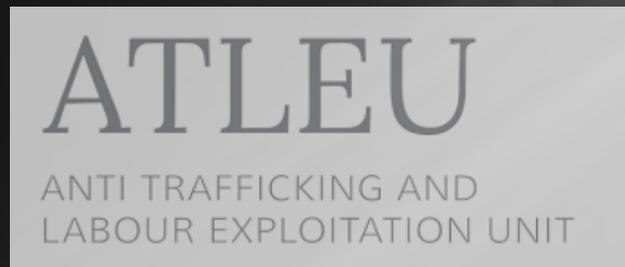


Human Trafficking and Modern Slavery: An Overview of Best Practice for Legal Aid Immigration and Public Law Practitioners Webinar



5 February 2021

Presenter

Lindsay Cundall

Public Law and Immigration Solicitor / Training Lead | Anti-Trafficking and Labour Exploitation Unit

Lindsay is an immigration solicitor and public law supervisor, and a training lead in ATLEU's Sheffield office. She qualified under the Law Society's Immigration & Asylum Accreditation Scheme (IAAS) in 2010. Lindsay qualified as a solicitor with Wilson Solicitors LLP; her training was based in the immigration and public law departments. Lindsay previously worked at Refugee and Migrant Justice, Brighton Housing Trust and the UNHCR. She has extensive experience of representing survivors of trafficking and slavery, particularly in complex judicial review claims, representing those detained in immigration detention or going through the criminal justice process. She is a contributor to Human Trafficking and Modern Slavery: Law and Practice. Lindsay works closely with support workers and legal advisors across the country, providing training and support to develop their knowledge and understanding of the rights and entitlements of survivors of trafficking and slavery.

Lindsay can be contacted by emailing training@atleu.org.uk

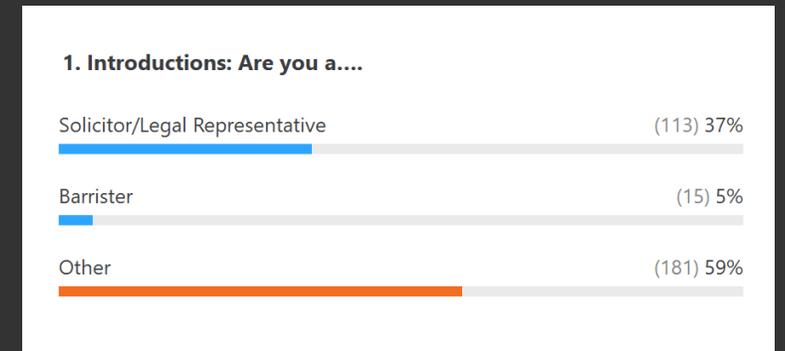
Agenda

- **Welcome and Introduction**
- **What is Trafficking and Modern Slavery?**
- **Indicators of Modern Slavery: Objective and Subjective**
- **Legal Framework: Sources of Law**
- **Legal Framework: NRM Process**
- **Evidence**
- **Legal Challenges: Reconsideration, Judicial Review and Appeals**
- **Funding**
- **Referrals**
- **Details of opportunity to participate in the ATLEU-Legal Education Foundation Training/Mentoring Programme**



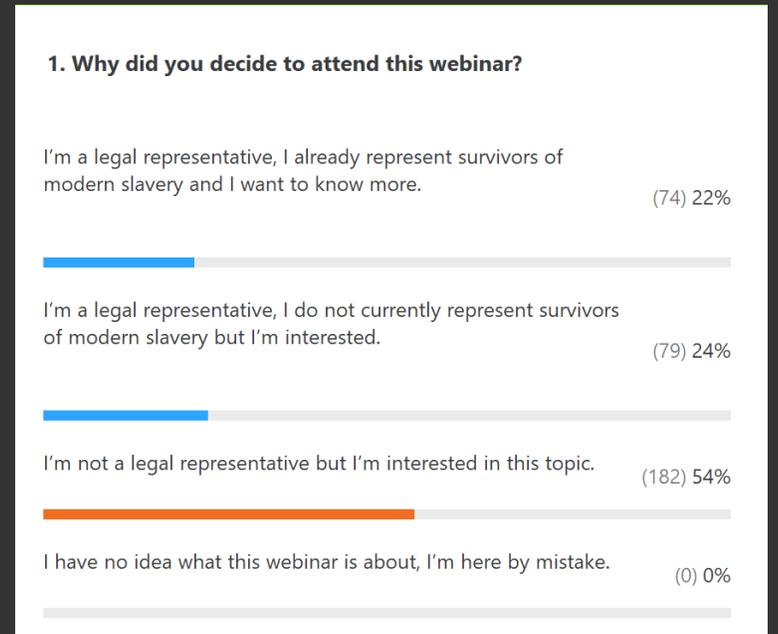
Introductions: Are you a....

