rise-of-abuse-within-modern-slavery-system>
- Patel, Priti. "Home Secretary's statement on the New Plan for Immigration". *Home Office* (March 24 2021). <https://www.gov.uk/government/speeches/home-secretarys-statement-on-the-new-plan-for-immigration>
- Phillips, Coretta. "Utilising 'modern slave' narratives in social policy research". *Critical Social Policy* Vol.40 (1) (2020), p.30-49.
- Ramiz, Adam, Paul Rock and Heather Strang. "Detecting Modern Slavery on Cannabis Farms: The Challenges of Evidence". *Cambridge Journal of Evidence-Based Policing* Vol.4 (3-4) (2020), p.202-217.
- Rigby, Paul and Margaret Malloch. "Trafficked children: towards a social work human rights response". *Critical and Radical Social Work* Vol.8 (2) (2020), p.223-239.
- Roberts, Kate. "Life after Trafficking: A gap in the UK's modern slavery efforts". *Anti-trafficking Review* Vol.(10) (2018), p.164-168.
- Robinson G, McLean R, Densley J. "Working county lines: child criminal exploitation and illicit drug dealing in Glasgow and Merseyside". *International Journal of Offender Therapy and Comparative Criminology* 63: 694–711 (2018).
- Salvation Army. "Supporting survivors of Modern Slavery;Report on The Salvation Army's Modern Slavery Victim Care Contract July 2021 to June 2022". *Salvation Army* (2022)
- Sands, Matthew. "UDHR and Modern Slavery: Exploring the Challenges of Fulfilling the Universal Promise to End Slavery in All Its Forms". *The Political Quarterly (London. 1930)* Vol.90 (3) (2019), p.430-438.
- Schwarz, Katarina and Jing Geng. "Reasserting Agency: Procedural Justice, Victim-Centricity, and the Right to Remedy for Survivors of Slavery and Related Exploitation,". *Journal of Modern Slavery* 4, 2: 93-120 (2018).
- Schwarz, Katarina, Hannah Baumeister, Emily Brady, Sandra Dankova, Naomi Lott, Ana Valverde-Cano, Olivia Wright, and Nesrien Hamid, 'What Works to End Modern Slavery? A Review of Evidence on Policy and Interventions in the Context of Justice' *Delta 8.7 and Rights Lab* (2020).
- Schwarz, Katarina and Alexandra Williams-Woods. "Protection and support for survivors of modern slavery in the UK: assessing current provision and what we need to change". *Journal of Poverty and Social Justice* Vol.30 (2) (2022), p.98-119.
- Shankley, William. "Gender, modern slavery and labour exploitation: experiences of male Polish migrants in England". *Journal of Ethnic and Migration Studies*, 2021, Vol. ahead-of-print (ahead-of-print), p.1-18.
- Sharapov, Kiril. "Traffickers and Their Victims": Anti-Trafficking Policy in the United Kingdom". *Critical Sociology* Vol.43 (1) (2017), p.91-111.
- Sharp, Avril. "The National Referral Mechanism: Near Breaking Point". *Kalayaan* (February 2023).
- Shepherd, Rowena and Mick Wilkinson. "Operating in the dark: The identification of forced labour in the UK". *Critical Social Policy* Vol.41 (2) (2021), p.208-228.

- Silverman, Bernard W. “Modern Slavery: an Application of Multiple Systems Estimation”. *Home Office* (2014).
- Silverman, Bernard W. “Multiple-systems analysis for the quantification of modern slavery: classical and Bayesian approaches”. *Journal of the Royal Statistical Society. Series A, Statistics in Society* Vol.183 (3) (2020), p.691-736.
- Simpson Bethany. “Modern Slavery and Prosecutorial Discretion: When Is It in the Public Interest to Prosecute Victims of Trafficking?”. *Journal of Criminal Law (Hertford)* Vol.83 (1) (2019), p.14-19.
- Simpson, Bethany. “The Reasonable Victim of Modern Slavery”. *Journal of Criminal Law (Hertford)* Vol.83 (6) (2019), p.508.
- Strauss, Kendra. “Sorting victims from workers: Forced labour, trafficking, and the process of jurisdiction”. *Progress in Human Geography* Vol.41 (2) (2017), p.140-158.
- Southwell, Philippa, Michelle Brewer and Ben Souglas-Jones. *Human Trafficking and Modern Slavery Law and practice*. London: Bloomsbury Publishing, 2020.
- Stephan, Summer and Wendy Patrick. “Fighting modern-day slavery: Justice in Human Trafficking Cases Requires a Victim-Centered Approach”. *The Judges' Journal* Vol.60 (2) (2021), p.10.
- Stevenson, Mark. “Hidden in plain sight: the bystander effect and the mobilisation of modern slavery whistleblowing”. *Supply Chain Management* Vol.27 (1) (2022), p.128-139.
- Tangen, James. “Timescapes in Public Policy - Constructing the "Victim of Trafficking". *Journal of Borderlands Studies* Vol.37 (3) (2022), p.475-492.
- Thompson, Charles, Arun Mahay, David Stuckler and Sarah Steele. “Do clinicians receive adequate training to identify trafficked persons? A scoping review of NHS Foundation Trusts”. *Journal of the Royal Society of Medicine* Vol.110 (11) (2017), p.460-460.
- Thornton, Sara. "Rushed borders bill will fail victims of modern slavery". *thetimes.co.uk*. November 4, 2021 Thursday. <https://advance-lexis-com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:640S-0WR1-JBNF-W1NB-00000-00&context=1519360>.
- Thornton, Sara. "Fears about bill that would take support away from some modern slavery victims". *thetimes.co.uk*. (February 10, 2022 Thursday). <https://advance-lexis-com.nottingham.idm.oclc.org/api/document?collection=news&id=urn:contentItem:64RM-YGP1-DY4H-K15C-00000-00&context=1519360>.
- Thornton, Sara. “As the government’s anti-slavery chair, I see the Home Office failing – and victims suffering”. *theguardian.com* (March 17 2022). https://www.theguardian.com/commentisfree/2022/mar/17/anti-slavery-chair-home-office-survivors?CMP=Share_iOSApp_Other
- Thornton, Sara. “Independent Anti-slavery Commissioner Annual Report 2020-2021”. *Independent Anti-Slavery Commissioner's Office* (2021).
- Thornton, Sara. “Independent Anti-slavery Commissioner Annual Report 2021-2022”. *Independent Anti-Slavery Commissioner's Office* (2022).
- Thornton, Sara. “Letter to Priti Patel regarding the Nationality and Borders Bill”. *Independent Anti-Slavery Commissioner's Office* (September 7 2021).

