

FEBRUARY 2023

Slavery at Home: a new bill to tackle slavery in Britain



Foreword

Modern slavery is a crime that impacts thousands of people each year who fall victim to criminals who abuse others for their own profit. The very real need to tackle modern slavery happening here in our communities is getting lost in the recent suspicions that people are falsely claiming to be modern slavery victims to bypass immigration rules. You would be forgiven for not knowing that the largest group of people referred into our modern slavery system are in fact British. Their experiences and the experiences of child slaves so often lost in a war of words and rhetoric.

This paper from Justice and Care and the Centre for Social Justice is a timely and welcome redirection, calling us back to the core of the fight against this horrendous abuse on our doorstep: bringing offenders to justice and supporting victims to recover.

As the paper suggests, we need to focus on the cause of the problem and stop this being a low risk - high reward crime. The four themes highlighted by the paper give us a road map to achieve this.

Cuckooing seems to be a growing form of modern slavery. We must outlaw this exploitation of vulnerable people, threatened and manipulated by drugs gangs who take over their home. We cannot leave them any longer to suffer behind closed doors at risk of being prosecuted themselves.

More generally we need to get tougher on modern slavery offenders. Too few offenders are being prosecuted and sentences still seem far short of the harm caused despite the life sentence created by the Modern Slavery Act. Prosecution of slavery gangs has to be a priority and we must give serious thought to how we ensure offenders receive penalties, both prison sentences and civil orders that are commensurate to the harm caused and effective at preventing continued exploitation. For too long too many people have got away with enslaving both adults and children. Although a landmark piece of legislation, the sea change presented by the 2015 Modern Slavery Act has not yet been fully realised.

We can't do this without survivors' testimony which is often the missing piece in the puzzle that brings offenders to justice. Supporting them well enables survivors to participate in justice. The Government should take note of the 82% of people polled for this paper who saw the need for more government support for victims to bring slavery gangs to justice. I have seen first hand working in these support services how we have no chance of achieving justice outcomes and a safer country without supporting victims of modern slavery throughout their journey.

And we must not forget the slavery that reaches our highstreets through national and global supply chains - stronger supply chain reporting and import controls proposed in this paper are worth consideration to encourage more wide-spread responsible business practice.

Our country should be proud of our efforts in the past on Modern Slavery and we should strive to be proud again. Modern Slavery has no place in any part of our country, every victim must be supported and every perpetrator convicted. I welcome this paper and its contribution to the much needed discussion of how to build on the 2015 Modern Slavery Act and step up our response to slavery in our communities. We need the new modern slavery bill promised by the Government and this paper points the way forward.

Jess Phillips MP

Preface

Some causes should be elevated well above party political point-scoring and Westminster jostling - fighting the evil of modern slavery and human trafficking is one of them. Saving lives from this sickening abuse and locking up those who manage it on British soil should unite the political community. This isn't about Left and Right or big State versus small State, nor about a choice between unrestrained immigration and controlling our borders. This is about our national moral fibre in the face of a hidden and growing crime.

Britain has come a long way in our efforts to tackle the criminal gangs destroying lives for profit, including leading global efforts at the UN and G7 in recent years, and through 2015's widely-respected Modern Slavery Act. Yet we also know how fast this abuse evolves, meaning Governments need to work hard to target the crime properly and find its often hidden victims. Post-pandemic pressures, the devastating invasion in Ukraine and a cost of living crisis only add to Britain's vulnerability to slavery and trafficking.

That is why we call on the Government to prioritise the Modern Slavery Bill announced in the 2022 Queen's speech, and to use it to strengthen rather than water down our country's fight at home and overseas.

For as much as we celebrate progress of late, long-term weaknesses in Britain's anti-slavery response remain and must be tackled urgently if we are to live up to political rhetoric about maintaining a world-leading response.

This paper, therefore, outlines four key ways that Ministers could do that. First, stamping out an emerging form of slavery known as 'cuckooing', which is taking root and bringing misery to many vulnerable people in the UK. It cannot be allowed to flourish behind people's front doors. Second, we call on Ministers to ensure that justice is served with the strength and seriousness these crimes deserve. We have to make more of the punishments in place, consider new ones and deliver meaningful sentencing if this is to move from a low risk - high reward criminal market, to a high risk - low reward one for these evil gangs. Third, we need to bolster the requirements on business and public sector supply chains. Too many are either unaware of their transparency requirements or dodging them with no consequences. We don't accept this when it comes to priorities like animal welfare or the environment, so we certainly should not accept it when it comes to human slaves in production lines. Finally, we need effective, committed care for victims of slavery. The NRM and our overall response to those whose lives have been broken by this abuse needs to change and change fast, beginning with a longer-term package of help for those recovering. Evidence shows that if we help them we also stand a much greater chance of tackling the traffickers too.

For centuries our country has led the way in the fight against slavery, from taking on the transatlantic trade to the pioneering legislation in 2015. The promise of a new Bill was welcome and must be seen through, but its test must be whether life improves for victims and gets tougher for criminals. This paper sets a course to achieve that.

Christian Guy, Chief Executive, Justice and Care

Andy Cook, Chief Executive, The Centre for Social Justice

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Executive Summary

In 2015 the Modern Slavery Act marked a turning point in the fight against slavery and human trafficking and set the UK as a global leader in tackling this horrendous crime. Nearly eight years later, despite increased awareness and understanding, the organised crime networks behind modern slavery are continuing to act with impunity—costing the UK billions of pounds and ruining thousands of lives.

Increasing numbers of potential victims are being identified and referred for support, nearly four times as many in 2021 as in 2015, including significant numbers of British victims who are now the single largest nationality represented. Yet more still go unidentified - in 2020, we estimated there could be at least 100,000 victims in the UK, 10 times the number referred for support that year. The imperative to stop slavery gangs in their tracks could not be clearer, yet prosecution rates remain low. The truth is that modern slavery remains a low risk, high reward crime.

Recently concerns have been raised that false claims of modern slavery are being used to bypass the immigration system. The National Referral Mechanism must be able to identify any false claims but these concerns should not divert attention from tackling slavery or reduce support for victims. Independent polling shows that the public believe that cracking down on false modern slavery claims should not lead to a reduction in victim support (53 per cent) and that more government support for victims is needed in order to bring more criminal gangs to justice (82 per cent).¹

There is an urgent need to shift the balance of risk and reward on modern slavery. While the Modern Slavery Act 2015 (MSA 2015) set the foundation, now is the time for a new drive towards eradicating exploitation.

At home this means that no-one must be left behind in the drive to address the cost of living crisis and move towards a levelled up UK where everyone has the opportunity to flourish. The Government must make it a priority to protect vulnerable people and communities from offenders and organised crime gangs who seek to take advantage and exploit them.

Abroad, as we move into a new chapter for Global Britain with new trade and political relationships, the Prime Minister has an opportunity to put the UK at the forefront of tackling modern slavery across the globe.

There can be no compromise. We must be resolute in our determination to be tough on modern slavery at home and abroad.

In May 2022 the Government announced plans for a new modern slavery bill. A refreshed modern slavery strategy is also expected. The Government now has an opportunity to take swift and bold action injecting new momentum into the fight against modern slavery and shift the balance of risk and reward so criminals can no longer profit from human misery.

This paper sets out four key ways to make that shift. These are:

1. Stamping out emerging forms of modern slavery by making 'cuckooing' a criminal offence

Cuckooing is where offenders exploit someone by taking over their home and use the property for their own purposes, often the storage of drugs or weapons but not exclusively. Victims are often targeted because they are vulnerable through addiction,

¹ Polling by Opinium for the Centre for Social Justice and Justice and Care, field dates: 12-14 October 2022

age, or disability, and offenders can be violent and threatening. Exploiting someone by taking over their home is not currently a criminal offence. The CPS has said cuckooing is out of reach of the MSA 2015 where there is no movement and no other 'labour' is involved. Other offences such as drugs crimes or generic organised crime offences do not address the exploitation of the victim. **The Home Secretary should use the forthcoming Modern Slavery Bill to protect vulnerable people at risk of cuckooing and adequately prosecute the perpetrators by making it a specific modern slavery criminal offence.**

2. Getting tough on modern slavery offenders

The prosecution rates for modern slavery offences remain low. Data on prosecution rates and sentencing is incomplete, but available data suggests despite the increase of the maximum sentence for modern slavery crimes to life imprisonment in 2015, average sentences are not commensurate with the devastation modern slavery causes to victims. Civil orders (STPOs and STROs) created by the MSA 2015 can be imposed on offenders to restrict their behaviour including travel restrictions or preventing them engaging in certain kinds of business or employment. The orders can provide additional consequences for offenders, protection for current victims and prevent others being abused by modifying their behaviour, yet only a third of convicted offenders receive an STPO. **Increasing prosecution and conviction rates must be a key focus of the new modern slavery strategy. A thorough review of sentencing patterns should be undertaken to identify challenges and areas for operational improvement and data should be published annually on sentencing outcomes for all modern slavery offenders. The new modern slavery bill should introduce a national register for modern slavery offenders – similar to the sex offenders register – and make imposition of an STPO a statutory requirement on conviction for modern slavery offences. It should also increase access to STPOs and STROs in other circumstances such as after conviction for other offences and after applications by a wider range of chief constables. The wider range of orders available and their interaction with STPOs/STROs should be reviewed.**

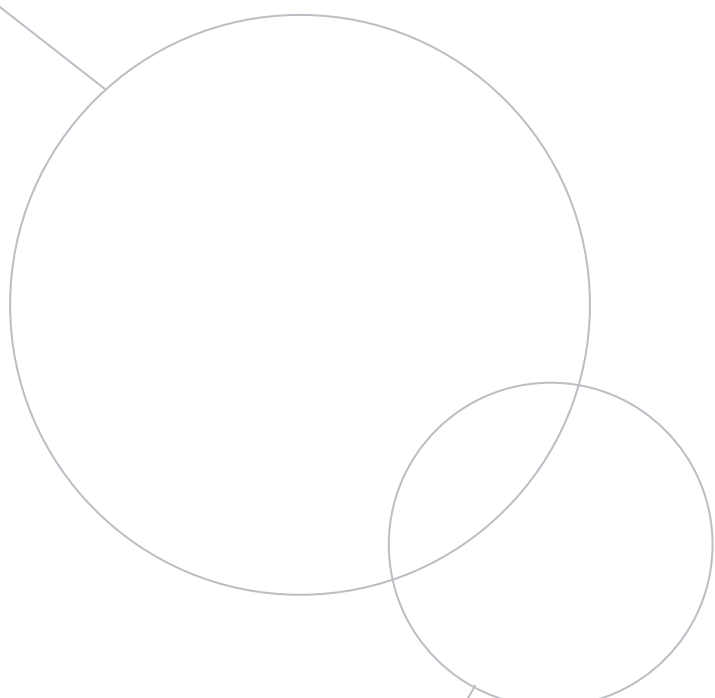
3. Shifting the balance in business supply chains