1. Solicitor/Legal Representative
2. Barrister
3. Other



Why did you decide to attend this webinar?

1. I'm a legal representative, I already represent survivors of modern slavery and I want to know more.
2. I'm a legal representative, I do not currently represent survivors of modern slavery but I'm interested.
3. I'm not a legal representative but I'm interested in this topic.
4. I have no idea what this webinar is about, I'm here by mistake.



What is Trafficking?

Action	recruitment, transportation, transfer, harbouring or receipt <i>which includes an element of movement whether national or cross-border</i>
Means	<i>which is achieved by a...</i> threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability;
Exploitation	<i>for the purpose of...</i> eg sexual exploitation, forced labour or domestic servitude, slavery, financial exploitation, removal of organs

Notes on the Definition

- Means is not necessary for child victims.
- Not necessary for exploitation to have actually happened.
- It is not smuggling.

Modern Slavery: An umbrella term which includes...

- **Human Trafficking:** *Action, Means for the purpose of Exploitation.*
- **Slavery:** *The status or condition of a person over whom any or all of the powers attaching to the right of **ownership** are exercised.*
- **Servitude:** *An **obligation to provide a service** that is imposed by the use of coercion.*
- **Forced or Compulsory Labour:** *All work or service which is exacted from any person under the menace of any penalty and for which **the said person has not offered himself voluntarily***

An ongoing process

Reasons to leave home country

Persecution
Economic factors
Vulnerabilities

Victim of Modern Slavery

Threats
Debt bondage
Psychological coercion

Exploitation in the UK

Indicators
Contact with
authorities
Victim's account
Victim's profile

Indicators: Objective evidence on UK trends

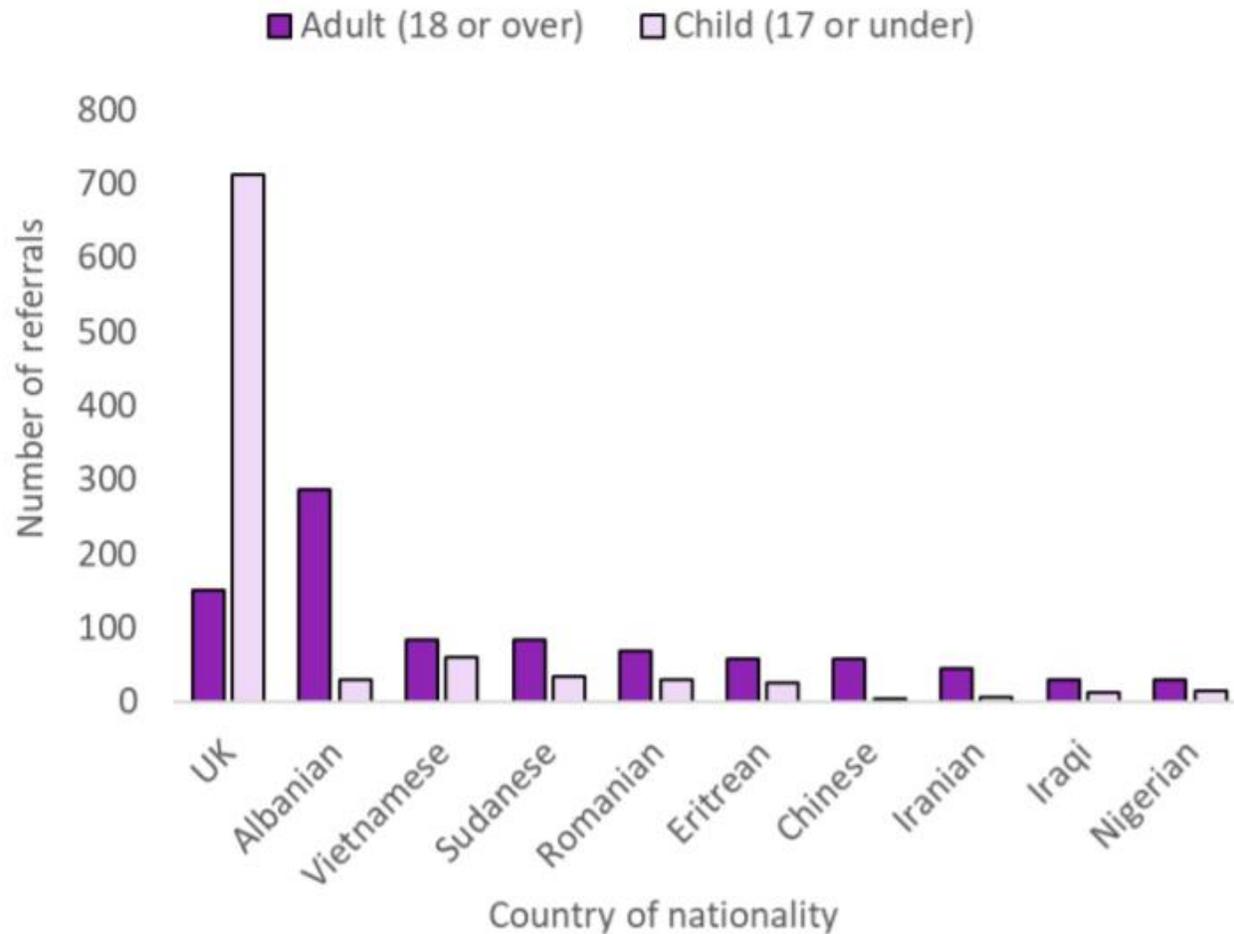
❁ Question: Which nationality had the highest number of identified potential victims of modern slavery in the last quarter of 2020?

