

# Modern slavery: Legal remedies for victims of labour exploitation



## At a glance

**This is the second in a series of Law Centre (NI) papers on forced labour and looks at the potential legal remedies available for victims of labour exploitation.**

We outline some of the legal remedies available through the criminal justice process, the civil justice process (including the Industrial Tribunal) and other enforcement mechanisms that can assist victims of labour exploitation. We consider the challenges associated with each remedy, which are summarised in a table on pages 13 - 14. Some of these remedies remain untested as this is a developing area of work.

A very complicated framework of protection emerges. Our view is that this framework is not victim centred, which is not surprising given that it predates contemporary understanding of trafficking and exploitation.

There have been a number of welcome legislative/policy developments in recent years to assist victims of exploitation in Northern Ireland. It is now time to ensure that effective remedies are available for victims of labour exploitation.

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## Introduction

Domestic and international law requires the UK government and NI Assembly to assist and support victims of trafficking to obtain compensation for their exploitation.<sup>1</sup>

This Law Centre paper focuses on *legal redress* for victims. Specifically, it identifies a number of different legal actions that can result in financial relief for the victim; contrary to a misconception, there is no straightforward process whereby victims automatically receive compensation. The paper takes a broad view of remedies available in both the criminal and civil spheres and highlights some of the difficulties associated with pursuing each. The paper concludes with some recommendations.

## Outcomes and the importance of financial remedies

Cases involving trafficking and/or slavery can result in any number of outcomes. Some victims embark on the process of rebuilding their life and may move into proper, decent employment. Some victims return to their country of origin and are reunited with family. In some cases, the perpetrator of the exploitation is prosecuted and incarcerated /fined, etc. Some of these outcomes can bring a sense of justice to the victim.

The majority of victims identified/recovered by enforcement agencies are destitute, having endured months or years of extreme financial hardship, thus any financial remedy – whether consisting of recovered wages or compensation for poor treatment – can be hugely valuable to the victim. Compensation can help reduce the victim's susceptibility to further exploitation. Further, compensation is evidence that an injustice has occurred and thus it can assist victims recover their sense of dignity and self-worth.

## Pursuing remedies: the practicalities

Many victims recovered from situations of trafficking/slavery are immediately subject to a number of different legal and support processes. For example, many victims are referred into the National Referral Mechanism for a trafficking determination and some have concurrent asylum claims. Both are rigorous processes. In addition, some victims are witnesses to crime investigations.

No doubt these different processes are bewildering, especially for those with limited language skills or familiarity with our systems. The prospect of embarking on yet another

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<sup>1</sup> The Council of Europe Convention on Action Against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197, 2005 and Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

legal process(es) is likely to be daunting for victims – but necessary for those seeking a financial remedy. In short, it can be practically difficult for some workers to take the time to explore potential financial remedies.

## Remedies available through the criminal process

The criminal process – whereby a perpetrator is tried for trafficking/slavery offences against an individual – can result in a financial remedy for the victim. Of course this means that a criminal process must be underway before there is any prospect of a financial remedy. In reality, criminal investigations may take considerable time, thus delaying access to a financial remedy for the victim.

The criminal process offers two important remedies: Slavery and Trafficking Reparation Orders and the Criminal Injuries Compensation Scheme.

### a) Slavery and Trafficking Reparation Orders

While there have been some convictions, we are not aware of any compensation order for a victim of trafficking in Northern Ireland.<sup>2</sup> However, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 (“the Act”) has introduced a new concept of Slavery and Trafficking Reparation Orders (“STRO”)<sup>3</sup>, which we hope will result in victims being awarded compensation. Courts have a new power to make a STRO against a person who is convicted on indictment of any of the offences to the victim for any harm which flows from the offence.<sup>4</sup> The STRO directs the convicted person to pay reparations to a victim for harm resulting from that offence. The Court must consider whether to make a STRO *regardless* of whether an application is made and it is required to give reasons if it chooses not to make such an order.<sup>5</sup>

This is a relatively new power and as of yet there has been no STRO made in Northern Ireland making their effectiveness difficult to gauge. A potential benefit to victims is that these Orders may obviate the need to pursue a separate civil remedy. Another benefit is that that enforcement of the order is managed through the criminal court, thus relieving the victim of having to initiate and pursue it. Furthermore, there is no minimum threshold of

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<sup>2</sup> Final Northern Ireland Human Trafficking and Exploitation Strategy 2015/16 29, page 10 ([www.dojni.gov.uk](http://www.dojni.gov.uk)). There were also two convictions in relation to forced labour in September 2016.

