



---

# Upholding Rights!

---

## Early Legal Intervention for Victims of Trafficking – Best Practice Principles

Kirsty Thomson



Co-funded by the Prevention of and Fight against Crime Programme of the European Union

## Contents

1	INTRODUCTION .....	3
2.	THE TIMING AND LOCATION OF EARLY LEGAL INTERVENTION.....	5
2.1	Timing.....	5
2.2	Location of ELI.....	9
3	EARLY AND EFFECTIVE LEGAL INTERVENTION .....	11
3.1	Overview .....	11
3.2	Summary of the Critical Success Factors of Early and Effective Legal Intervention ...	11
3.3	ELI - Core Principles and Practice .....	13
3.3.1	Partner Relationships and Co-Working .....	13
3.3.2	Obtaining Evidence to support the Client’s case and Front-loading.....	14
3.3.3	Holistic Approach.....	14
3.3.4	Tenacity.....	16
3.4	ELI- Applying Experience: Skills and Knowledge .....	16
3.4.1	Previous interventions: working out what has happened and redressing inaccuracies.....	16
3.4.2	Specialist legal knowledge.....	16
3.4.3	Being clear about legal/professional boundaries .....	17
3.4.4	Checking of Records/Interviews.....	18
3.5	ELI - Ensuring Client Engagement and Understanding .....	18
3.5.1	Initial time spent with client so that they can consider all options .....	18
3.5.2	Pacing the case .....	19
3.6	ELI - Communication with Clients and Partners .....	19
3.6.1	Availability and Accessibility.....	19
3.6.2	Regular Client Liaison.....	20
3.6.3	Victim-Centred Approach which is Trauma Informed .....	20
3.6.4	Backup following any decision .....	21

4. INTER-AGENCY CO-OPERATION.....	22
4.1 Overview.....	22
4.2 Identification of Key Partners .....	23
4.3 Establish Formal Agreements regarding ELI .....	23
4.4 Broader Learning from the Pilot .....	25

# 1 INTRODUCTION

This paper seeks to identify promising practices within the provision of early legal intervention (ELI) for victims of human trafficking and set out principles of good practice that should inform the pilots being developed within Ireland, Bulgaria and Croatia. In doing so, issues of transferability within each Member State, requires to be taken into account.

The paper follows on from national reports that were prepared by Ireland, the UK, Finland, Bulgaria and Lithuania detailing the situation of ELI within each state and the resultant Comparative Report summarising these. The aim is to search for a model of best practice of ELI which complies with International and European human rights standards and therefore follows a human rights based approach.

It is therefore important to comment on what is meant by a human rights based approach in the area of ELI. A human rights based approach is about ensuring that a victim of human trafficking is able to effectively realise their human rights under international law. It is also, however, about how a pilot is set up, managed and supervised. It is about the expertise of lawyers within the pilot, how victims are treated and the extent to which they feel empowered to pursue a legal remedy as a result of the pilot. It is furthermore about how a pilot communicates with other partner agencies and its accountability and transparency in this regard. Depending on the context, a gender sensitive and child rights approach may be necessary.

Therefore, rather than set down a specified and more structured model of ELI, this paper aims to set down key principles that should be embedded within each pilot. If followed, each pilot will be offering an “enhanced legal service” essential to the effective provision of ELI in this area. The pursuit of these principles, taking into account the differing national political, social and legal contexts, will in turn inform the structure, location and operation of any pilot.

Not only are these principles transferable but their embodiment within each pilot should lead to a model of ELI which follows a human rights based approach outlined above.

These principles are based on existing models of ELI within Scotland and Ireland. The model of ELI in Scotland has recently been independently evaluated and the principles set down in this paper are, in part, based on this evaluation.

The principles may sound simple and a reflection of common sense. However, lawyers work within legal systems and structures which do not place an individual, never mind a victim of

trafficking, at their centre. Legal advice is often implemented according to the needs of an organisation and a legal system rather than the needs of the victim. This is contrary to the ethos of a human rights based approach.

Furthermore, legal advice does not operate in a vacuum and lawyers must engage with organisations that have competing interests in working with a victim, for instance the pursuit of a prosecution. Professional relationships can therefore be difficult to maintain.