- Thornton, Sara. "Letter to Home Secretary responding to the New Plan for Immigration". *Independent Anti-Slavery Commissioners Office* (May 6 2021).
- Turnbull, Nick and Rose Broad. "Bringing the problem home: The anti-slavery and anti-trafficking rhetoric of UK non-government organisations". *Politics (Manchester, England)* Vol.42 (2) (2022), p.200-215.
- Van Dyke, Ruth. "Monitoring and Evaluation of Human Trafficking Partnerships in England and Wales". *Anti-trafficking Review* Vol.(8) (2017), p.131-146.
- Van Dyke, Ruth. "The UK's Response to Modern Slavery; Law, Policy and Politics". In *The modern slavery agenda: Policy, politics and practice*, edited by Gary Craig, Alex Balch, Hannah Lewis and Louise Waite, 1st ed., 47-74. Bristol University Press, (2019).
- Wake, Nicola. "Human trafficking and modern day slavery: when victims kill". *Criminal Law Review* Vol 9 (2017), p.658-677.
- Wake, Nicola, Raymond Arthur, Thomas Crofts and Sara Lambert. "Legislative approaches to recognising the vulnerability of young people and preventing their criminalisation". *Public Law* Vol.1(2021), p.145-162.
- Ward, Tony. "Prosecution of Victims of Trafficking". *Journal of Criminal Law (Hertford)* Vol.86 (3) (2022), p.212-215.
- Washburn, Tessa, Marissa L. Diener, David S. Curtis and Cheryl A. Wright. "Modern slavery and labor exploitation during the COVID-19 pandemic: a conceptual model". *Global Health Action* Vol.15 (1) (2022), p.2074784-2074784.
- Weatherburn, Amy and Yvonne E. Mellon. "Child trafficking victims and legal guardians: Exploring the fulfilment of the EU trafficking directive in the context of the UK modern Slavery Act 2015 – Best practice or not fit for purpose?". *New Journal of European Criminal Law* Vol.10 (2) (2019), p.107-127.
- Webb, Philippa and Rosana Garcíandia. "State responsibility for modern slavery: uncovering and bridging the gap". *The International and Comparative Law Quarterly* Vol.68 (3) (2019), p.539-571.
- Williams-Woods, Alexandra and Yvonne Mellon. "Irregular Victims: Investigating the Immigration Status Decisions of Post-NRM Victims of Human Trafficking, the Availability of Eligible Benefits and the Related Impact on Victims of Trafficking," *Journal of Modern Slavery* (2018).
- Wood, Laura C.N. "Child modern slavery, trafficking and health: a practical review of factors contributing to children's vulnerability and the potential impacts of severe exploitation on health". *BMJ Paediatrics Open* 4, no. 1 (2020).
- Work and Pensions Committee, *Victims of Modern Slavery-Twelfth report* (HC 2016-17, 803) conclusions and recommendations, 6
- Wright, Nicola, Emma Hadziosmanovic, Minh Dang, Kevin Bales, Caroline Brookes, Melanie Jordan and Mike Slade. "Mental health recovery for survivors of modern slavery: grounded theory study protocol". *British Medical Journal Open* Vol.10 (11)(2020).
- Wright, Nicola, Melanie Jordan and Runa Lazzarino. "Interventions to support the mental health of survivors of modern slavery and human trafficking: A systematic review". *International Journal of Social Psychiatry* Vol.67 (8) (2021), p.1026-1034.

Wroe, Lauren Elizabeth. "Young people and "county lines": a contextual and social account".
Journal of Children's Services Vol.16 (1) (2021), p.39-55.

Yeon, Thomas and Edward Lui. "Modern Solutions to Human Trafficking- A Tangled Journey".
Nottingham Law Journal Vol.29 (1) (2021), p.1.