<sup>3</sup> Section 10 of the Act.

<sup>4</sup> Under the Act the offences of forced labour and human trafficking are triable on indictment only which means they must be heard in the Crown Court. Prior to the 2015 Act a victim of crime could only receive compensation through criminal proceedings as per Art. 14 of the Criminal Justice (Northern Ireland) Order 1994 – this was by way of a compensation order.

<sup>5</sup> Section 10 (7) (a) and (b)

injury required to be shown which is in contrast to the Criminal Injuries Compensation Scheme (see below).

While we are positive about the new STRO power, this remedy is contingent upon the perpetrator being convicted and the convicted person having sufficient assets to pay to their victim: if there are no assets, there is no compensation.

### **b) Criminal Injuries Compensation Scheme Claim (NI)**

A victim may be entitled to make a claim under the Criminal Injuries Compensation Scheme (“the CICS”).<sup>6</sup> This scheme can make compensatory payments to victims of violent crime who have suffered personal injury. As compensatory payments come from a statutory fund rather than the offender’s assets, this route can be beneficial in circumstances where the convicted person has no assets. A claimant does not need legal representation to make an application and assistance can be provided free of charge by Victim Support.<sup>7</sup>

The Department of Justice has published a leaflet for victims of human trafficking setting out how to apply for compensation under the CICS.<sup>8</sup> Further guidance is also due to be published. However, victims of human trafficking and forced labour have no special status under the CICS and must fulfil the same criteria as all other victims of crime.

To qualify for compensation under the CICS the following conditions must generally be fulfilled:

- the injury must have been sustained in Northern Ireland
- an application should be made within 2 years of the injury being sustained, or, in the case of a minor, within 2 years of the minor reaching the age of 18.
- the victim must have suffered a physical<sup>9</sup> or mental injury<sup>10</sup> sufficiently serious to be classified in one of the tariff bands attached to the Scheme:
- if the mental illness has arisen without any physical violence the victims must show that he was put in reasonable fear of immediate harm to self.<sup>11</sup>

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<sup>6</sup> Northern Ireland Criminal Injuries Tariff Compensation Scheme (2009) underpinned by the Criminal Injuries (Compensation) (Northern Ireland) Order 2002. A guide to the Scheme is available on: <http://www.nidirect.gov.uk/2009-guide-to-criminal-injuries-compensation>

<sup>7</sup> Victim Support (Northern Ireland) is a government funded organisation tasked with assisting victims to make applications under the scheme

<sup>8</sup> See here: <https://www.dojni.gov.uk/publications/compensation-leaflet-and-advice-victims-human-trafficking-english>

<sup>9</sup> The test of what constitutes a physical injury is quite high e.g. that it had significant residual effects 6 weeks post incident.

<sup>10</sup> Mental injury must constitute a disabling mental illness, confirmed by psychiatric diagnosis which lasts for at least 28 weeks.

- Victims who are unwilling to co-operate with police in bringing the offender to justice may have compensation reduced or withheld.

Although victims of human trafficking and slavery may have endured extreme hardship (both in terms of working conditions and their living conditions) and may have been subjected to threats of violence, they may not qualify for CICS compensation if they cannot demonstrate having suffered physical violence and/or mental trauma constituting a “disabling mental illness”.<sup>12</sup> We see this as a significant limitation on the value of the CICS for victims of forced labour.

CICS also has other limitations. First, the scheme does not permit victims to obtain compensation for loss of earnings as a result of their exploitation. Second, the scheme precludes any violence inflicted on victims prior to arrival in Northern Ireland (for example while in transit) from any payment. Third, victims may be put off pursuing an application for compensation under the CICS because it can require victims to co-operate with the police and authorities.