Therefore, to place a victim of human trafficking at the centre of each legal process, and to ensure that others do this as well, is often not a simple process in practice. This is why effective ELI is essential to a human rights based approach.

Taking this into account, this paper aims to focus on three key areas for each pilot. The first is an examination of what is “early” legal intervention and to examine the timing and location of such advice.

Legal intervention may be provided early but to ensure successful outcomes, it must also be provided in an effective manner. Therefore, this paper sets out 15 principles that should be embedded within each pilot to ensure that this is the case.

Finally, the paper will examine the requirement to work in partnership with other agencies. This is because the success of each pilot will depend on the support and “buy in” it achieves from key partners.

Examples from the countries involved in this Project will be used, as appropriate, throughout the paper to demonstrate good practice.

## 2. THE TIMING AND LOCATION OF EARLY LEGAL INTERVENTION

### 2.1 Timing

The ELI Project is based on an acceptance that the point at which a victim of trafficking obtains information and advice on their rights is a crucial element of the legal process and is key to their on-going protection and co-operation with other agencies including law enforcement.

When looking at ELI, this paper proceeds on the basis that the international standards apply to victims of human trafficking as defined by their experiences and irrespective of the role of any formal identification system within a member state.

Therefore, best practice in this area dictates the following principles:-

- ELI should be available for all legal proceedings; and
- ELI is available as soon as there is an indication of human trafficking.

These principles are further examined below.

#### **Best practice dictates that ELI should be available for all legal proceedings**

Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (the *Trafficking Directive*) states that victims should have access without delay to legal counselling and to legal representation including for the purposes of claiming compensation where there are criminal proceedings<sup>1</sup>.

The Council of Europe Convention on Action against Trafficking in Human Beings (the *Trafficking Convention*), having a broader human rights focus than the law enforcement

---

<sup>1</sup> Art 12 (2).

based Trafficking Directive, does not restrict the right to legal assistance and free legal aid to criminal legal proceedings.

A joint communique from the UN bodies on the Trafficking Directive states that best practice is to provide ELI to all proceedings relating to a person's victim status. This includes criminal, civil, or labour procedures, for the purposes of compensation as well as proceedings in relation to immigration status or asylum<sup>2</sup>.

This is because, as the Explanatory Report to the Trafficking Convention states, court and administrative procedure is so complex in the area of human trafficking and that legal assistance will be necessary for victims to be able to claim their rights<sup>3</sup>.

### **Best practice dictates that ELI is available as soon as there is an indication of human trafficking**

The Trafficking Directive states that a victim should receive legal representation "without delay"<sup>4</sup>. The Trafficking Convention does not specify a time period but states the following in its Explanatory Report:-

194. Victims must be informed of relevant procedure as from their first contact with the competent authorities. By "competent authorities" is meant the wide range of public authorities with which victims may have their first contact with officialdom, such as the police, the prosecutor's office, the labour inspectorate, or the customs or immigration services. It does not have to be these services which supply the relevant information to victims. However, as soon as a victim is in touch with such services, he or she needs to be directed to persons, services or organisations able to supply the necessary information.

---

<sup>2</sup> Joint UN Commentary on EU Directive on Preventing and Combating Trafficking (2011), page .66.

<sup>3</sup> Para 195.

<sup>4</sup> Art 12 (2).

From the research carried out within the Member States in this Project, the following benchmarks can be stated in this regard:-

- **The optimum point of ELI is as soon as there is an indication of human trafficking.**
  - This is regardless of whether such indicators have been reported to a “competent authority” in the meaning of the Explanatory Report to the Trafficking Convention.
  - ELI should not be contingent upon the reporting of indicators of trafficking to a “competent authority” and any subsequent decision of that authority.
  - It is therefore important that NGOs working with migrants, children or in the violence against women sector are able to refer to specialist representation as soon as they think that there are indicators of human trafficking in a case.
  - Free ELI should not be tied to any such formal decision.
- **ELI should be provided prior to any formal engagement of the client with law enforcement or immigration proceedings.**
  - From the research, best practice dictates that it is provided prior to any informal engagement with such proceedings, where first contact is not with law/border enforcement agencies. This is because of the possibility of such engagement rapidly turning into a formal engagement.
- **At the very least, ELI must occur from the victim’s first contact with the competent authorities as described in the Trafficking Convention.**
  - The provision of ELI is from “first contact”. As soon as a competent authority is made aware of a potential victim, ELI should be arranged.