Globalised supply chains bring considerable risks of forced labour into the UK market. The British public has been horrified by the reports of modern slavery in PPE supply chains during the COVID-19 pandemic and state-sponsored forced labour of hundreds of thousands of Uyghur people in China. There is huge potential for action by businesses to reduce modern slavery around the world, but, this requires decisive Government action to create a level playing field with consistent standards expected of all companies. The MSA 2015 created the first national obligations on businesses to report action against modern slavery, however, non-compliance and poor quality reporting has limited its effectiveness. As Global Britain moves into a new chapter after Brexit we must once again take a lead and strengthen protections against goods made with forced labour entering the UK market in both public and private supply chains. **The new modern slavery bill should strengthen section 54 reporting requirements by (i) extending them to public authorities and investment organisations, (ii) setting mandatory minimum reporting requirements with additional requirements to increase the quality of information provided including details of all instances of forced labour identified, remediation taken or reasons for null reports, and (iii) introducing penalties for failure to comply with the section including disqualification from holding a Director's position and a fine set at an appropriately dissuasive level, proportionate to an organisation's turnover. The bill should also establish a framework for the transparent imposition of WTO-compatible import controls**

targeting specific companies and goods affected by forced labour, that will encourage the remediation of forced labour practices as well as preventing goods from entering the UK market. UK trade deals should support these controls by containing strong anti-slavery provisions. The Government should take the earliest opportunity to put in place a consistent approach to eradicating modern slavery from all government supply chains emulating the regulation-making power under the Health and Care Act 2022. We also urge the Government to prioritise consideration of a comprehensive framework for mandatory due diligence including for modern slavery over the coming years.

4. Smarter support for modern slavery victims

Victims are the key to unlocking progress against slavery offenders. We need a smarter approach to support which sees it as not simply a crisis intervention for individuals, but a strategic investment crucial to bringing offenders to justice and preventing further exploitation. Evidence shows that with appropriate, consistent support more victims engage with investigations and prosecutions providing vital evidence and intelligence that brings criminals to justice. But at present there is limited statutory provision of support available once the Home Office has confirmed someone as a victim. The current system for extending support is not working, in large part because of a bureaucratic process requiring victims to regularly provide evidence of their need at repeated assessments after short periods of support. The Government has already committed to providing a minimum of 12 months support for confirmed victims who need it, but the guidance has not yet been produced to make this a reality. **The new modern slavery bill should provide all confirmed victims with a minimum of 12 months of support after the NRM without a complex bureaucracy to 'prove' needs directly related to exploitation. We also urge the Government to ensure that confirmed victims with irregular immigration status receive temporary leave to remain so all victims can access support and take action to increase availability of specialist Victim Navigators embedded with police forces to support modern slavery victims to engage with the criminal justice process.**



Introduction

The Modern Slavery Act 2015 (MSA 2015) was a landmark piece of legislation, bringing together criminal interventions on contemporary forms of exploitation, naming them as the slavery they are and introducing maximum life sentences. The Act established the first national framework around the world for bringing transparency to business action on modern slavery in their supply chains. It also established the role of Independent Anti-Slavery Commissioner (IASC) to provide a distinct voice to identify, promote and encourage best practice in tackling modern slavery and identifying and supporting victims.

Since the introduction of the MSA 2015 understanding of the nature and scale of modern slavery in this country has increased. The number of possible victims referred to the National Referral Mechanism (NRM) for formal identification has increased from 3,264 in 2015 to 12,727 in 2021.² The duty on public authorities to notify the Home Office of adult potential victims identified but not referred, introduced by the MSA 2015, has also highlighted increasing numbers of likely victims being identified but not accessing the support available through the NRM. 762 such notifications were made in 2016 compared with 3,190 in 2021.³ Estimates of the full extent of modern slavery have also increased. In 2014 the Home Office estimated there to be between 10,000 and 13,000 victims of modern slavery in the UK,⁴ whereas in 2020 using police data we calculated there are likely to be at least 100,000 victims at any given time.⁵

It is not just our understanding of the scale of modern slavery that has developed, but also the forms it takes and the people who are affected. Significant numbers of British nationals are now being referred to the NRM, including many children caught in exploitation for criminal activities, which is itself the most commonly reported single form of modern slavery. We have seen modern slavery offenders continually adapt and evolve their operations to take advantage of new technologies or bypass changing circumstances such as the COVID-19 pandemic.

Despite the legislative changes and increased awareness created by the MSA 2015, prosecution and conviction levels are still comparatively low. Modern slavery remains, by and large, a low risk/high reward crime with some perpetrators earning or saving substantial sums from the exploitation of their victims. In 2014 the International Labour Organisation estimated global profits of US\$150.2 billion from forced labour.⁶

Recently concerns have been raised about false modern slavery claims being used to bypass the immigration system, particularly in the context of increasing flows of migrants crossing the channel in small boats. The National Referral Mechanism must be able to identify any false claims, but, this must not distract from the need to tackle modern slavery happening here in the UK and supporting genuine victims. 53 per cent of people polled said the Government should strengthen the processes to spot people making false modern slavery claims without reducing any of the support currently given to victims and 82 per cent believe more government support for victims is needed in order to bring more criminal gangs to justice.⁷

The Modern Slavery Act 2015 set the foundation, now is the time for a new drive towards eradicating exploitation and to shift the balance of risk and reward on modern slavery.

² Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2021

³ Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2021

⁴ Modern Slavery Strategy, HM Government November 2014

⁵ It Still Happens Here: Fighting UK Slavery in the 2020s Justice and Care and the Centre for Social Justice, July 2020

⁶ Profits and Poverty: The Economics of Forced Labour, ILO 2014;

⁷ Polling by Opinionium for the Centre for Social Justice and Justice and Care, field dates: 12-14 October 2022

In May 2022, the Government announced it would bring forward a new modern slavery bill to “strengthen the protection and support for victims of human trafficking and modern slavery and increase the accountability of companies and other organisations to drive out modern slavery from their supply chains.”⁸ This new bill is an opportunity to build on the foundations of the MSA 2015 and shift the balance of risk/reward for this abhorrent crime which strips people of their dignity and humanity. We urge the Home Secretary to take this opportunity to build on the ground breaking Modern Slavery Act 2015 (MSA 2015), making our communities resistant and resilient to exploitation and reasserting the UK as a global leader in this fight.

There are four specific areas where the Centre for Social Justice and Justice and Care believe action can be taken in this new modern slavery bill to shift this balance: addressing the emerging form of modern slavery known as cuckooing, supporting victims toward recovery, strengthening our response to offenders, and preventing modern slavery in company supply chains.



If we are to shift the risk/reward balance of modern slavery the first thing of importance is

⁸ The Queen's Speech 2022: background briefing notes HM Government May 2022

Chapter One

Stamping out emerging forms of modern slavery: Making ‘cuckooing’ a criminal offence

ensuring that all current and emerging forms of slavery are within reach of our criminal law.

When the MSA 2015 was introduced, modern slavery for the purpose of criminal activities (commonly referred to as ‘criminal exploitation’) was far less understood than it is today. At that time, NRM referrals for this form of exploitation were subsumed within the ‘labour exploitation’ category and the only form that was widely discussed was related to cannabis cultivation. Since then, both understanding and police tactics have changed, in particular with the recognition of widespread human trafficking and exploitation of young people in drug distribution networks often referred to as ‘county lines’ activity.

In 2021, 33 per cent of all potential victims referred to the NRM reported criminal exploitation alone and a further 15 per cent reported criminal exploitation with other types such as sexual or labour exploitation.⁹ Referrals tagged as ‘county lines’ cases specifically amounted to 2,053, 16 per cent of all referrals, most of these boys under the age of 18.

In 2019 the Independent Review of the Modern Slavery Act 2015 rejected a suggestion of amending the definition of ‘exploitation’ in section 2 of the MSA 2015. The review considered it sufficiently flexible and suggested that exploitation that does not meet the threshold for slavery, servitude and forced or compulsory labour could be addressed by the Gangmasters and Labour Abuse Authority or civil enforcement routes.¹⁰ However, our research has shown that in respect of one growing type of criminal exploitation— ‘cuckooing’— there is a significant gap in the criminal law.

‘Cuckooing’ is the name given to a situation where offenders exploit someone by taking over their home and use the property for their own, usually criminal, purposes —commonly drug dealers taking control of the victim’s home and using the premises to store, prepare or distribute drugs as part of ‘county lines’ networks. Offenders can be violent or threatening to victims or they may control victims’ behaviour and even limit their use of their own home.¹¹

Police reports suggest there are many hundreds of vulnerable victims currently suffering as a result of ‘cuckooing’. During a national week of police enforcement action on ‘county lines’ drug dealing during 7-13 March 2022, 799 cuckooed addresses were visited.¹² During a similar week of action in October 2021, 894 cuckooed addresses were visited.¹³ Our polling found that one in eight people (13 per cent) have seen signs of cuckooing in their community.¹⁴ Comprehensive data on the number of cuckooing victims is not available as there is no systematic approach to recording these cases. We submitted Freedom of Information requests to all 43 local police forces in the UK. Although at the time of writing only 30 had responded to our request, only seven could provide us with any data on the number of cuckooing victims. The majority of police forces we approached told us that any

⁹ Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2021

¹⁰ Independent Review of the Modern Slavery Act 2015: Final Report Home Office, 2019

¹¹ County Lines Violence, Exploitation & Drug Supply 2017 National Crime Agency, 2017; The variable and evolving nature of ‘cuckooing’ as a form of criminal exploitation in street level drug markets. Jack Spicer, Leah Moyle, & Ross Coomber Trends Organ Crim 23, 301–323 (2020)

¹² Over 1,400 arrested and 671 vulnerable people safeguarded in county lines week of action, Press Release, National Police Chiefs’ Council, 18 March 2022

¹³ Over 1,400 arrested in a national week-long operation on county lines drug dealing, Press Release, National Police Chiefs’ Council, 21 Oct 2021

¹⁴ Polling by Opinium for the Centre for Social Justice and Justice and Care, field dates: 12-14 October 2022

data they held on cuckooing cases could not be reported because the data is not in an easily retrievable format.