This ‘co-operation requirement’ is a concern as assistance to victims should not be conditional on the victim on the victim giving evidence in criminal proceedings.<sup>13</sup>

There has been some recent litigation in this area: in November 2015, a claimant successfully appealed a refusal of compensation on grounds that she had not co-operated with a criminal investigation. The First-Tier Tribunal held that, while she had not co-operated, it would be contrary to EU legislation to bar her from an award.<sup>14</sup> We suggest that the CICS scheme is now reviewed in light of this litigation.

## Remedies available through the civil process

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<sup>11</sup> There are also provisions to cover mental injury arising from witnessing an injury to a person with whom a victim has a close relationship of love and affection.

<sup>12</sup> The Law Centre has raised the issue of the lack of specialist mental health service for victims of trauma and torture in Northern Ireland with the Department of Health

<sup>13</sup> Art 14 of the NI Human Trafficking & Exploitation Act states that investigation and prosecution of an offence under the Act is not dependent on the victim reporting the offence or accusing the person of committing the offence and that proceedings may be commenced or continued even if the victim has withdrawn any statement made in relation to the offence.

Art 15 of the Council of Europe Convention on Action Against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197, 2005 provides that states shall “guarantee” compensation for victims and Art 12 provides that assistance to victims should not be conditional on their willingness to act as witnesses.

<sup>14</sup> Ms C v Criminal Injuries Compensation Authority, CI 011/15/00026 [Nov 2015].

A victim of human trafficking/forced labour may wish to consider a civil claim in addition to or in preference to pursuing any remedies available through criminal proceedings. This does not mean that a victim is entitled to double recovery.<sup>15</sup>

The Industrial Tribunal offers the key remedy here but there are other possibilities through the civil courts.

### 1. Claim to the Industrial Tribunal

A person who has experienced labour exploitation may have a right to bring a claim against their employer before an Industrial Tribunal for a range of issues including: breach of contract (wrongful dismissal)<sup>16</sup>; unfair dismissal; breach of the laws around national minimum wage; dismissals for health and safety reasons; breach of the Working Time Regulations and unauthorised deductions from wages.

Where the worker can show that the exploitation amounted to race discrimination, it opens the possibility of an award of compensation for injury to feelings.<sup>17</sup> Such compensation can range from a relatively modest sum to an unlimited amount for serious physical or psychiatric injury arising from the discrimination. While on paper this may sound like a fruitful avenue for workers, the reality is that it is difficult and laborious to collect the evidence that is needed to succeed with a race discrimination claim.

If discrimination is not a ground of complaint, then no compensation can be claimed for injury to feelings caused by the exploitation *per se*. This is a significant limitation on the remedies available before an Industrial Tribunal.

There are no fees for submitting a claim to the Industrial Tribunal as opposed to other civil claims. This is in marked contrast to GB where fees have been in place since 2013. However, while the Tribunal is comparatively accessible, there are numerous drawbacks to this avenue, as discussed below (a-e).

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<sup>15</sup> Applicants under the CICS are required to disclose if compensation has been received for the injury from another source and this may be taken into account in any payment. Similarly, it is likely that when considering a slavery and trafficking reparation order under the Act, a court would take into account compensation already received when deciding what level of compensation is “appropriate” (see paragraph 2(3) of Schedule 2).

<sup>16</sup> Caution should be exercised in bringing a breach of contract claim before the Industrial Tribunal as there is an upper limit of £25,000 on damages recoverable. In addition, a respondent can counter-sue if it alleges the claimant has been in breach of contract.

<sup>17</sup> The fact that the claimant is a victim of trafficking and/or is a migrant will not of itself be sufficient to ground a claim in discrimination – exploitation on grounds of vulnerability does not equate to exploitation on racial grounds: *Taiwo & Onu v Olaigbe & Ors* [2016] UKSC 31

### **a) Short time limits**

For most claims to an Industrial Tribunal, the limitation period is 3 months from the date of the act or omission giving rise to the claim. The short timeframe can create particular difficulties for victims of labour exploitation: given the competing legal processes discussed above, there may be some delay before a victim receives advice from an employment adviser; the victim may need time to decide whether s/he wishes to issue proceedings; language barriers and the victim's trauma may impede the adviser in getting clear instructions; and delay can be experienced in identifying the correct potential respondents.