- This is regardless of any subsequent decision or process that the competent authority then follows.

The underlying rationale is that a victim must have access to confidential legal advice **before** they make any formal statement or agreement regarding their experiences and participate in any formal proceedings.

A victim must only participate with law enforcement or other formal proceedings related to their trafficking experiences on a consensual and informed basis. Legal advice will be needed to ensure that this is the case and at its optimum should be provided as soon as any agency, whether statutory or non-statutory, identifies potential indicators of human trafficking.

#### Good Practice – Ireland

In one case, the Immigration Council of Ireland (ICI) provided legal representation to a potential victim of human trafficking from an early stage. This provision of ELI led to early identification.

The victim of human trafficking was in the process of being prosecuted for offences linked to the trafficking. The ICI then liaised with criminal law solicitors and sent a letter to the District Court Judge explaining why the client should not be prosecuted. The charges were subsequently dropped.

This contrasted with another case of the ICI, where a client was prosecuted for offences linked with being a victim of trafficking, before legal advice was provided. Extensive inquiries and submissions were required to overturn those offences and have them removed from the client's record.

## 2.2 Location of ELI

The timing of legal intervention is closely linked to where advice is provided by the pilots and how. Therefore best practice in this area demands that:-

- **Pilots assess where there is unmet legal in the area of ELI and pro-actively target its services appropriately.**

This is in recognition of the fact that a high proportion of victims may be recovered through law enforcement/border control led operations. This could be from raids of establishments where potential victims may be located, i.e. brothels and places where individuals may be involved in criminal activities such as cannabis cultivation, petty theft etc. This can lead to a person being taken into either police or immigration custody without any recourse to a specialist lawyer in the area of human trafficking and without the law enforcement agency identifying signs of human trafficking.

Consideration should also be given to the identification of “hidden” groups within the trafficking population of a country, i.e. those who frequently will not come into contact with any services or where the relevant service routinely does not refer for ELI. Within the identified partner countries for pilots, these groups would appear to be as follows:-

- Children in Ireland
- Roma within Bulgaria.

The ability to provide ELI is therefore intrinsically linked to being able to work in partnership with key services, both statutory and non-statutory, that will be able to ensure access to ELI. How this is implemented will depend on each national context but it could include the following:-

- Agreement with key statutory agencies to attend at places where victims may be located.
- Agreement that specialist agencies are brought in quickly, or at the same time as law enforcement activity, and they in turn must ensure access to ELI.
- Targeting “hidden groups” and setting up referral routes to legal advice that best suit that group, i.e. confidential anonymised telephone advice or ensuring that certain groups of individuals are offered a legal consultation as standard.

- Outreach work at places where it is thought that victims may be located and may not have been offered ELI. This outreach work could take the form of surgeries which target geographical areas or target sections of the trafficking population of a country.
- The provision of advice in places best suited to the victim.

In terms of police raids on brothels or other premises, the Comparative Report emphasised that specialist services in cooperation with law enforcement and other state authorities are often best placed to have contact with vulnerable people at such a crisis point. It is therefore unlikely that this will be legal representatives.

The general view however was that legal practitioners should be called on as soon as practicable in such situations following the principles set out in the previous section. In ensuring this, close co-operation between police and specialist services is crucial highlighting the importance of inter-agency co-working described in more detail below.

The pilot will need to ensure that their lawyers are accessible which, as a good practice principle, is broader than just location. The accessibility of the pilot more generally is discussed in the next section.

#### Good Practice –Scotland

Clients access Legal Services Agency (LSA) either directly or through referral by another key partner in the field.

A regular weekly drop in session has been introduced allowing clients to directly access initial advice. This is well attended, and has the added advantage of being able to offer clients referred by partners a quick appointment if their case is urgent.

A weekly phone line where free initial advice can be offered to partners or potential clients is also available.