More than one force specifically stated that “This is because there is no specific offence code to undertake relevant searches for ‘cuckooing’ within our crime database.”¹⁵

Many people who become victims of ‘cuckooing’ are targeted because they are vulnerable. Victims can have issues with substance misuse themselves, others may be elderly or have learning disabilities, mental or physical health challenges or have suffered other previous trauma such as domestic abuse.¹⁶ For example, in response to our FOI request, North Wales Police told us that of the 54 cuckooing victims they had identified between March 2021 and April 2022, 44 had drug warning markers (so thought to have issues with substance misuse), 10 were disabled or learning disabled and 39 were unemployed.¹⁷ Similarly Dorset Police reported 26 cuckooing victims including 14 people with markers which highlighted additional vulnerabilities as well as victims with issues with substance misuse, disabilities and unemployment.¹⁸ Offenders take advantage of these vulnerabilities to groom or coerce their victims in order to gain access to their property, but this can also make it harder for victims to seek help. Some victims may initially consent or invite the offenders into their homes, whether because they believe them to be friends or in return for drugs or after entering an intimate relationship with the offender, only later to experience the full reality.¹⁹ Tackling cuckooing is an essential part of building thriving communities where vulnerable people are protected and no one gets left behind.

Despite growing awareness of cuckooing and the many victims affected, our research has revealed significant challenges in bringing offenders to justice. Exploiting someone by taking control of their home is not currently a criminal offence. We have heard compelling frontline evidence from a number of police forces that the CPS is regularly refusing to charge cuckooing offenders under the MSA 2015 a position confirmed and clarified by the Director of Public Prosecutions.

In simple terms the nature of cuckooing, in which the exploiter intrudes into the person’s own home means the ‘travel’ element of the section 2 ‘human trafficking’ offence is missing. Whilst the section 1 ‘slavery, servitude and forced or compulsory labour’ offence has no requirement for ‘travel’ the scope is narrower and as we reported in 2021 is not considered to apply to victims exploited and controlled through the occupation and use of their home, unless they are required to perform additional ‘labour’.²⁰

It has been suggested that other criminal charges can be brought against cuckooing offenders including drugs and organised crime offences and that the exploitation can be addressed as an aggravating factor at the point of sentencing.²¹

In two national weeks of intensive police action on county lines a total of 894 cuckooed addresses were visited between 11-17 October 2021 and 799 cuckooed addresses were visited in 7-13 March 2022

Exploiting someone by taking control of their home is not currently a criminal offence.

¹⁵ Quoted here: Surrey Police response to FOI request 002400/22

¹⁶ County Lines Violence, Exploitation & Drug Supply 2017 National Crime Agency, 2017; A life without fear?, Foundation for People with Learning Disabilities Disabilities, 2018; Becoming cuckooed: conceptualising the relationship between disability, home takeovers and criminal exploitation, (2022) Stephen J. Macdonald, Catherine Donovan, John Clayton & Marc Husband, Disability & Society, DOI: 10.1080/09687599.2022.2071680

¹⁷ Heddlu Gogledd Cymru North Wales Police response to FOI request 2022/520, 23 June 2022

¹⁸ Dorset Police response to FOI request 2022-519, 27 July 2022

¹⁹ The variable and evolving nature of ‘cuckooing’ as a form of criminal exploitation in street level drug markets. Jack Spicer, Leah Moyle, & Ross Coomber Trends Organ Crim 23, 301-323 (2020)

²⁰ Cuckooing, Centre for Social Justice and Justice and Care 2021

²¹ Hansard, House of Lords 22 November 2021 Column 712; Cuckooing, Centre for Social Justice and Justice and Care 2021

However, this is an unsatisfactory approach. It does not recognise the true nature of the crime committed or adequately hold offenders to account for the abuse and harm done to the individual victim. Nor are these offences necessarily applicable to every situation of cuckooing, for example, cuckooing need not involve drugs offences or organised crime groups. For example it has been suggested that cuckooing is associated with the exploitation of disabled people at a local level by local people not just organised crime groups from other areas involved in county lines drug dealing.²² Likewise cuckooing can be similar to coercive or controlling behaviour but that offence under section 76 of the Serious Crime Act 2015 does not apply if there is no family or intimate relationship between the individuals.

In our view, taking over someone's home without their consent or by abusing their vulnerability is a serious, harmful and exploitative act in and of itself and should be a criminal offence. Almost four in five of the people we polled (78 per cent) agreed that cuckooing should be a criminal offence.²³ Far more than a property crime it is a form of modern slavery where a person's safety, security and dignity are trampled on. It causes many victims to live in fear due to the invasion of their premises and the coercive and controlling behaviour of the offender. Some are cut off from friends and family, others have even left their homes and been forced to sleep on the streets as a result of cuckooing.²⁴

There is a further impact on the police and other services, such as those operating in the third sector, that pick up the bill, temporally, financially, physically and emotionally, when trying to safeguard cuckooing victims. Meanwhile, criminals profit.

The absence of a specific modern slavery offence of cuckooing means offenders' criminal records lack the warning signs of exploitation and victims are not fully recognised either. There continue to be reports of vulnerable individuals, even acknowledged victims of cuckooing who are themselves convicted for allowing the criminal activity to take place in their homes.²⁵

The absence of a clear statement in law that cuckooing is a form of slavery contributes to a context where such victims are prosecuted rather than protected. Even where victims are treated as such, because cuckooing alone cannot be prosecuted under the MSA 2015, victims do not have automatic access to 'special measures' for giving evidence.²⁶ They may also find it more difficult to be recognised as slavery victims when accessing support services (we note that there is no specific mention of cuckooing as a form of criminal exploitation in the statutory guidance for identifying and support victims of modern slavery under section 49 of the MSA 2015).²⁷

"It's scary, your house is taken over, you don't know who's knocking on your door. People coming to your door every two minutes looking for them. They're threatening people in your home, threatening me in my home. It totally takes over your life."

Survivor supported by
Justice and Care

²² Becoming cuckooed: conceptualising the relationship between disability, home takeovers and criminal exploitation(2022), Stephen J. Macdonald, Catherine Donovan, John Clayton & Marc Husband, *Disability & Society*, DOI: 10.1080/09687599.2022.2071680

²³ Polling by Opinium for the Centre for Social Justice and Justice and Care, field dates: 12-14 October 2022

²⁴ The variable and evolving nature of 'cuckooing' as a form of criminal exploitation in street level drug markets. Jack Spicer, Leah Moyle, & Ross Coomber *Trends Organ Crim* 23, 301-323 (2020)

²⁵ Cuckooing, Centre for Social Justice and Justice and Care 2021; 'Cuckooing' victim confined to lounge as bedroom used to grow £44k cannabis farm, *Liverpool Echo*, 2 November 2021

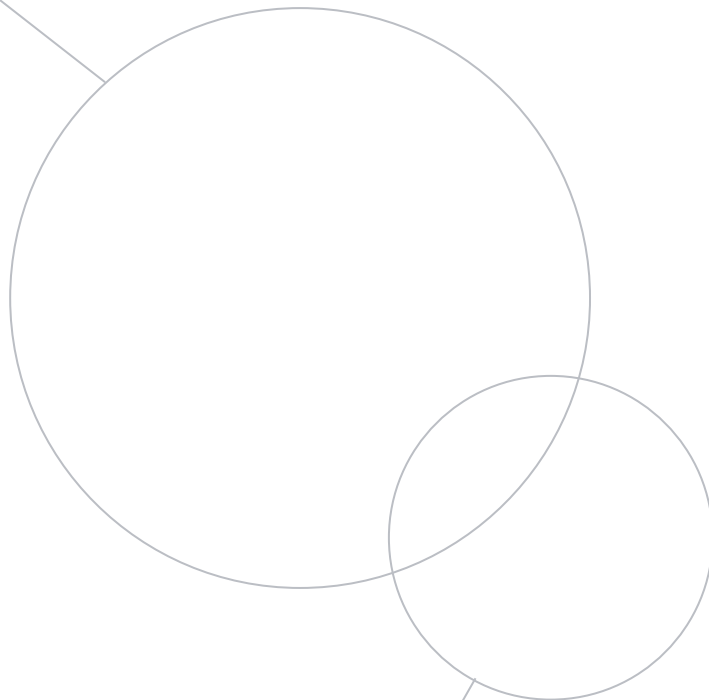
²⁶ Under section 17 of the Youth Justice and Criminal Evidence Act 1999 victims of section 1 and section 2 MSA 2015 offences are automatically considered 'intimidated witnesses' and eligible for special measures.

²⁷ 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 Version 2.11 Home Office September 2022

If we are to shift the risk/reward balance when it comes to modern slavery we need to ensure perpetrators of all forms of modern slavery are met with robust and clear legislation that can reflect the true criminality of their offending from the indictment to sentencing. Relying entirely on broad sentencing guidelines deployed on conviction for other offences to recognise the offending is wholly inadequate to meet the threat to public safety.

Of course, some people allow criminals to use their properties for drug dealing and other criminal activity without undue influence and the law should address that. But where victims are coerced and their home controlled against their will then it must be possible to charge the offenders with offences that recognise that exploitation. Similarly, we recognise the possibility that some of those who are involved in taking over the property of a cuckooed person are themselves victims of modern slavery given the many young people exploited to transport and distribute drugs. But again, the law (through access to the section 45 MSA 2015 statutory defence) and a sensitive approach from police and prosecutors should be able to identify and respond to such cases.

Recommendation 1: The new modern slavery bill should include specific provision to criminalise the act of cuckooing as a form of modern slavery. The provision should ensure victims have access to support and special measures in court as modern slavery victims and that those offenders who may themselves be victims of modern slavery are able to access the statutory defence. The offence should be identifiable in recorded crime and court statistics.