The three month time limit can be extended for a discrimination claim on the grounds that such extension is "just and equitable". However an extension of time for other claims such as breach of contract, unfair dismissal, breach of the Working Time Regulations and breach of the law around national minimum wage is much more difficult to obtain.<sup>18</sup> In summary, the time limit can act as a bar to justice.

### **b) Prospect of cross-examination**

In any civil proceeding, the claimant must be prepared to be cross-examined by the respondent or the respondent's representative. The prospect of such cross-examination and the stress and trauma involved (or indeed even seeing the respondent in court) may be a significant impediment to a victim pursuing a claim.

### **c) Lack of Legal Aid**

Legal Aid is available for advice and preparation for Industrial Tribunal proceedings through the Green Form scheme. However, there is no Legal Aid for representation in court. This means that a victim may have to present their own cases.

The Law Centre has long argued that it is extremely difficult for workers to represent themselves at a Tribunal.<sup>19</sup> Difficulties are multiplied in exploitation cases. In short, without

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<sup>18</sup> Claimants must show that it was not "reasonably practicable" to bring the claim within the time limit. Complete ignorance of the right to bring a claim may succeed if a tribunal is satisfied that it was reasonable for the Claimant to be completely of his/her rights (*Palmer and anor v Southend on Sea BC* [1984] IRLR 119)

<sup>19</sup> For example, see our response to the DEL Tribunal Rules consultation (2013) and the DEL Employment Law Review (2013) accessible at [www.lawcentreni.org](http://www.lawcentreni.org)

pro-bono expert legal representation, a claim is unlikely to proceed.<sup>20</sup> Thus the lack of Legal Aid is a real impediment for victims.

#### **d) The doctrine of illegality**

An Industrial Tribunal may decline to hear a case if it decides that the contract has been tainted by illegality. In labour exploitation cases, this issue is most likely to arise where the victim is a non-EU national and has been working in Northern Ireland in breach of immigration rules. In such cases, if the worker's claim is founded on the contract of employment the Industrial Tribunal can prevent the case from progressing.

EU law makes provision for a state to put in place measures to hold employers of undocumented workers liable to pay outstanding wages. However, the UK has not opted in to this provision.<sup>21</sup> This is a live issue: in *Hounga v Allen and Another*, the Supreme Court held that illegality of contract arising from illegal immigration status does not defeat a claim for discrimination.<sup>22</sup> Significantly, in the case of *Patel v Mirva*,<sup>23</sup> the Supreme Court has recently revisited the doctrine of illegality as it applies to contractual claims and this may now enable victims of trafficking who were working in the UK in breach of immigration rules to pursue claims for unlawful deduction of wages, breach of contract and unfair dismissal.<sup>24</sup>

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<sup>20</sup> The Equality Commission for Northern Ireland and Law Centre (NI) are the only two bodies which at present are likely to be in a position to represent a victim of trafficking on a pro-bono basis before the Tribunal. The Public Interest Litigation Support Project may be a source of funding for such cases.

<sup>21</sup> Directive 2009/52/EC. The Home Office Minister defended its decision not to opt in citing the administrative burden on employers and the public sector, potential difficulties for subcontractors, and that this provision would "send the wrong message by rewarding breaches of immigration legislation": The Rt Hon Damian Green, 24 May 2011.

<sup>22</sup> [2014] UKSC 47. The court held that while there were policy arguments in favour of upholding immigration law, it is also necessary to consider policy considerations of suppressing human trafficking. The court held that to apply the illegality defence in this case would be in breach of the UK's international obligations to suppress human trafficking and forced labour and servitude under the UN 'Palermo' Protocol, the Council of Europe Convention and Art 4 of the European Convention on Human Rights.