Surgeries are currently being rolled out to ensure a wider national presence. One has already taken place within the only female prison in Scotland (where victims of human trafficking have previously been located). Others are being rolled out in geographical areas where human trafficking is known to exist but where there are a lack of specialist agencies present.

LSA ensures that a solicitor sees a victim of human trafficking quickly.

LSA are also visible to key stakeholders and other groups who may come into contact with their client group – “being seen out and about”.

## 3 EARLY AND EFFECTIVE LEGAL INTERVENTION

### 3.1 Overview

As noted in the Introduction, the provision of ELI is not in itself sufficient. In order for there to be successful outcomes, ELI must have at its core a rights based approach to the protection of victims. It must be delivered by those who have knowledge and training in this area and in a manner tailored towards the specific needs of the victim of human trafficking.

The Comparative Report highlights the benefit of dedicated, specialised independent law centres such as LSA in Scotland and ICI in Ireland who provide an enhanced legal service for victims of human trafficking. The Comparative Report refers to this service provision as “*a dedicated, holistic model of care and legal representation*”.

Whilst it is recognised that systems of legal provision are different in each country, this section aims to set out the key components that should be in place in order to deliver an effective enhanced legal service to victims of human trafficking.

This enhanced model of legal service provision has recently been independently and robustly evaluated within the UK. Evaluators carried out an in-depth evaluation of the LSA service model, called The Extra Mile followed by a lighter touch evaluation of legal projects within England and Wales called Fighting Chance.

The evaluation of LSA documented a framework for working with vulnerable clients including victims of human trafficking. This framework is based on human rights principles and the evaluators stated it to be a benchmark of best practice. The LSA evaluation, The Extra Mile, is attached to this report.

### 3.2 Summary of the Critical Success Factors of Early and Effective Legal Intervention

The LSA evaluation explored the elements of an enhanced legal service model which appeared to be the most influential in upholding human rights and in bringing about positive outcomes for clients including victims of human trafficking. In doing so, it identified 15 key success factors which are summarised below:-

### ***Core Principles and Practice***

1. Partnership relationships and co-working.
2. Obtaining evidence which supports the client's case.
3. Frontloading.
4. Holistic Support.
5. Tenacity.

### ***Applying Experience: Skills and Knowledge***

6. Previous interventions: working out what has happened and redressing inaccuracies.
7. Specialist legal knowledge.
8. Being clear about legal boundaries.
9. Checking records and interviews.

### ***Ensuring Client Engagement and Understanding***

10. Initial time spent with client so that they can consider all options.
11. Pacing the case.

### ***Communication with Clients and Partners***

12. Availability and accessibility.
13. Regular Liaison.
14. Client reassurance and person centred approach.
15. Backup following any decision.

The evaluation highlighted that all of these factors are inter-dependant in terms of achieving successful legal outcomes. However, five emerged as underpinning all else. These are:-

- partnership working;
- obtaining expert evidence to support a client's case;
- providing holistic support to help a client with other important aspects of their life (for instance housing, benefits, health);

- front-loading a legal case to enable a client’s story to be unravelled, set down and submitted to decision-makers as early as possible; and
- finally tenacity - the determination to keep coming back on the client’s behalf, no matter what knock backs are received.

The next section aims to examine these factors in more detail with a specific focus on providing ELI to victims of human trafficking in the forthcoming pilots.

### **3.3 ELI - Core Principles and Practice**

#### **3.3.1 Partner Relationships and Co-Working**

Partnership working is a critical success factor not only at a broader level (which is discussed in the last section of this report) but also on an individual case level. The Project research demonstrated positive working relationships in Member States with other organisations which can feed into the pilots.

Partner organisations, working with a victim of human trafficking, should be involved closely with each legal case and attend legal meetings if appropriate and consented to by the victim.

This will ensure that victims are not only properly supported at legal meetings but that they are better able to engage with the legal information and advice provided as a result. Partnership working can also prevent re-traumatisation as the level of repeat disclosures to different agencies is reduced.

#### **Good Practice – Ireland**

ICI have participated in inter-agency conferences to discuss specific clients. These conferences were seen to progress matters quickly giving legal representatives a better insight into the likelihood of a victim being identified as a victim of trafficking as well as any barriers to such identification.