Chapter Two

Getting tough on modern slavery offenders

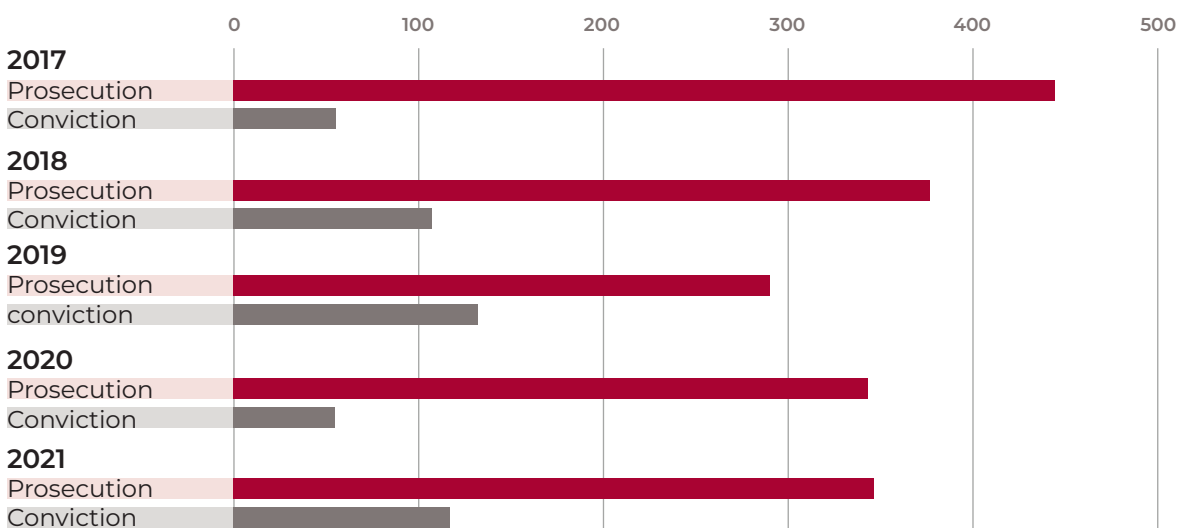
The most flagrant example of the off-kilter risk/reward balance is the consequence for offenders. Until the chances and consequences of being caught for modern slavery offences are more detrimental than the possible gains (usually financial), offenders will continue to exploit victims.

More work is needed to increase prosecution and conviction rates which remain low, especially considering the National Crime Agency's estimate of 6,000-8,000 offenders involved in the crime in the UK,²⁸ the 9,661 recorded modern slavery crimes in 2021-22,²⁹ and the 69 per cent of referrals to the National Referral Mechanism in 2021 (8,844) which reported exploitation in the UK in full or in part.³⁰

In 2021 there were 93 prosecutions and 33 convictions for modern slavery offences as a principal offence under the MSA 2015 — up from 89 prosecutions and 10 convictions in 2020.³¹ Prosecution rates under the MSA 2015 remain considerably lower than the high of 132 in 2017 and convictions are still below the high of 40 achieved in 2019. On an all offence basis, 2021 saw a total of 342 defendants prosecuted and 114 convicted under the MSA 2015.³²

³³ Prosecutions continue under the predecessor offences but these are reducing year on year. In 2021 there were a further six prosecutions and four convictions for slavery, servitude and forced or compulsory labour offences under the predecessor legislation and none for either of the two human trafficking offences.

Prosecution and convictions on an all offence basis under the MSA 2015 and predecessor legislation



²⁸ National Strategic Assessment of Serious and Organised Crime, NCA 2021

²⁹ Police recorded crime and outcomes open data tables updated 21 July 2022

³⁰ Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2021

³¹ Criminal Justice System statistics quarterly: December 2021, Outcomes by Offence data tool

³² Criminal Justice System statistics quarterly: December 2021, All Offence Prosecutions and Convictions by Home Office Offence Code data tool

³³ All offence basis refers to all defendants prosecuted or convicted for modern slavery charges including where another criminal charge is the principal offence

There are many factors that contribute to these low figures, including prosecution of offenders for other (often lesser) offences such as controlling prostitution for gain, as well as the complex nature of the cases, offenders who may not be in the UK, and the challenges of enabling victims' participation, all of which Justice and Care has seen in its case work with victims. Alongside legislative changes made in the new modern slavery bill we urge the Government to ensure the new modern slavery strategy puts a clear plan in place to ensure prosecution and conviction rates increase. This should include guaranteeing the long term future of the NPCC Modern Slavery and Organised Immigration Crime Unit and ensuring that modern slavery is the Unit's priority.³⁴

Low prosecution rates are not the only indicator of the risk/reward balance being misaligned. Whilst the chances of prosecution have the greatest impact on deterrence, the penalties imposed on convicted offenders currently appear not to reflect the harm done to their victims and fail to provide sufficient protection to the public by preventing offenders continuing to exploit future victims. This is true not only where offenders are charged with other, lesser crimes, but also with sentences for specific modern slavery offences.

Published data on sentencing is incomplete and difficult to decipher. Data on sentences for those convicted for modern slavery offences alongside other more serious offences (for which a longer sentence is imposed) or for other offences altogether cannot be identified in the published data tables. It is also unclear whether data tables are updated when sentences are amended after an appeal. Data for those prosecuted for conspiracy to commit modern slavery — which CPS policy suggests is likely in all cases involving multiple offenders and multiple victims — has to be extracted separately and are not counted as modern slavery offences.^{35 36} Not only that, but the descriptions of these offence codes refer only to forced labour, slavery and servitude with no mention of sexual exploitation or human trafficking which raises the possibility that some conspiracy offences are not included. Collection and analysis of comprehensive data on outcomes for offenders arrested, charged, prosecuted and convicted of modern slavery offences is essential if we are to identify and remedy the barriers to bringing exploiters to justice.

The MSA 2015 underlined the seriousness of modern slavery offences increasing the maximum sentence to life imprisonment. The limited data that is available suggests this seriousness is not to date reflected in sentencing levels for offences under the Act.

Ministry of Justice data tables suggest that since 2017 the average sentence for offenders convicted of modern slavery as a principal offence (i.e. not alongside another more serious charge) has been between three and seven years.³⁷ The percentage of such offenders receiving a sentence of four years or more imprisonment has dropped from a high point of 75 per cent in 2018 to just 31.4 per cent in 2021. None of these offenders received a life sentence and only one a sentence of over 15 years in the last five years.³⁸

³⁴ A Path to Freedom and Justice, Centre for Social Justice and Justice and Care 2022

³⁵ Victims of modern slavery to be further protected from prosecution by earlier investigation, Notes to Editors News release, Crown Prosecution Service, 2 December 2021

³⁶ In response to an FOI request the Ministry of Justice stated "offences, of conspiracy to commit offences under section 1 or 2 of the Modern Slavery Act 2015, come under section 71(1)(a) & (3) of the Coroners and Justice Act 2009 and section 1(1) of the Criminal Law Act 1977" and can be obtained by filtering published data for the following offence codes: 09925 - Knowingly holding another person in slavery or servitude, 09926 - Knowingly requiring another person to perform forced or compulsory labour

³⁷ Criminal Justice System statistics quarterly: December 2021, Outcomes by Offence data tool

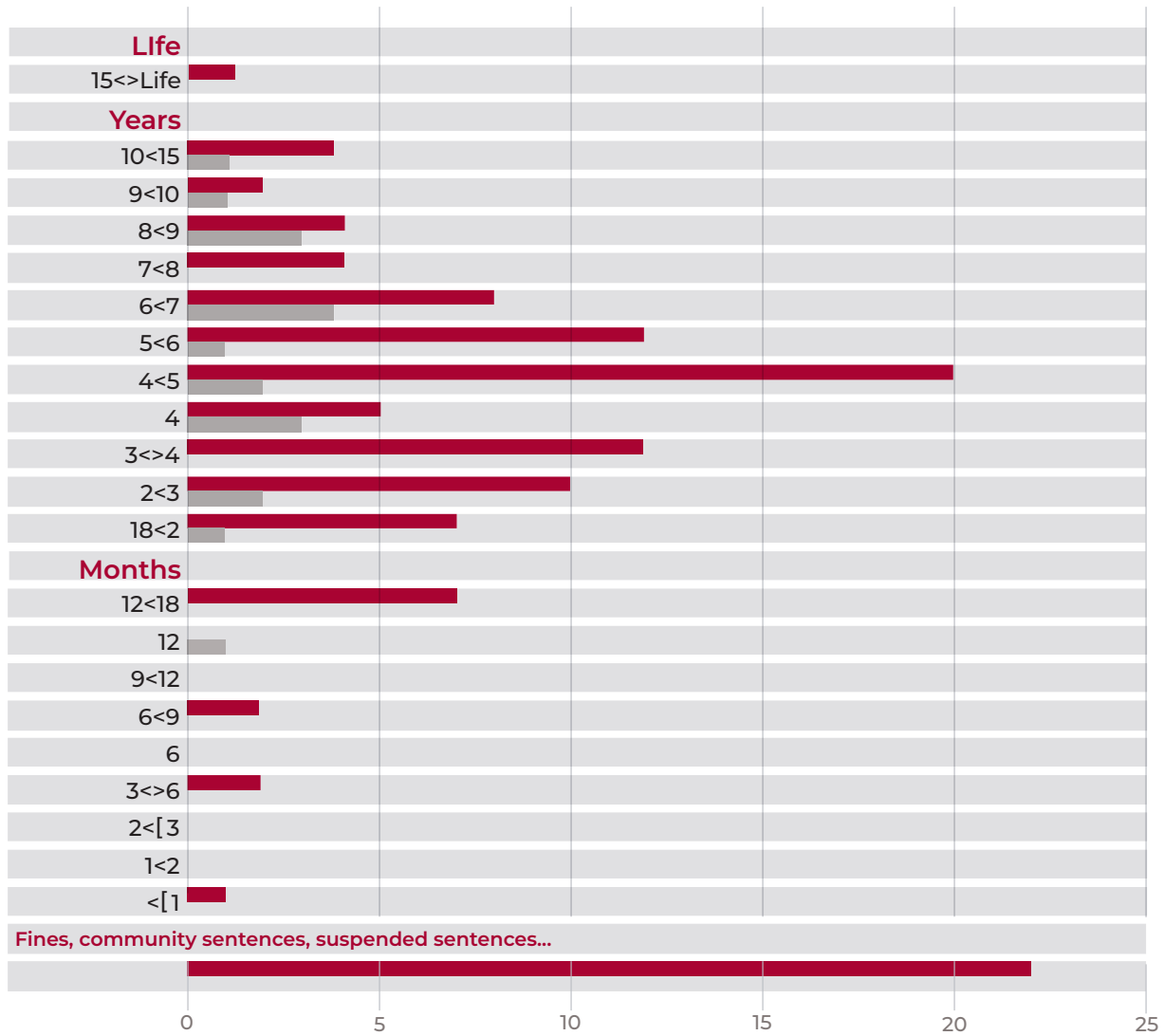
³⁸ Criminal Justice System statistics quarterly: December 2021, Outcomes by Offence data tool

The average custodial sentence for modern slavery offences in 2021 of 4 years and 1 month was less than half that recorded for offences of rape (eight years five months).^{39 40}

There were no offenders convicted for conspiracy to commit modern slavery offences in 2020 and 2021 (and only two prosecuted, both in 2020).