1. Ukrainian
2. Nigerian
3. British
4. Albanian

Answer: British nationals



Figure 5: Number of NRM referrals for the most common nationalities of potential victims in Q3 2020, by age group at exploitation; the top 10 nationalities shown here account for 76% of referrals



Objective Indicators: Country of origin and trends

Albania

Vietnam

Forced criminality:
Cannabis Cultivation



Sexual Exploitation
Nail Bars
Car Washes
Forced begging

Objective Indicators: Country of origin and trends

Eritrea
Sudan
Ethiopia

via Libya



Via Italy etc

Inadmissible
asylum claim?

Objective Indicators: Country of origin and trends

British nationals
Foreign nationals
with drug related
convictions



Deportation Order

Subjective Indicators

Withdrawn and refuses to talk / appears afraid to talk to a person in authority

Physical indications of working (For example overly tired in school, indications of manual labour – condition of hands/skin, backaches)

Gone missing from local authority care

Involved in criminality highlighting involvement of adults (for example recovered from cannabis farm / factory, street crime, petty theft, pick pocketing, begging)

Claims to have been in the UK for years but hasn't learnt local language or culture

No passport or other means of identity

Story very similar to those given by others, perhaps hinting they have been coached

Has money, expensive clothes, mobile phones or other possessions without plausible explanation

Sources of Law

ECAT

Article 4 ECHR

EU Directive
2011/36/EU

Modern
Slavery Act
2015

Article 4 ECHR

Article 4 European Convention on Human Rights
No one shall be held in slavery or servitude.
No one shall be required to perform forced or compulsory labour

s6 HRA it is unlawful for a public authority to act in a way that is incompatible with a person's rights under the ECHR.

Rantsev v Cyprus and Russia (2010) 51 EHRR 1

System duty: implement measures to combat trafficking

Protection duty: take steps to protect (including support) victims

Investigation duty: investigate situations of potential trafficking

ECAT

ECAT (Council of Europe Convention on Action Against Trafficking)

Unincorporated International Treaty?