ICI provided an example of one meeting where statutory and non-statutory services were present. The meeting provided clarity to the client surrounding her options and demonstrated how the various agencies were working together on her behalf.

After the meeting, the client’s instructions became clearer and she was identified as a victim of human trafficking. Each agency also had a greater understanding of the realistic possibilities open to this client at the end of the meeting.

### **3.3.2 Obtaining Evidence to support the Client's case and Front-loading**

For the purposes of this report, factors two and three (obtaining evidence and frontloading) have been examined together.

The lawyers in the ELI pilots will require to immediately pursue and investigate lines of inquiry in order to submit evidence which supports the individual's case to the relevant authorities as early as possible. Depending on the national context, this may require the following:-

- Obtaining a written detailed disclosure as early as possible. This is then sent to the relevant authorities with a view to avoiding re-victimisation and unnecessary repetition of traumatic accounts.
- The gathering of external evidence to support the claims made by the individual. This can include health assessments, evidence from education and childcare professionals, and evidence regarding country conditions (for instance the nature and extent of human trafficking in supply, transit and destination countries).
- Records and documentary evidence being obtained from other organisations/authorities that the individual may be or may have been involved with.
- Setting out written arguments explaining the position as early as possible. In a trafficking case, this often involves explaining the definition of human trafficking and the legal framework that should apply.

### **3.3.3 Holistic Approach**

The Comparative Report highlights that the concept of ELI incorporates the following:-

- Risk assessment of immediate protection needs.
- Decision on the best/most appropriate route for protection by the State.
- Ensuring that a recovery and reflection period is obtained prior to interviews.
- Assessing criminalisation risks, i.e. immigration offences.
- Legal Advice and Assistance should be provided to victims of human trafficking on various matters.

A holistic approach will therefore involve being able to assist with a number of legal issues ensuring that an individual is able to effectively realise their rights as a victim of human

trafficking. These issues should focus on all matters relevant to a victim's identification and subsequent protection and could cover administrative, civil and criminal legal proceedings.

#### Good Practice- Ireland

The ICI currently has capacity to represent victims across all areas of immigration law, asylum and protection procedures, EU law, general immigration law as well as additional areas which a client requires expertise such as a seeking compensation, access to social welfare and family reunification for children or other family members who remain in their country of origin.

A holistic approach, however, means more than this. It means assessing a victim's safety and protection as a whole and promoting respect and trust. It will often involve asking individuals about themselves first (rather than the actual legal issue/case).

It involves getting to know and understand the personal characteristics of a victim and responding to the physical and psychological situation they find themselves within. This may involve signposting a client to other services in order that necessary support is obtained.

The provision of holistic support increases a client's ability to disclose their account in full thereby assisting their legal case. Referrals to other key specialist services for assistance and support at an early stage is also critical to the establishment of trust which is a necessary pre-requisite for a full disclosure from a victim.

### **3.3.4 Tenacity**

Victims of human trafficking often present with complex and challenging personal circumstances. Anti-trafficking systems are complex and can bring lawyers into confrontation with state authorities.

Therefore, lawyers working in this area must have a willingness to challenge systems and state authorities persistently and at all levels in a professional manner to achieve the best outcome for victims of human trafficking.

This includes challenging clients themselves in order that they make the best decisions and maximise their chances of a positive outcome.

Tenacity is also about taking the long view in terms of a client's protection and safety and not just limiting any involvement or legal advice to the immediate issue in question.

## **3.4 ELI- Applying Experience: Skills and Knowledge**

### **3.4.1 Previous interventions: working out what has happened and redressing inaccuracies**

The pilots will likely have to work with victims who have already come into contact with an authority or agency. Disclosures may have already been made to that authority or agency by the victim. These disclosures may be confusing, inaccurate or incomplete.

These previous interventions will require to be understood by the lawyer. It is likely that requests for information and records from these statutory agencies will be necessary.

Often, a victim will not understand who the previous service was or the nature of their engagement with them and this will require to be explained.

The lawyer will need to work with the victim to establish a sequence of events and deal with any previous inaccuracies and the reasons that these may have arisen. This may need to be submitted to other authorities and services working with the victim.