Between 2017 and 2019, 19 offenders were convicted of these offences receiving an average custodial sentence of between five years nine months, and six years. None received a sentence longer than 15 years, and just one a sentence of between 10 and 15 years.⁴¹

Sentencing outcomes for offenders convicted of modern slavery offences and conspiracy to commit modern slavery offences 2017-2021



Key

- < More than and up to
- <> More than and less than
- <[More than and including
- Sentences for modern slavery offences as the principal offence
- Sentences for conspiracy to commit modern slavery offences

Note: there were no convictions recorded for conspiracy offences in 2020 or 2021

³⁹ Criminal Justice System statistics quarterly: December 2021, Outcomes by Offence data tool

⁴⁰ The combined average custodial sentence for offences of rape of a female aged 16 or over and rape of a male aged 16 or over.

⁴¹ Criminal Justice System statistics quarterly: December 2021, Outcomes by Offence data tool

A new sentencing guideline for the offences under the MSA 2015 came into operation in October 2021 setting out the matrix for judges' consideration of culpability and harm with sentencing ranges and starting points at each level.⁴² It is too soon to assess the impact of the new sentencing guideline on sentencing practice, but it is noteworthy that during the consultation process there were suggestions that sentencing levels were still too low especially for the most serious category of offence and recommendations that it should be raised to the same level as the sentencing guideline for rape.⁴³

The lack of comprehensive data on sentencing of all modern slavery offenders hinders assessment of the effectiveness of the criminal justice process to apply sentences appropriate to the level of harm caused and the need to protect the public. It also hinders analysis of any barriers to achieving an effective and appropriate response. There is a need for a thorough review of sentencing patterns and data for all flagged modern slavery offences with collection and analysis of a wider set of sentencing data. There should also be strategic engagement with Police and CPS to assess whether offenders are receiving sentences appropriate to the harm caused and what barriers there might be to achieving such outcomes. This might include evidence gathering, victim testimony or challenges in apprehending and prosecuting the most culpable offenders higher up the 'chain of command'. Addressing these operational barriers is vital to achieving appropriate sentences.

During the consultation process on the new sentencing guideline there were suggestions that sentencing levels were still too low especially for the most serious category of offence and recommendations that it should be raised to the same level as the sentencing guideline for rape

Criminal sentencing is not the only form of penalty and public protection mechanism available for modern slavery offences. The MSA 2015 also provides civil orders to regulate the behaviour of convicted modern slavery offenders or those believed to pose a risk with the aim of preventing exploitation (Slavery and Trafficking Prevention Orders 'STPOs' and Slavery and Trafficking Risk Orders 'STROs'). STPOs and STROs can restrict or prohibit the person's engagement in relevant activity. This might include restrictions on working with children, being a gangmaster or recruiting staff. Orders could make restrictions on contacting a specific individual. They can also restrict the offender's travel (to a specific place or country) or their involvement in arranging travel for others.

According to analysis for the IASC, STPOs have been imposed on less than one third of all those convicted for modern slavery offences. STPOs can only be imposed following specific modern slavery offences, so low prosecution and conviction rates for these offences impacts the availability of these orders.⁴⁴ However, as the report for the IASC found, with two thirds of convicted modern slavery offenders not being served with STPOs "It is evident that although STPOs are being considered by the courts, they might be discounted for various reasons including considerations of the Rehabilitation of Offenders Act, a perceived minimal risk of offending or, a lack of a defined plan to satisfy the court that any imposed conditions would be monitored."

⁴² Modern slavery offences sentencing guidelines published, News Release, Sentencing Council, 12 August 2021

⁴³ Modern Slavery Offences Guidelines Response to Consultation, Sentencing Council, August 2021

⁴⁴ The use of modern slavery risk and prevention orders, Independent Anti-Slavery Commissioner 2022

The IASC's report also highlighted inconsistencies in the approach taken by police forces to recording STPOs and STROs which make monitoring offenders' compliance difficult. There is wide recognition that a national system is needed but little progress appears to have been made to date.⁴⁵

STPOs and STROs have the potential to play a key role in preventing offenders from continuing to profit through modern slavery as well as protecting current or future victims. We welcome the intention for the new modern slavery bill to strengthen the operation of STPOs and STROs.

To maximise the potential of these orders STPOs should be a routine part of sentencing for these offences and there need to be effective methods for monitoring compliance with both STPOs and STROs. A national register for modern slavery offenders—similar to the sex offenders register—with mandatory imposition of an STPO on conviction for offences under section 1 or section 2 of the MSA 2015 would make this possible. At a minimum the mandatory order should include notification requirements compelling the offender to register their name and address with police, which should then be recorded on a national register or database to allow for more effective monitoring along with any other restrictions. Additional restrictions on a mandatory STPO could then be defined on a case by case basis. Making STPOs an automatic part of sentencing for MSA 2015 section 1 and section 2 offences will increase familiarity with the orders among professionals and promote consideration of the need for wider restrictions on the offender in order to protect individual victims or the wider public. In all other cases where STPOs or STROs are imposed the order should similarly include the notification requirements requiring registration with the police and addition of the order details to the national register.

Changes to the legal framework should also make STPOs and STROs accessible in more modern slavery cases. It has been suggested that it should be possible for Crown Courts to impose an STRO if a person is acquitted of a modern slavery offence which would provide a welcome opportunity to prevent exploitation.⁴⁶ We also recommend widening the circumstances in which STPOs or STROs can be sought to include on conviction for offences other than those under the MSA 2015 offences where modern slavery is also suspected. This would include offences such as controlling prostitution, child sexual exploitation offences, other sexual offences and some offences related to assisting unlawful immigration. We note that Caroline Haughey KC made a similar recommendation in her 2016 review of the MSA 2015.⁴⁷

We support the proposal for the Chief Constable of British Transport Police to be added to the list of officers able to apply to the court to make, vary, discharge, or renew an STPO or STRO given the known widespread use of the transport network for human trafficking, especially for criminal exploitation in 'county lines' drug dealing. Additionally, removing the restriction that means police forces can only apply for orders for persons who live in their force area would, together with mandatory notification of name and address, make it harder for offenders to escape the reach of such orders by moving around the country, streamline police processes and protect more potential victims.⁴⁸

⁴⁵ The use of modern slavery risk and prevention orders, Independent Anti-Slavery Commissioner 2022

⁴⁶ The use of modern slavery risk and prevention orders, Independent Anti-Slavery Commissioner 2022

⁴⁷ The Modern Slavery Act 2015 review: one year on, Home Office 2016

⁴⁸ The use of modern slavery risk and prevention orders, Independent Anti-Slavery Commissioner 2022

In addition to changing the legal rules around STPOs and STROs we recommend the Government works with the Crown Prosecution Service and the NPCC Modern Slavery and Organised Immigration Crime Unit to develop protocols, training and clear guidance for professionals including guidance on the extent of terms that can be applied. This will ensure that not only are more applications made for orders with a range of terms appropriate to the case, but that they are made with the requisite evidence and plans that will satisfy the court of their importance. This should be supported by a review of the wider spectrum of orders that may be available in some modern slavery cases (including for example serious crime prevention orders, sexual harm prevention orders and sexual risk orders) and their interaction with STPOs/STROs to avoid duplication and ensure application and monitoring processes work together effectively.

Recommendation 2: The Government should introduce a national register for modern slavery offenders—similar to the sex offenders register—through the new modern slavery bill. As part of this approach the MSA 2015 should be amended to make imposition of an STPO a mandatory requirement on conviction for MSA 2015 offences and to require notification of an offender’s name and address as part of all STPOs and STROs.

Recommendation 3: The availability of STPOs and STROs should be increased through the new modern slavery bill to:

- allow imposition of orders on acquittal for modern slavery offences and conviction for other related offences;
- empower the Chief Constable of British Transport Police to apply to the court for orders to be made, varied, discharged or renewed; and
- allow police forces to apply for orders in respect of individuals not residing in their force area.

Recommendation 4: Alongside legislative changes made in the new modern slavery bill we urge the Government to:

- make increasing prosecution and conviction rates a key focus of the new modern slavery strategy—this should include guaranteeing the long term future of the NPCC Modern Slavery and Organised Immigration Crime Unit and ensuring that modern slavery is the Unit’s priority;
- conduct a thorough review of sentencing patterns including strategic engagement with the Crown Prosecution Service and Police;
- publish in the UK Annual Report on Modern Slavery each year data and analysis of sentencing and other outcomes for all modern slavery offenders including those charged for conspiracy or other charges alongside or instead of modern slavery offences;
- produce revised guidance on STPOs/STROs including the full extent of terms that can be applied;
- conduct a review of the wider spectrum of orders available in modern slavery cases and their interaction with STPOs/STROs; and
- work with the Crown Prosecution Service and Police to identify and make operational changes and strengthen training to ensure prosecution and conviction rates for modern slavery offences increase, that appropriate sentences are achieved and more STPOs/STROs are imposed.