See PK (Ghana): Statutory Guidance/NRM gives effect to rights and obligations of ECAT

National Referral Mechanism (NRM)

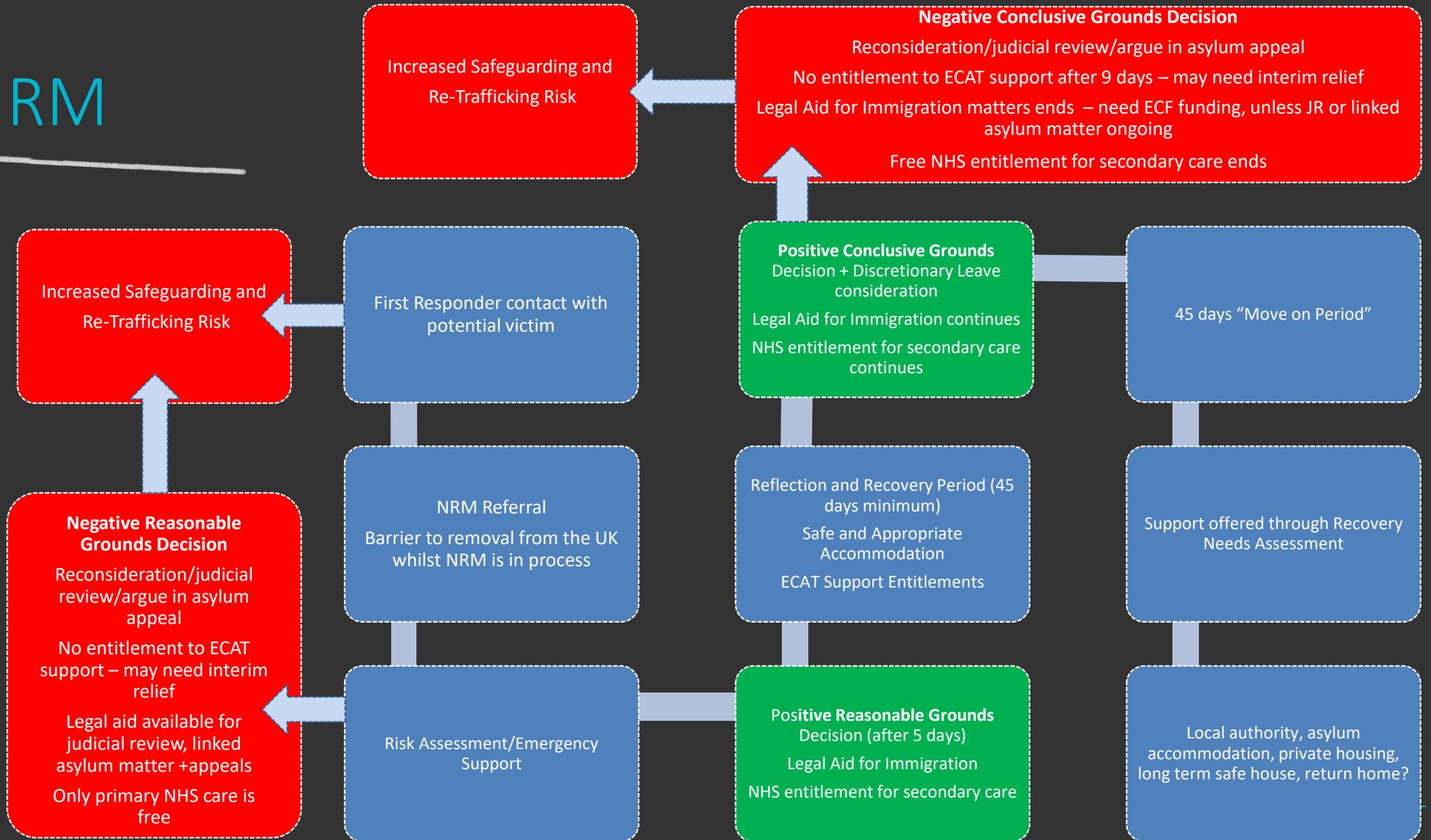
Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.0, 4.1.21

Victim Care Contract? Recovery Needs Assessment Guidance?

Support: ECAT Articles 12 and 13

- **Appropriate and secure accommodation**
 - **Material assistance**
 - **Psychological assistance and necessary medical treatment**
 - **Translation and interpretation services**
 - **Counselling and information regarding legal rights (in a language they understand)**
-
- **The UK must take due account of the victim's safety and protection needs.**
 - **These rights continue until the individual has left the UK**
 - **Support should be offered in all settings (unless there are "public order grounds"), including prisons and detention centres**

NRM



Reasonable Grounds Decision

- Decision should be made within 5 working days
- Initial filter decision, very low legal threshold, “I suspect but I cannot prove”
- It is not a detailed credibility assessment
- Breach Article 4 - (protection/investigation/systems duty) when there is a credible suspicion which can be before a reasonable grounds decision is made

R (TDT) v SSHD [2018] EWCA Civ 1395

Conclusive Grounds Decision

- Decision made after the 45 days reflection and recovery period – delays are a problem
- The burden of proof is “the balance of probabilities”
- The legal representative should submit representations and evidence before a decision is made.