<sup>23</sup> [2016] UKSC 42. This was not an employment case, but rather, involved claims of breach and contract and unjust enrichment arising out an insider trading agreement.

<sup>24</sup> In preference to a strict application of the "reliance" principle (i.e. does the plaintiff have to rely on the illegal conduct in order to pursue his claim) the Supreme Court has adopted a more flexible "range of factors" approach which focuses on whether it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system. There are compelling grounds for arguing that any public policy arguments around the prevention of illegal working should give way to the public policy priority of detecting, punishing and preventing trafficking for labour exploitation.

While this caselaw is promising, the reality is that undocumented workers will find it very difficult to pursue a case through the Industrial Tribunal.

### e) Enforcement

Unfortunately, respondents often fail to pay the claimant following an Industrial Tribunal order for compensation.<sup>25</sup> In such cases, the claimant must try and enforce the order through the Enforcement of Judgments Office. The route for enforcement has been considerably simplified in recent years but the process still requires the claimant to pay a fee, which may simply be out of reach for a victim of exploitation. Thus, there is no guarantee that a successful Industrial Tribunal claimant will ever receive payment.

## 2. Other Civil Remedies in the County or High Court

There are a range of civil claims that *potentially* could be made against traffickers or exploiters in cases involving labour exploitation. This paper cannot address all the various claims that could arise but claims in tort and contract include: personal injury, harassment, false imprisonment, assault, battery, deceit, negligent misrepresentation, conspiracy, breach of contract.

The advantage of such claims is that the limitation period far exceeds the three month time limit for most Industrial Tribunal claims. The time limit for claims such as the above is between three and six years.

The potential benefit of a civil claim is demonstrated by the High Court case of *AT and others v Dulghieru and another*<sup>26</sup> in which four Moldovan women who had been trafficked for sexual exploitation were awarded a total of £600,000.<sup>27</sup> The claimants brought the case following a criminal prosecution where no compensation order had been made.

However, as with claims to the Industrial Tribunal, the need to give evidence and to face cross-examination by the defendant or the defendant's representative may dissuade some claimants. In addition, funding a civil claim is also likely to be difficult as legal aid.

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<sup>25</sup> We raised our concern about the non payment of Tribunal awards with the Committee for Employment on 6 January 2016. In Westminster, the Business Minister described it 'scandalous' that so few employment awards are paid promptly. Hansard 26 Jan 2015: Col GC14

<sup>26</sup> [2009] EWHC 225 (QB)

<sup>27</sup> The claimants took proceedings against the defendants for unlawful conspiracy to traffic them into the UK for the purpose of sexual exploitation and prostitution.

## Alternative Enforcement Mechanisms

In addition to the remedies outlined above, statutory agencies can also provide a potential means of redress for exploited workers. The two agencies that are most likely to be able to provide assistance are HMRC and the Department of Agriculture Environment and Rural Affairs.

- a) **HM Revenue & Customs (“HMRC”)** has powers to investigate and intervene where employers are not paying the National Minimum Wage.<sup>28</sup> If HMRC concludes that the National Minimum Wage has not been paid, it serves a notice of underpayment. This requires an employer to pay arrears of the NMW to each worker named on the notice. The employer is also required to pay a financial penalty to the Secretary of State. If the employer refuses to comply, HMRC has powers to take a case to a tribunal or County Court on behalf of the worker or can begin a criminal prosecution.<sup>29</sup>

One of the benefits of an HMRC intervention is that their inspections - undertaken by a team of HMRC Compliance Officers – can provide detailed information about working practices. This can be useful in circumstances where the victims have little or no evidence of the hours worked.