Chapter Three

Shifting the balance in business supply chains

The ILO has estimated there are 27.6 million people in forced labour worldwide, mostly in the private sector excluding commercial sexual exploitation (63 per cent).⁴⁹ An estimated US\$354 billion worth of products at risk of modern slavery are imported into G20 countries annually.⁵⁰

Facilitated by technological developments and spurred by firms' attempts to maximise profits through lower labour costs, globalised supply chains bring considerable risks of forced labour into the UK market. The inherent difficulties involved in monitoring extremely fragmented production processes render workers—especially those in and from developing countries—vulnerable to exploitation. These modern slavery risks in supply chains have been highlighted and increased by the Covid-19 pandemic as businesses responded to fluctuations in demand, with suppliers facing reduced scrutiny, and expedited processes employed for engaging new suppliers.⁵¹ Similarly the vulnerability of refugees fleeing conflict has been highlighted by the large number of Ukrainians who left their country in March 2022, which investment managers point to as an increased risk of exploitation in company supply chains.⁵²

The presence of state-sponsored forced labour in global supply chains has been highlighted by the situation of the Uyghur people in China over recent years. It has been said that between 2017 and 2019 alone, more than 80,000 Uyghurs were forcibly transferred out of Xinjiang to work in factories across China with more recent estimates indicating at least 570,000 people from Xinjiang have been forced to pick cotton.⁵³ Researchers have identified more than 82 international and Chinese companies benefiting, directly or indirectly, from the exploitation of Uyghur workers in Xinjiang including leading names in the automotive, fashion, retail and information technology sectors such as Adidas, Amazon, Apple, Google, Jaguar, Land Rover, Nike, and Samsung.⁵⁴ Solar technology has also been identified as particularly vulnerable to labour exploitation due to the concentration of the world's production of solar-grade polysilicon in the Uyghur region of China (45 per cent of global supply).⁵⁵

Section 54 of the MSA 2015 introduced the first national legislation aimed at creating greater transparency about the action businesses are taking to address modern slavery. Under the legislation companies with a turnover of £36m or more are required to report on the steps they have taken to ensure modern slavery is not taking place in their business or supply chains. Whilst the MSA 2015 led the world in taking such a step, in the nearly eight years since it was passed section 54 has not been as effective as was hoped. By 2021, the rate of non-compliance was 40 per cent.⁵⁶

⁴⁹ Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, ILO, Walk Free, IOM 2022

⁵⁰ Global Slavery Index 2018, Walk Free, 2018

⁵¹ Implications of Covid-19 for modern slavery challenges in supply chain management Dr Bruce Pinnington, Dr Joanne Meehan and Dr Alex Trautrim, July 2021

⁵² Conflict and modern slavery: the investment perspective, Stephanie Williams & Katie Frame, schroders.com September 2022

⁵³ Never Again: The UK's Responsibility to Act on Atrocities in Xinjiang and Beyond, House of Commons Foreign Affairs Committee July 2021; Uyghurs for Sale, Australian Strategic Policy Institute, March 2020; Coercive Labor in Xinjiang: Labor Transfer and the Mobilization of Ethnic Minorities to Pick Cotton by the Newlines Institute, December 2020

⁵⁴ Uyghur forced labour in Xinjiang and UK value chains, House of Commons BEIS Committee, March 2021; Uyghurs for Sale, Australian Strategic Policy Institute, March 2020

⁵⁵ In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains. Laura T. Murphy and Nyrola Elimä Sheffield Hallam University Helena Kennedy Centre for International Justice 2021

⁵⁶ Independent Review of the Modern Slavery Act 2015: Final Report May 2019; Modern Slavery Act: Five Years of Reporting Businesses and Human Resource Centre, 2021

Even the statements that are published are often fragmented, and exhibit substantive gaps and issues around the quality of the information being disclosed due to a lack of clarity and precision about specific reporting requirements. Whilst Section 54 provides some guidance on what may be contained within a statement these are neither compulsory nor detailed enough to ensure that effective action is being taken to address modern slavery. A review of reports for the IASC found that disclosures about policies on slavery and trafficking “often lacked detail, often failing to provide information on how policies operated in practice, or how their effectiveness was measured.”⁵⁷ It is estimated that about one third of statements from companies covered by the MSA 2015 provide no information about their risk assessment processes, and two-thirds of them do not identify any priority risks.⁵⁸ Another weakness is that companies seem to “opt for a reactive, rather than proactive, approach to addressing modern slavery risks” with most focussed on past activities.⁵⁹ Analysis of a sample of statements found that only a third (37 per cent) clearly identified emerging issues and only 12 per cent of companies provided a long-term plan.

Non-compliance with Section 54 reporting requirements was 40 per cent in 2021

One area of reporting that appears to be lacking relates to investment activity. Investments, directly or through asset management, can present modern slavery risks, which may vary according to the sector, location, business model or workforce make-up.⁶⁰ Whilst the MSA 2015 definition of commercial organisation does not explicitly include investors, reporting on companies’ ‘business and supply chains’ could reasonably be expected to include investment activity. It has been argued that many financial firms however “do not look beyond their own firm’s in-house operations”.⁶¹ Analysis of the financial sector identified 91 asset managers as within scope of the MSA 2015 reporting provisions, of which 87 per cent had issued a modern slavery statement.⁶² However, beyond the minimum requirements of the MSA 2015 this analysis found that “most asset managers did not disclose modern slavery risks as a consideration in their investment decisions” and fewer than one third (27 per cent) reported conducting due diligence on modern slavery or human rights issues in their portfolios.

The UK is one of the world’s leading financial centres, consistently ranked first or second on global indexes.⁶³ We have the most globally connected banking hub, the second largest asset management centre worldwide with £11 trillion assets under management in the UK in 2020,⁶⁴ and the second largest pensions market in the world valued at US\$3.8 trillion in 2021.⁶⁵ This presents a significant degree of influence which is being missed in efforts to eradicate modern slavery from commercial supply chains. Australia’s Modern Slavery Act 2018 includes investments and lending among the activities covered in the disclosure legislation – extending its reporting requirements to institutional investors such as superannuation funds. A similar specific inclusion of investment organisations and activities in the MSA 2015 disclosure framework would support the efforts of the many

⁵⁷ Modern Slavery Reporting Practices in the UK Evidence from Modern Slavery Statements and Annual Reports Lancaster University, Financial Reporting Council, Independent Anti-Slavery Commissioner, April 2022

⁵⁸ Reporting on Modern Slavery: The current state of disclosure, Ergon Associates, 2016; Independent Review of the Modern Slavery Act 2015: Final Report May 2019

⁵⁹ Modern Slavery Reporting Practices in the UK Evidence from Modern Slavery Statements and Annual Reports Lancaster University, Financial Reporting Council, Independent Anti-Slavery Commissioner, April 2022

⁶⁰ Financial services and modern slavery Practical responses for managing risk to people, KPMG, Australian Human Rights Commission 2021

⁶¹ City A.M., Investors should have a duty to investigate links to modern slavery, 25 June 2021

⁶² Beyond Compliance In The Finance Sector: A Review Of Statements Produced By Asset Managers Under The UK Modern Slavery Act, Walk Free, Wiki Rate, Business and Human Rights Resource Centre, 2021

⁶³ State of the sector: annual review of UK financial services 2022, City of London Corporation, HM Treasury

⁶⁴ State of the sector: annual review of UK financial services 2022, City of London Corporation, HM Treasury

⁶⁵ Global Pension Assets Study Thinking Ahead Institute 2022

investors already giving significant time and energy to build robust ESG (environment, social and governance) processes to ensure sustainable investing, and set a level playing field encouraging all organisations to reach for the same standards.

A key reason for the limited success of disclosure legislation in transforming corporate behaviour, in the UK and globally, is its heavy reliance on creating pressure from external stakeholders —consumers, investors, and shareholders— as the main enforcement mechanism.⁶⁶ One barrier to the effectiveness of this mechanism has been access to information. The MSA 2015 only requires businesses to publish statements on their own websites with no obligation to publish them elsewhere. Two separate repositories for statements were set up by NGOs, but many stakeholders have found this confusing.⁶⁷ In March 2021 the Government launched a central registry for modern slavery statements following a recommendation of the 2019 Independent Review of the Modern Slavery Act 2015. This is very welcome, however to be a useful tool for external stakeholders, submission should be mandatory rather than voluntary and there should be a published list of companies within scope of the reporting obligation.⁶⁸

A more significant absence, however, has been any effective enforcement on the part of the UK authorities. Despite persistent and high levels of non-compliance by 2020 no injunctions had been sought by the Secretary of State (as permitted under the MSA 2015) nor other administrative penalties (such as exclusion from public procurement contracts) applied to non-compliant businesses.⁶⁹

The lack of clarity of reporting requirements and the lack of government enforcement means that firms can ultimately decide on the extent to which they engage with the legislation.⁷⁰ The balance needs to be reset so that there is a level playing field for all businesses.

In 2020, we recommended the Government introduce measures to increase compliance with Section 54 and enhance the ability to scrutinise and hold to account companies that fail to tackle slavery in their supply chains.⁷¹ We, therefore, welcomed the plans announced to strengthen the reporting requirements including making the voluntary reporting themes mandatory and introducing financial penalties for non-compliant companies to be enforced by the proposed single enforcement body for employment rights.⁷² Details published about the new modern slavery bill suggest that these commitments will be included in the bill but to be effective the penalties must be meaningful. A situation where companies 'price in' such fines to their business plans will not result in changed practice. Any financial penalties should be at an appropriately dissuasive level proportionate to an organisation's turnover. In our view, a degree of personal responsibility for directors of companies who fail to comply with these legal duties would ensure they are taken seriously and is within the spirit of the rules for disqualification of directors as 'unfit'. The swift establishment of the single enforcement body to enforce these penalties is also essential.

⁶⁶ Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches, Justice and Care, July 2022

⁶⁷ Independent Review of the Modern Slavery Act 2015: Final Report, Home Office, May 2019

⁶⁸ Modern Slavery Reporting Practices in the UK Evidence from Modern Slavery Statements and Annual Reports Lancaster University, Financial Reporting Council, Independent Anti-Slavery Commissioner, April 2022

⁶⁹ Independent Review of the Modern Slavery Act 2015: Final Report May 2019; Modern Slavery Act: Five Years of Reporting Businesses and Human Resource Centre, 2021

⁷⁰ Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches, Justice and Care, July 2022

⁷¹ It Still Happens Here: Fighting UK Slavery in the 2020s, Justice and Care and the Centre for Social Justice, July 2020

⁷² Transparency in supply chains consultation Government response, Home Office, September 2020; Establishing a new single enforcement body for employment rights Government response, Department for Business, Energy and Industrial Strategy June 2021

Ultimately the aim of supply chain regulation is to prevent modern slavery not simply to increase reporting. One way to encourage action is to require companies to publish more meaningful information than under the current criteria.