Safeguarding



- Do they know what support/accommodation is available?
- Do they know they can challenge a negative legal decision?
- Good practice to discuss safety openly – do they want to provide a specific authority for you to act if they are missing?
- Going missing is an indicator of trafficking
- Ask key questions, build trust. For example:
 - ✓ Have you suffered physical harm/sexual abuse/rape at any point previously?
 - ✓ Are you scared of anyone now?
 - ✓ Have you previously been threatened/are you still being threatened?
 - ✓ Do you owe a debt?

Break Time

Evidence



Is a formal witness statement appropriate if we can never know everything?



Challenges: Not in line with Guidance

- Did the decision maker properly investigate the case?
- Did the decision follow the guidance on credibility, delayed disclosure etc?
- Did the decision maker take practical steps such as contacting third parties for information?
- Check the quality assurances, e.g. second pair of eyes review
- Please note: The statutory guidance states that a “not in line with the guidance” challenge **can only be raised once**, and **within 3 months of the decision** – however ECAT requires the UK authorities to investigate trafficking, it is not time limited.

Challenges: New Evidence

- Medical Evidence
- Expert Evidence: country, trafficking expert
- More detailed account to explain inconsistencies
- Objective Evidence
- New case law
- New police investigation into traffickers
- No time limit in statutory guidance for bringing “new evidence” challenges

Challenges: Types of challenge

- Reconsideration Request: An individual, or someone acting on their behalf, may request reconsideration of a negative RG or CG decision
- Judicial Review: within 3 months of the negative decision (or 3 months of decision to refuse to reconsider)
- Appeal: Although not an immigration decision the Tribunal does have jurisdiction to make a finding whether the Appellant is a victim of trafficking.

There is a right of appeal on Article 4 grounds.

MS (Pakistan) v Secretary of State for the Home Department [2020] UKSC 9

Risk of re-trafficking, risk of harm from traffickers and vulnerability arguments relevant to protection appeals of survivors of modern slavery.

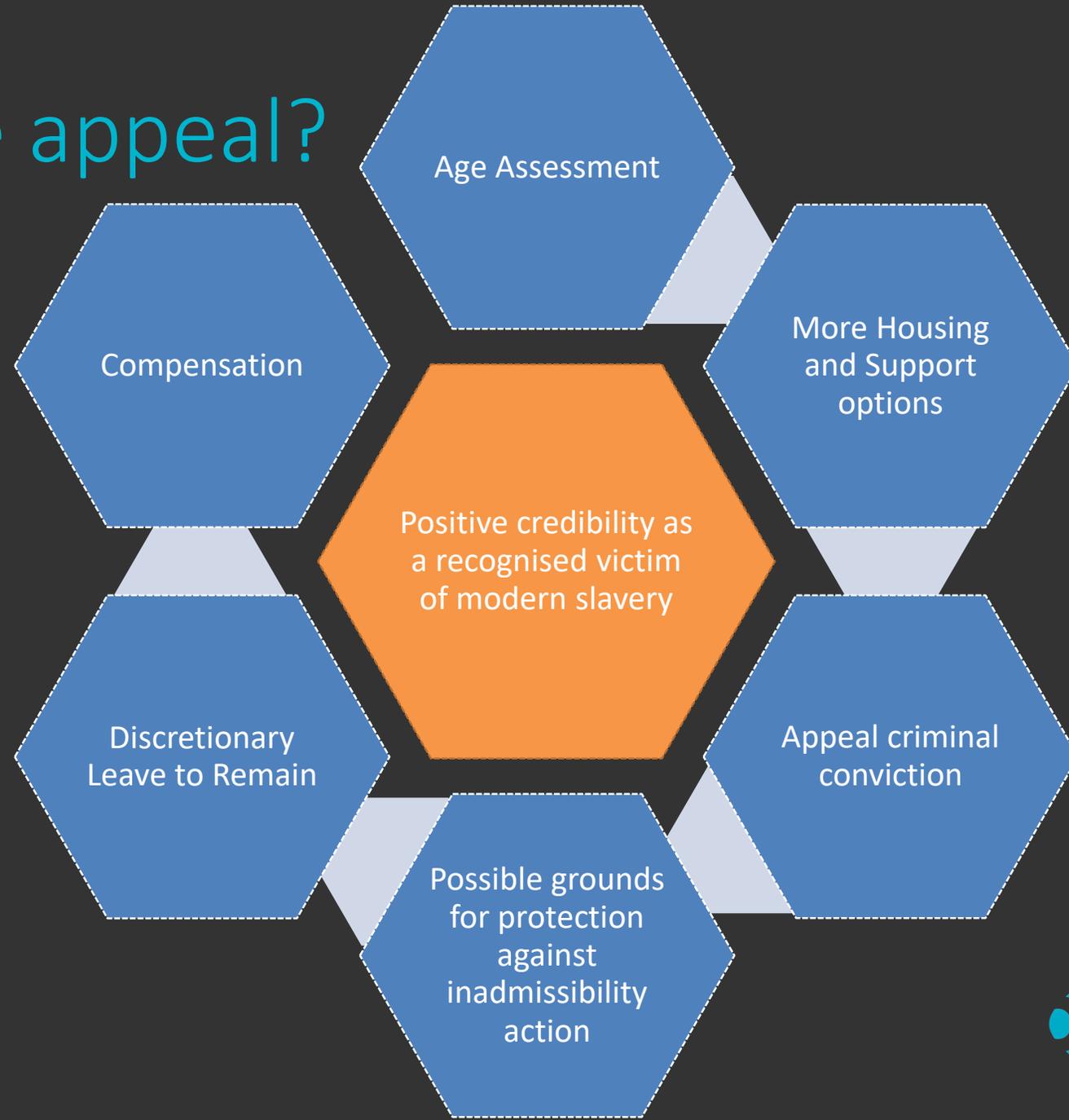
Poll Question:

Who has previously assisted a client with a judicial review of a negative trafficking decision?

1. Yes
2. No
3. I'm not a legal representative who can do this type of work



Why JR before appeal?



Succeed in judicial reviews by frontloading



Detailed Account	Negative Credibility
Subjective/Objective Evidence	JR Costs risk
Expert Evidence	
Procedural Arguments	
Strong Reconsideration Request	
Better legal aid rates/inter-partes rates	

Detailed Account

Subjective/Objective Evidence

Expert Evidence

Procedural Arguments

Strong Reconsideration Request

Better legal aid rates/inter-partes rates

Negative Credibility

JR Costs risk

Is there Legal Aid?

1. Always available for:

- Asylum claim, including appeals and pre-asylum advice (trafficking advice can be given if linked to the asylum claim)
- Judicial review
- Domestic abuse applications
- Public law legal help for advice on any other unlawful decision of a public authority which affects your client which may lead to judicial review

2. Also available for those with positive Reasonable grounds (RG) decision for any immigration application (e.g. Discretionary Leave to Remain, Article 8, and settlement applications)

3. Please note, if the individual then gets a negative CG it may be necessary to apply for ECF funding for immigration matters under (2), unless it can be justified under (1)

JR Costs Risk

The representative is only paid for the work carried out if:

- the court gives permission to bring judicial review proceedings;
- the court neither gives nor refuses permission, and the LAA considers payment is reasonable in the circumstances: a 'discretionary payment';
- the defendant withdraws the decision to which the application for judicial review relates and the withdrawal results in the court (a) refusing permission to bring judicial review proceedings, or (b) neither refusing nor giving permission;
- the court orders an oral hearing to consider whether to give permission to bring judicial review proceedings;
- the court orders a rolled-up hearing.

But can all this work really be done on legal aid?

Asylum Legal Help - £413 fixed fee, 51.62 p/hour

1 unit = 6 mins

Client Care Letter – 2

Advice letter – 4

Meeting with client - 10

Standard letters and calls – 10

Reviewing documents – 30

Taking instructions on account/statement – 80

= 136 units = 13.6 hours

13.6 x 51.62 = £702

Already way over the fixed fee threshold and we haven't even sent representations!