- b) **Department of Agriculture, Environment and Rural Affairs (“DAERA”)** is responsible for enforcing some agricultural worker rights.<sup>30</sup> Any agricultural worker who believes he has been underpaid the agricultural wage or deprived of holidays, holiday pay or time off can make a complaint to DAERA.<sup>31</sup> DAERA inspectors have powers broadly equivalent to the powers of HMRC compliance officers under the National Minimum Wage Act.<sup>32</sup> In addition to being able to pursue a civil remedy against an

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<sup>28</sup> These powers are set out in the National Minimum Wage Act 1998 (as amended). It is a criminal offence for an employer not to pay the National Minimum Wage. The relevant offences are: refusal or wilful neglect to pay the NMW; failing to keep or preserve NMW records; causing or allowing a false entry to be made in NMW records producing or furnishing false records or information; intentionally delaying or obstructing a compliance officer; refusing or neglecting to answer questions, give information or produce documents to a compliance officer

<sup>29</sup> See Department for Business, Energy and Industrial Strategy, ‘NMW & NLW: Policy on HMRC Enforcement’ (July 2016)

<sup>30</sup> DAERA’s powers are set out in the Agricultural Wages (Regulation) (Northern Ireland) Order 1977

<sup>31</sup> The complaint form is available online at: <https://www.DAERAni.gov.uk/publications/awbni-complaints-form>

<sup>32</sup> Art 8A of the 1977 Order.

employer on behalf of workers<sup>33</sup>, DAERA can also instigate criminal proceedings against an employer for failure to pay the minimum agricultural rate.<sup>34</sup>

The advantage for victims of labour exploitation in making a complaint to HMRC and/or DAERA is that the process:

- Removes the need for the victim to sue the respondent directly. Instead, the worker is interviewed by the enforcement agency officer who then interviews the respondent;
- Facilitates evidence gathering as enforcement officers can go into premises to locate records;
- May allow other victims to access compensation even if they have not made a complaint.

However, if the agencies do not exercise their investigatory powers, there is little a worker can do. Moreover, our understanding is that, to date, DAERA's approach is to seek to 'mediate' a resolution between the employer and worker rather than initiate enforcement action. Our view is that this approach is not appropriate in cases of forced labour.

## Conclusions and recommendations

This paper has highlighted the large number of the legal remedies potentially available for victims.

We conclude that the current framework is not victim centred. This is not surprising given the legal remedies described above predate contemporary understanding of trafficking and exploitation. The Department of Justice has sought to assist victims by publishing a leaflet explaining how they can access the Criminal Injuries Compensation Scheme. However, as this paper demonstrates, CICS is just one piece of an extremely complicated jigsaw of remedies.

Thus, the Law Centre's key recommendation is that the Department of Justice convenes a working group to identify the different remedies available to assess the effectiveness of same. The working group should be comprised of officials from Department of Justice and Department for the Economy and should include practitioners working on criminal and civil

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<sup>33</sup> Art 9 of the 1977 Order

<sup>34</sup> To date, we are not aware of criminal proceedings ever having been instigated under the 1977 Order.

claims. In addition to the recommendations outlined in our first paper,<sup>35</sup> the working group may wish to consider:

- Amending the Criminal Injuries Compensation Scheme to allow victims of human trafficking/forced labour to secure compensation for unpaid wages arising from their exploitation;
- Ensuring that the Criminal Injuries Compensation Scheme is compliant with the NI Human Trafficking & Exploitation Act (i.e. remove the 'co-operation requirement'.)
- Establishing a specific fund to compensate victims for unpaid wages where the trafficker/exploited cannot be located or has no assets. The existing Redundancy Payment Fund could be a useful model for such a scheme. One possibility would be to fund this scheme with money recouped via confiscation orders made under the Act or via the money raised by HMRC through penalties for non-payment of the national minimum wage.
- Enacting a new employment claim specifically of labour exploitation that would allow claimants to apply to an Industrial Tribunal for compensation for injury to feelings for distress/injury caused by human trafficking / forced labour. Such a claim could be analogous to discrimination law and extend liability to other parties who have aided the exploitation.
- Making legal aid available for victims of human trafficking / forced labour to take civil proceedings either at the Industrial Tribunal or, where currently not available, in the civil courts.

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<sup>35</sup> We called on the Department to review arrangements to ensure labour justice is accessible to all workers; in the short term, to coordinate an employment enforcement network and publish an annual report of enforcement activity; in the long term, to review remit and powers of enforcement agencies and expand where necessary and to consider how powers can be consolidated through a more centralised approach. We are delighted that our recommendation to ensure that (non trafficked) victims of forced labour have access to protections has been delivered and we congratulate all parties on this.