At a minimum, companies should report the number of modern slavery incidents they have identified and the steps they have taken to address them, and if no incidents are reported, companies should provide a full explanation of why (for example the basis for confidence that there has been no forced labour in their supply chains, or details of barriers encountered in conducting due diligence).

Disclosure obligations relating to action against modern slavery have helped increase awareness of modern slavery among businesses and investors, but are limited in their ability to actively prevent and remove modern slavery from supply chains. Justice and Care analysis has shown that many of the limitations of the MSA 2015 are also seen with similar transparency legislation around the world. By contrast, evidence suggests that mandatory human rights due diligence (mHRDD) legislation holds greater promise of catalysing comprehensive and effective change in corporate practices.⁷³ Leading UK businesses have called for a more comprehensive and integrated approach to due diligence legislation across issues such as the environment, human rights and modern slavery.⁷⁴ While it might not be appropriate to introduce such broader requirements in this bill, we would urge the Government to prioritise consideration of this approach working across departments and with a range of stakeholders to develop a comprehensive framework for mandatory due diligence including for modern slavery over the coming years. Having such a framework would complement an enhanced transparency regime and import control mechanism (see below).

One further step that could be taken at this time to protect the UK market from association with modern slavery is the application of import controls. Justice and Care's recent global review found evidence that import controls may help change corporate behaviour and improve working conditions in supply chains over the short run – particularly in industries that rely on just-in-time supply, for whom the loss of market access as a result of the bans has immediate and far reaching economic consequences⁷⁵

The most comprehensive example of forced labour related import controls is the US Tariff Act of 1930 which prohibits the importation of all goods produced or manufactured in any foreign country by forced (including child), convict or indentured labour. Until recently, however, the ban had been rarely enforced partly due to the 'consumptive demand loophole' included in the law, which allowed goods produced with forced labour to be imported if domestic production was not sufficient to meet the demand. This loophole was closed in 2016. Since then instances of enforcement of the law have grown considerably.⁷⁶

One example of the impact of the US Tariff Act is the case of Top Glove. In July 2020, US authorities issued a Withhold Release Order under the Tariff Act against two subsidiaries of the world's largest rubber glove company Top Glove based in Malaysia. The order restricted access of these companies to the US market based on a reasonable belief the companies were using debt bondage in the production of rubber gloves. Just two weeks after the order had been issued, Top Glove agreed to refund foreign workers who had paid

⁷³ Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches, Justice and Care, July 2022

⁷⁴ UK Business Statement Calling For A New UK Law Mandating Human Rights And Environmental Due Diligence For Companies And Investors, October 2021

⁷⁵ Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches, Justice and Care, July 2022

⁷⁶ Towards an EU import ban on forced labour and modern slavery. Discussion paper commissioned by the Greens/EFA Group in the European Parliament, Ben Vanpeperstraete, 2021

recruitment fees to agents (as much as \$34 million to be paid to 10,000 workers) and to improve workers' accommodation.⁷⁷


It is likely that the speed of this response was related to the large volume of sales the company was at risk of losing (shipments from the two subsidiaries constituted 12.5 per cent of the group's total sales).⁷⁸ This case also demonstrates the potential impact for sector-wide effects of import bans which spread beyond the individual companies sanctioned. After Top Glove agreed to refund foreign workers, the other top three glove manufacturers – Kossan, Hartalega, and Supermax – followed suit, announcing repayments of \$12.5 million, \$9.5 million, and \$5.5 million, respectively.⁷⁹ Although import controls of this nature are something of a blunt instrument, and there is limited evidence about the long term impact, it seems clear that in certain circumstances and alongside other regulations they can be effective in ensuring companies take action against forced labour at least in the short term.

In developing a framework for import controls, attention must be given to the design and implementation of the bans to avoid unintended negative effects on workers as a result of lost market access. Remedies for victims of forced labour should be a key part of import controls in addition to preventing entry of goods to the UK market. Transparency about the processes and conditions for imposing such controls and criteria for securing the release of goods will be essential to building confidence and trust in the scheme. Similarly, the controls should be formulated so as to be compatible with WTO laws on product exclusion. The UK has the opportunity to lead the world by designing all trade deals to include strong anti-slavery clauses that enable the use of import controls and encourage other countries to strengthen their action on modern slavery.

3.1 Public procurement

Public procurement has the potential to make a significant difference to preventing modern slavery in company supply chains. The UK Government spends around a third of its annual expenditure on contracts to private companies. This normally falls in the region of £290 billion per year, more than twice the total annual NHS budget.⁸⁰ If this purchasing power were harnessed effectively it could lead to greater action to identify, remedy or prevent modern slavery by businesses wanting to bid for Government contracts. Global analysis suggests public procurement is generally an under-utilised tool.⁸¹ The UK has an opportunity to demonstrate leadership in implementing effective processes for due diligence in and monitoring of Government supply chains.

Notwithstanding the extreme circumstances of the COVID-19 pandemic, concerns about personal protective equipment (PPE) sourced from Malaysia and from factories in Xinjiang and other parts of China implicated in the modern slavery of Uyghur people, highlight the need



If Government purchasing power were harnessed effectively it could lead to greater action to identify, remedy or prevent modern slavery by businesses wanting to bid for Government contracts.

⁷⁷ Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches, Justice and Care, July 2022

⁷⁸ Policy brief: Effectiveness of forced labour import bans. Irene Pietropaoli, Owain Johnstone, Alex Balch, Modern Slavery and Human Rights Policy & Evidence Centre, 2021

⁷⁹ Policy brief: Effectiveness of forced labour import bans. Irene Pietropaoli, Owain Johnstone, Alex Balch, Modern Slavery and Human Rights Policy & Evidence Centre, 2021

⁸⁰ Spending It Better: Taking Back Control Of Public Contracts To Level Up Britain, Centre for Social Justice, 2021

⁸¹ Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches, Justice and Care, July 2022

to strengthen Government processes.⁸² For example, research into forced labour in the Malaysian medical gloves industry during the Covid 19 pandemic found “evidence of all forced labour indicators before and during the Covid-19 pandemic, with evidence that four of the 11 indicators worsened during the pandemic.”

We welcome the Government’s announcement that it will extend the requirement to publish a modern slavery statement to public bodies at the same budget threshold as for businesses and we hope this will feature in the new modern slavery bill.⁸³

The Government has already set out its intention to take a proactive approach to eradicating modern slavery from NHS supply chains beyond reporting through powers to regulate action to prevent modern slavery in NHS supply chains in the Health and Care Act 2022. We urge the Government to adopt a similar approach across all Government departments at the earliest opportunity. The Government has already announced plans to strengthen the grounds for exclusion of a supplier and to create a disbarment list of suppliers including disregarding bids from suppliers known to use forced labour or perpetuate modern slavery themselves or in their supply chains.⁸⁴ It is essential that this is done in a fully transparent way with clear guidance for suppliers and procurement officers about the processes to be followed and the criteria used to determine the evidence of forced labour that would lead to a supplier being excluded. These intentions would fit well within a framework of regulations like that in the Health and Care Act 2022, and would ensure public sector bodies have clear and consistent processes to follow and access to all necessary information to ensure our public supply chains are free from goods produced through modern slavery. An amendment tabled to the Procurement Bill currently before parliament offers a template for regulations like those in the Health and Care Act for all Government departments creating a unified approach across Government.⁸⁵

The MSA 2015 led the world in action against modern slavery in business supply chains, but since then the context and understanding in this area has continued to develop. This new modern slavery bill is an opportunity for renewed leadership in this area, to shift the balance away from those using forced labour, protect the UK market and level the playing field for businesses taking proactive action to eradicate slavery from their supply chains.

Recommendation 5: The new modern slavery bill should amend section 54 MSA 2015 to strengthen transparency of business supply chains by:

- extending the scope of the obligations to bring in public authorities and explicitly include investment organisations and activities;
- setting mandatory minimum reporting requirements including all the suggested forms of information under the current provisions with additional requirements at a minimum related to processes for remediation, the effectiveness of grievance mechanisms, an assessment of the impact of procurement practices, and details of all instances of forced labour identified, remediation taken or reasons for null reports;
- giving the Government-run registry of modern slavery statements a statutory basis in the Act including a list of all organisations in scope;

⁸² Labour rights abuse in global supply chains for PPE through COVID-19 – issues and solutions, BMA, July 2021; Uyghur forced labour in Xinjiang and UK value chains, House of Commons Business, Energy and Industrial Strategy Committee, March 2021; Forced labour in the Malaysian medical gloves supply chain during the Covid-19 pandemic, Mahmood Bhutta, Ben Bostock, James Brown, Emily Day, Alex Hughes, Rosey Hurst, Alexander Trautrim, Mei Trueba, July 2021

⁸³ Transparency in supply chains consultation Government response, Home Office, September 2020

⁸⁴ Hansard House of Lords 18 July 2022, Column 622GC

⁸⁵ At the time of writing an amendment (no.141) to this effect had been tabled for Report stage of the Procurement Bill in the House of Lords by Baroness Stroud with cross party support.

- introducing penalties for failure to comply with the section including disqualification from holding a Director's position for any person who knowingly or recklessly supplies a false or materially incomplete statement and a fine set at an appropriately dissuasive level, proportionate to an organisation's turnover, for the company concerned. The Single Enforcement Body should be established swiftly to enforce these penalties with sufficient expertise and must be sufficiently resourced, financially and administratively, to do so.

Recommendation 6: The new modern slavery bill should establish a framework for the transparent imposition of import controls targeting specific companies, goods and industries in geographical regions affected by forced labour, that will encourage the remediation of forced labour practices as well as preventing goods from entering the UK market. This should include:

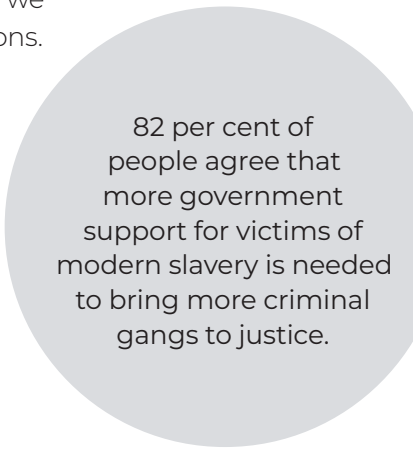
- a formal, secure and confidential complaints process for notification of concerns;
- product exclusion in certain situations in compatibility with WTO laws, supported by UK trade deals containing strong anti-slavery provisions;
- clear and published guidance on the criteria and process for imposing a ban, for contesting a ban and/or securing release of goods, including details of evidence, due diligence and remediation activity;
- a published list of entities, regions and products sanctioned and a risk register advising businesses of goods, entities or industries from specific geographical areas from which goods cannot be sourced without high risk of slavery and human trafficking being present in supply chains beyond those already sanctioned; and
- coordination with global counterparts, including the USA, Canada and when applicable Mexico and the EU, to share evidence standards and align procedures, including the possibility to trigger UK investigations on the basis of a determination from third countries.