Solution:

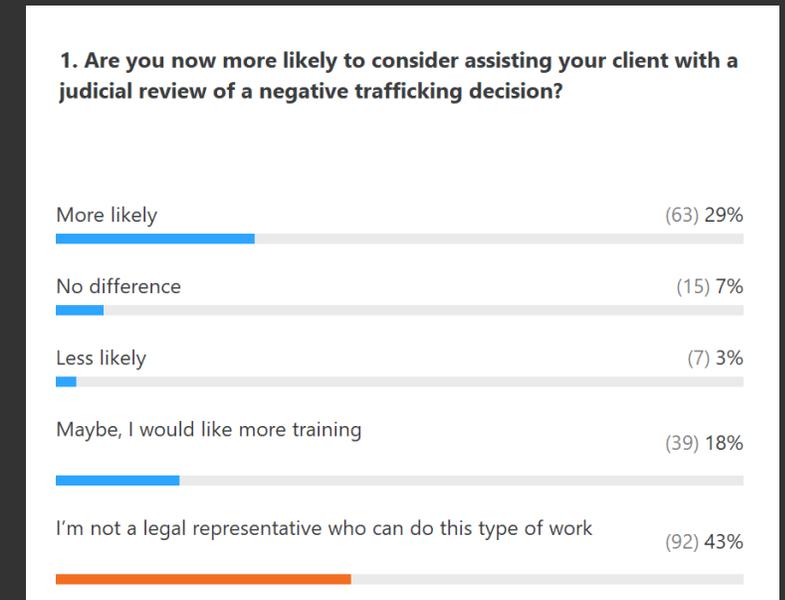
Trafficking cases are always complex

Meet the escape free threshold to be paid for all work + more likely to succeed in a judicial review or appeal.

Poll Question:

Are you now more likely to consider assisting your client with a judicial review of a negative trafficking decision?

1. More likely
2. No difference
3. Less likely
4. Maybe, I would like more training
5. I'm not a legal representative who can do this type of work



Referrals

❖ Immigration Solicitors:

- Trafficking identification (when connected to discretionary leave to remain or asylum), Immigration (eligible because RG/CG decision), discretionary leave to remain, out of scope legal aid advice if ECF applied for.
- Judicial review – identification, decisions of public authorities that arise out of the immigration case

❖ Public Law Solicitors:

- Judicial review – identification, support, decisions of public authorities
- Representation if police are not investigating trafficking
- Civil claims for damages against traffickers and the state

❖ Community Care Solicitors:

- Care/Support and Housing matters
- Age Assessments (the benefit of the doubt should be applied for age if potential victim of trafficking)

❖ Housing Solicitors:

- Homelessness matters

❖ Criminal Solicitors:

- Modern Slavery Defence, first instance or appeal

❖ Employment Solicitors: Compensation against trafficker for non payment of wages

ATLEU-The Legal Education Foundation Training

- A tailored training/mentoring programme for immigration and public law legal aid practitioners.
- Suitable for legal practitioners interested in delivering high quality advice and representation for survivors of modern slavery.
- Programmes will be delivered to law firms/organisations after agreement of terms with partners/managers.
- The programme will focus on ensuring quality whilst delivering income under the legal aid contract.
- Different packages will be offered depending on demand; delivering training free of charge where there is a need, or for an affordable fee.
- Get in touch now! Deadline is 8.3.2021 training@atleu.org.uk

Further Resources

- Join the ATLEU referrals portal:
<https://referrals.athub.org.uk>
- Go to our training website:
ATHUB – The anti trafficking information resource
<https://athub.org.uk>
Sign up for free
- Free second tier advice: advice@atleu.org.uk
- Further Reading:
Human Trafficking and Modern Slavery Law and Practice, Second Ed, Bloomsbury Professional
- <https://www.bloomsburyprofessional.com/uk/human-trafficking-and-modern-slavery-law-and-practice-9781526514790/>

Did you enjoy today's webinar?

- Please send your feedback via DG legal and include your email so we register attendance from today's webinar.
- Please send your email to training@atleu.org.uk for information on further events.
- Please state in your email if you or your organisation are interested in the training/mentoring programme [closing date is 8.3.2021]
- Please donate to our strategic litigation fund virginmoneygiving.com/fund/strategiclitigation

ATLEU

ANTI TRAFFICKING AND
LABOUR EXPLOITATION UNIT

Thanks for watching!

David Gilmore | Director

M: 07779 713 886

T: 01509 214 999

E: david@dglegal.co.uk

Lindsay Cundall | Public Law and Immigration Solicitor/Training Lead

E: training@atleu.org.uk

