

By email alex.chalk.mp@parliament.uk

1st July 2020

Dear Alex Chalk MP,

Legal aid changes for immigration and asylum appeals risk access to justice for survivors of trafficking and slavery

We write as members of the Home Office's Modern Slavery Strategy and Implementation Group's Task and Finish Group on Victim Support to express our concern with the changes to the way legal aid is paid for immigration and asylum appeals as introduced on 8 June 2020.

Many of us have direct experience supporting survivors of trafficking and slavery to access their entitlements. Access to legal advice is an article 12 entitlement (Council of Europe Convention for Action Against Trafficking). It is our experience that access to other article 12 entitlements, including access to suitable housing and support, often hinges on early good quality advocacy and legal representation. The changes will likely mean that fewer trafficked people will be able to access legal aided immigration advice and representation, jeopardising survivors' access to justice, protections and rights, which are integral to their recovery.

While anyone can be trafficked, exploiters are well known to use insecure or uncertain immigration status to increase psychological control. Further, as a result of their exploitation, many survivors are unable to return to their country of origin due to the ongoing threat of further harm. Many people enter the NRM in urgent need of immigration advice. The traffickers' methods combined with the UK's hostile environment mean that without specialist immigration advice many victims are too anxious to disclose many elements of their abuse. Survivors are also in a position where they are unable to navigate the exceptional complex immigration system without a legal representative. This can be seriously detrimental to recovery and can undermine identification.

Already many people in the NRM struggle to access specialist immigration and asylum advice within their 'recovery period' (the 45 days following a first stage NRM decision). Snapshot research undertaken in June 2020 found that 71% of anti-slavery group respondents reported difficulties in finding legal aid immigration representation for victims of trafficking.¹ It is already not uncommon for survivors to rely on informal loans – which they often have no means to repay - to pay for private legal advice, making them vulnerable to debt bondage and re-exploitation. We believe that the scarcity of advice is because it is already so hard for legal aid providers to sustain this work due to the legal aid payment structures and processes in place. Research by Refugee Action shows that there has been a 56% drop in the number of asylum and immigration legal aid providers since 2005.²

At present, lawyers doing this work can only charge for actual time spent at an hourly rate where their work exceeds three times the value of the fixed fee in the whole life of a case. Changes introduced include increasing the fixed fee amount, meaning lawyers are required to do significantly more work 'at risk' before they will be actually paid for their time. As such, lawyers will be less likely to take on cases that are complex and demand more time, for people with complicated histories and

¹ Young Legal Aid Lawyers "A Sector at Breaking Point: Justice Denied for Victims of Trafficking" June 2020

² Refugee Action and NAACOM "Tipping the Scales: Access to Justice in the Asylum System" July 2018.

vulnerabilities, as there is too great a risk that they will not be paid, and they cannot afford to take this risk. The Immigration Law Practitioners' Association estimates that with the introduced changes, even in complex cases, a barrister might be expected to produce a skeleton argument for as little as £60. The immigration Bar is united in refusing to accept instructions under this new fee model. The changes make legally aided asylum and immigration work financially unviable and pose an existential threat to the profession.

Trafficking cases can be very complicated; they often involve disclosing complex and traumatic events, are slow to resolve, and often involve translation, expert evidence, time and trust. As such, we are deeply concerned that under this next structure legal aid lawyers will not be able to afford to take these cases, the number of asylum and immigration legal aid providers will reduce further, and it will be increasingly difficult for our client group to get legal representation.

We understand there is until the 8th July to stop these new rules. We strongly urge that you pause the changes, and conduct consultations, including impact assessments, to ensure that these changes do not inadvertently aggravate the already precarious situation, and further undermine access to vital legal advice for survivors of human trafficking and modern slavery.

Your sincerely,

Kate Roberts, ASI, Tamara Barnett, HTF, Rachel Smith, HTF, Anna Sereni, ATMG - MSSIG Victim Support Group Co- Chairs.

Emily Chalke, Ella's

Amber Cagney, West Midlands Anti-Slavery Network

Lara Bundock, The Snowdrop Project

Debbie Ariyo, AFRUCA

Kerry Smith, Helen Bamber Foundation

Lynne Chitty, Love 146

Avril Sharp, Kalayaan

Laura Duran, ECPAT

Kate Garbers, Unseen

Karen Anstiss, Bakhita House, Caritas

Julia Thomas, The Passage

Phillipa Roberts, Hope for Justice

Marissa Begonia, The Voice of Domestic Workers

Bali Sohal, Black Country Women's Aid

Victoria Marks, ATLEU

Tatiana Gren- Jordan, Modern Slavery Policy Unit, Justice and Care and the Centre for Social Justice

Yvonne Hall, Palm Cove Society

Kirsty Thompson, JustRight Scotland

Major Kathy Betteridge, The Salvation Army

Gisela Valle, Latin American Women's Rights Service

Jennifer Dew - International Organization for Migration, UK (IOM UK)