## Summary of remedies

Remedy	How does it work?	How does this assist victim?	Advantages	Disadvantages
<p><b>CRIMINAL JUSTICE</b></p> <p>Slavery &amp; Trafficking Reparation Order</p>	<p>The NI Human Trafficking legislation has create a new power for courts to make a Slavery and Trafficking Reparation Order against a person convicted of a trafficking /slavery offence</p>	<p>Through the Order, the Court can direct the convicted person to pay reparations to a victim for any harm</p>	<p>The Court <u>must</u> consider making an Order (the victim does not have to apply)</p> <p>Enforcement is managed through the criminal court and so victim does not have to initiate</p> <p>No minimum threshold of injury</p>	<p>This is a new power; its effectiveness is still unknown.</p> <p>This remedy is contingent on the convicted person having sufficient assets to pay the victim.</p>
<p>Criminal Injuries Compensation Scheme</p>	<p>A victim can make a claim under the CICS scheme.</p>	<p>This scheme makes compensatory payments to victims of violent crime who have suffered personal injury</p>	<p>Victim Support NI can help victims make an application. Payments come from a statutory fund and therefore are not reliant on the perpetrator having assets.</p>	<p>There is a minimum threshold of injury.</p> <p>Strict eligibility criteria apply including high physical / mental injury threshold. Victims of labour exploitation in particular may not qualify</p> <p>The 'cooperation requirement' is an obstacle</p> <p>CICS scheme does not cover injury arising from violence inflicted prior to arrival to NI.</p>

Remedy	How does it work?	How does this assist?	Advantages	Disadvantages
<p><b>CIVIL JUSTICE</b></p> <p>Claim to Industrial Tribunal (“IT”)</p>	<p>A worker can bring an employment claim against their employer before an Industrial Tribunal for a range of employment claims</p>	<p>The Industrial Tribunal can make an order for compensation for unpaid wages, etc. In race discrimination cases the IT may award injury to feelings.</p>	<p>IT can hear a wide range of complaints.</p> <p>As this is a civil process, there is a lower standard of proof, which may benefit workers.</p> <p>There are no fees to apply to an IT</p>	<p>Short time limits apply</p> <p>Prospect of cross examination</p> <p>Lack of Legal Aid means workers may have no means of funding their representation</p> <p>The doctrine of illegality may remain an obstacle to claims founded on the employment contract</p> <p>Enforcing a tribunal award can be difficult.</p>
<p>Other civil claims in the County or High Court</p>	<p>A worker could bring a range of civil claims against a trafficker e.g. personal injury, harassment, false imprisonment, assault, battery, deceit, negligent misrepresentation, conspiracy, breach of contract.</p>	<p>The County / High Court could make a range of orders.</p>	<p>More generous longer time periods apply</p>	<p>Effectiveness largely untested to date.</p> <p>Prospect of cross examination</p> <p>Lack of legal aid may be an obstacle.</p>
<p><b>OTHER ENFORCEMENT MECHANISMS</b></p> <p>HMRC</p>	<p>HMRC is responsible for enforcing National Minimum Wage and has powers to investigate and to compel payments</p>	<p>The agency can serve a notice of underpayment to the employer, requiring the employer to pay any arrears of NMW to the worker(s).</p> <p>Employer may also be required to pay a financial penalty (this does not go to the worker)</p>	<p>This process does not require the victim to sue the employer directly</p> <p>HMRC investigation methods can obtain information useful for other legal proceedings</p> <p>Can allow other victims to access compensation even if they have not made a complaint</p>	<p>HMRC remit is limited i.e. to NMW.</p> <p>Reliant on the agency to exercise its discretionary powers.</p>
<p>DAERA</p>	<p>DAERA inspectors have similar powers to HMRC.</p>	<p>DAERA can compel the employer to pay arrears of (agricultural) minimum wage and unpaid holiday pay</p>	<p>As above</p>	<p>As above; remit is limited.</p> <p>Current approach of mediated resolution not appropriate in forced labour cases.</p>

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