Recommendation 7: At the earliest opportunity the Government should put in place a consistent approach to eradicating modern slavery from all government supply chains emulating the regulation-making power under the Health and Care Act 2022. Regulations under that Act should be introduced as soon as possible supported by comprehensive guidance.

Chapter Four

Smarter support for modern slavery victims

If victims remain at risk of re-exploitation then offenders still have the upper hand. If victims are so afraid or anxious about the future that they do not engage with police, prosecution and conviction rates will remain low and the risk/reward calculation is in the offenders' favour. However, the opposite is also true — by supporting victims well we can reduce risks of re-exploitation and increase the chances of convictions. We need a smarter approach to support which sees it as not simply a crisis intervention for individuals, but a strategic investment crucial for tackling organised crime, bringing offenders to justice and preventing further exploitation by keeping criminals off the streets and building survivors' resilience and independence. Our polling found that 82 per cent of people agree that more government support for victims of modern slavery is needed in order to bring more criminal gangs to justice including more than half (53 per cent) who strongly agree.⁸⁶



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Significant evidence has been built to show that if victims receive consistent ongoing support, more engage with prosecutions. For example, all 62 adult survivors receiving long term support through one of the Home Office Local Authority Pathways pilot schemes in 2018-2020 supported a police investigation.⁸⁷ At their latest or final engagement level, 92 per cent of victims supported by a specialist Justice and Care 'Victim Navigator' were willing to engage on some level with the police compared to an estimated 44 per cent engagement rate for victims without a Navigator (based on analysis of police data from Surrey and Essex). Between September 2021 and August 2022, 24 offenders were convicted in cases where Victim Navigators were providing support to the victims. More than half (56 per cent) of all cases where victims had some level of engagement with police led to additional investigative outcomes, including the identification of suspects (50 per cent), locations of interest (37 per cent) and further victims (14 per cent).

Research shows that modern slavery survivors continue to need support after they receive a positive conclusive grounds decision —one project found that all the survivors participating needed support for 12 months after leaving the NRM and although their needs varied, all required one-on-one support, from a specialist caseworker, to help them access the support and services they needed during that time.⁸⁸ Despite the introduction of the Recovery Needs Assessment (RNA) process for extending support, many victims still leave the NRM very vulnerable.⁸⁹ Survivors often still need advice and practical assistance to establish an independent life with some of their needs not being identified or addressed during the NRM period.

One of the problems of the RNA process is that many victims only receive support for short periods of time and then undergo repeated needs assessments.⁹⁰ This is destabilising and

⁸⁶ Polling by Opinium for the Centre for Social Justice and Justice and Care, field dates: 12-14 October 2022

⁸⁷ It Still Happens Here: Fighting UK Slavery in the 2020s Justice and Care and the Centre for Social Justice, July 2020

⁸⁸ Hope for the Future, Ashiana, Hestia, Red Cross 2019

⁸⁹ A Path to Freedom and Justice, Centre for Social Justice and Justice and Care 2022

⁹⁰ A Path to Freedom and Justice, Centre for Social Justice and Justice and Care 2022

can be harmful to victims' mental health. Although the guidance allows for support to be granted for periods of up to six months, reports suggest no such periods have been granted with support workers saying they would initially request longer periods of support, but these would frequently be refused, and shorter periods granted, often without justification.⁹¹

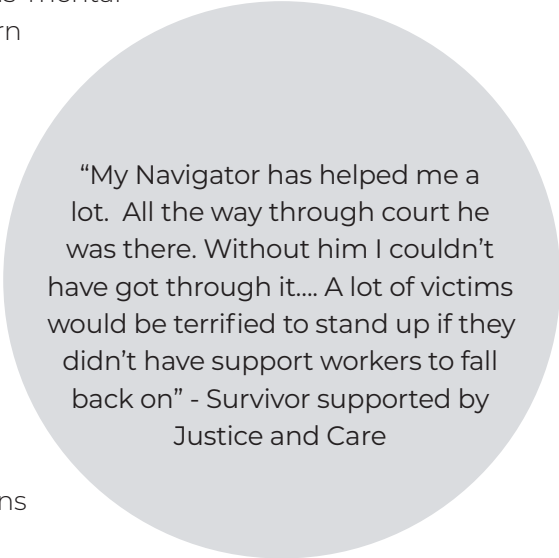
Victims must also provide 'evidence' of need with support available only for 'needs arising from exploitation'.⁹² The criteria of 'needs arising from exploitation' leaves many victims unsure if they will receive support as it can be very difficult to separate pre-existing needs from those directly caused by exploitation. Pre-existing vulnerabilities, or even other health episodes not directly caused by modern slavery are exacerbated by it. These restrictions have even seen support for basic needs such as dietary specific food or sanitary products refused because they are not 'needs arising from exploitation' even when these are not being met through other means.⁹³ Another example is that the RNA does not provide support to help victims care for their dependent children, leaving survivors anxious and distressed about how they will look after their children.⁹⁴

The process of having to answer intrusive questions and provide evidence of needs and having to do this on a repetitive basis can be traumatising for victims and damaging to their recovery.⁹⁵ If survivors' basic needs are not met, not only does this damage their mental health and recovery, they are also vulnerable to re-exploitation, whether from their previous traffickers who may persist in contacting them, or others who take advantage of their precarious situation.

Survivors have reported being destitute at times and also being exited from the support before they are ready.⁹⁶ This lack of certainty harms victims' mental health and hinders their overall recovery. For many modern slavery survivors, a secure immigration status with the right to work, access to benefits and other services is an essential part of making that transition to long term recovery.⁹⁷ This is not, however, currently available for all confirmed victims with temporary leave to remain under the recent Nationality and Borders Act 2022 limited to victims meeting certain criteria.⁹⁸

The RNA process as it stands is not working to smooth survivors' transition from the NRM into independent living, resilient to re-exploitation which is surely the aim of any support programme. It also does not offer the consistent support they need to engage with investigations and prosecutions.

Modern slavery survivors need the stability of 12 months' support after a positive conclusive grounds decision to meet their basic needs such as safe housing and finances and help to access other services.



"My Navigator has helped me a lot. All the way through court he was there. Without him I couldn't have got through it... A lot of victims would be terrified to stand up if they didn't have support workers to fall back on" - Survivor supported by Justice and Care

⁹¹ One day at a time, Anti-Trafficking Monitoring Group April 2022

⁹² A Path to Freedom and Justice Centre for Social Justice and Justice and Care 2022; One day at a time, Anti-Trafficking Monitoring Group April 2022

⁹³ One day at a time, Anti-Trafficking Monitoring Group April 2022

⁹⁴ One day at a time, Anti-Trafficking Monitoring Group April 2022

⁹⁵ A Path to Freedom and Justice Centre for Social Justice and Justice and Care 2022; One day at a time, Anti-Trafficking Monitoring Group April 2022

⁹⁶ One day at a time, Anti-Trafficking Monitoring Group April 2022

⁹⁷ A Path to Freedom and Justice, Centre for Social Justice and Justice and Care 2022

⁹⁸ Under section 65 of the Nationality and Borders Act 2022 leave to remain is restricted to victims who are already supporting police investigations, or who need to stay in the UK to make a claim for compensation or if they have a recovery need related to physical or mental harm caused by their exploitation that cannot be met in another country.

DC Colin Ward of Greater Manchester Police told us “If we get the victim side right first, the prosecutions will eventually naturally follow, alongside us doing the evidence based collection of that crime.” This will provide a foundation for them to engage with the often traumatic and uncertain investigation and court processes. Specialist support such as Justice and Care’s Victim Navigators can offer continuity and expert care through the life of a criminal case enabling more victims to participate in prosecutions. Victim Navigators fill a specific and important gap in existing service provision by forming a trusted bridge between the police and victims of modern slavery, keeping them informed about the case and providing support. A vital part of this role is to support and advocate on a victim’s behalf to help them access services to meet their basic needs such as accommodation, financial support and healthcare. Significant challenges arise if services are unavailable or victims are ineligible.

The Nationality and Borders Act 2022 put the recovery period (while the NRM identification process is completed) into law for the first time in England and Wales, but it did not give the same framework to support for confirmed victims after the NRM. During the passage of the Act the Government made a commitment that “all those who receive a positive conclusive grounds decision and are in need of tailored support will receive appropriate individualised support for a minimum of 12 months”, but did not add this to the legislation.⁹⁹ The commitment is welcome but plans for delivery through guidance have not yet been published. It also leaves the statutory framework incomplete as it does not reflect the full support package proposed. The Government now has an opportunity to reform the length and the process for delivering support to confirmed victims and put this into law alongside the recovery period.

Recommendation 8: The new modern slavery bill should amend the MSA 2015 to provide all confirmed victims with a minimum of 12 months of support after the NRM. This support should:

- be guaranteed for all confirmed victims with the nature of support tailored according to individuals’ needs;
- address the need to protect victims from re-exploitation and enable them to engage with criminal processes and not be limited to needs proven to arise directly from the person’s exploitation.

We strongly urge the Government to ensure that all confirmed victims with irregular immigration status receive temporary leave to remain so all victims can access support and the benefits of work during this period.

Recommendation 9: Alongside legislative changes to complete the statutory framework for support during and after the NRM process, we urge the Government to take action to increase availability of specialist Victim Navigators embedded with police forces to support modern slavery victims to engage with the criminal justice process. This should be done by:

- an initial grant-funded pilot programme in 5-10 police forces or regional organised crime units, building on the Justice and Care Victim Navigator programme and outworking the New Plan for Immigration commitment to consider testing such a role;
- following the pilot, national provision of Victim Navigators through a ring-fenced additional allocation within the existing structure of Police and Crime Commissioner / Mayoral budgets rolled out in a phased ‘test and learn’ approach.

⁹⁹ Hansard House of Commons 8 December 2021 column 427

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