### **3.4.2 Specialist legal knowledge**

As the Comparative Report highlights, certain service providers within Member States do provide legal advice and information to victims of human trafficking in relation to a number of key areas, including their presence in the jurisdiction, applications for international

protection, welfare and family re-unification, the various possible forms of legal redress, compensation and how the civil and criminal justice systems operate.

The Comparative Report goes on to note, however, that access to advice and information on legal rights is not the same as access to professional, legal advice and in particular legal representation. The report noted that trafficking cases are complex and extensive at all stages and the importance of using legal advocates who had developed high levels of expertise was recognised in all Member States participating in the ELI project.

Indeed, the LSA evaluation states that it is the lawyers' expertise which separates an "enhanced legal service" from other providers.

Working in the area of human trafficking, lawyers require an in-depth knowledge of International, European and Domestic legal standards that affect victims of human trafficking. They also require a good knowledge of professional standards and ethics due to the potential complexities and circumstances surrounding a victim of human trafficking.

Lawyers also require an in-depth knowledge of the broader professional sectors that the legal pilot will work within including law enforcement. This includes knowledge at the operational case level but also the broader political/policy environment that the pilot works within.

### **3.4.3 Being clear about legal/professional boundaries**

The pilots will require to ensure that their remit and scope is clear, understood by key partners and potential clients, and rigidly implemented. This will in part depend on the areas of greatest unmet legal need identified within the trafficking population of the pilot country if the pilot is not able to accept all such victims.

Although a client centred approach requires to be adopted (further described below), it should be boundaried with a professional relationship maintained at all times. This requires to be strictly monitored, particularly given the complexities of human trafficking where a holistic service is being implemented.

Expectations regarding a victim's case, chances of success and potential pitfalls should always be realistically managed in order to maintain a relationship of trust with the victim but also to maintain the integrity of the pilot.

### **3.4.4 Checking of Records/Interviews**

All interviews/statements/official records involving a victim should be obtained and meticulously checked. This pre-empts potential challenges as well as gathering as much information as possible to assist with any legal case.

## **3.5 ELI - Ensuring Client Engagement and Understanding**

### **3.5.1 Initial time spent with client so that they can consider all options**

The pilots will need to ensure that the lawyers will have enough time to spend with a victim of trafficking to ensure that trust can be built. This will often require the securing of an effective reflection and recovery period.

Part of the process of building up trust is the imparting of information early on by the lawyer rather than requiring too early disclosures of sensitive information from the victim.

Information imparted could include:-

- a description of the pilot legal service and organisation;
- the role of a lawyer, their independence and professional responsibilities including that of confidentiality;
- a description of the key professionals that may be linked into or become linked in with the victim and their role and responsibilities towards that victim;
- an explanation of any process that the victim has previously gone through and their understanding of this;
- a description of the legal situation and frameworks they currently find themselves in; and
- an explanation of why the lawyer will be requesting further information and what will be done with that information.

Time is also required to ensure that a victim understands the legal processes that they are involved within and so feel more empowered. This is particularly the case where a victim may be involved with multiple and parallel processes. This will ensure better and more relevant disclosures of past experiences.

A case must be taken from the client's point of view. Experienced legal staff will be able to find options that suit the particular client. A victim's case will be complex. It will require time to unpick and work out the best option. There is no standard /one size fits all approach that

can be employed when assisting victims of human trafficking. Each approach requires to be bespoke and tailored to the particular individual.

Working from the point of view of the victim follows on from taking the time to explain options and check understanding. However difficult a decision may be, a victim needs to understand the pros and cons of their choice and take ownership of the decision.

These pre-action meetings and understanding sessions are distinguishing features of an enhanced legal service. They are particularly relevant with a victim of human trafficking where any step may place that individual in further danger. They therefore facilitate the process of the individual making an informed choice regarding their present and future options.

### **3.5.2 Pacing the case**

Taking the case at the right pace for a victim of human trafficking is a key element of an enhanced service. Early access to legal advice is not tantamount to ensuring an early legal outcome. This will depend on each individual.

There is a balance to be found between reducing uncertainty by getting early decisions/results with the risk that a victim is not yet psychologically able to participate effectively in legal processes designed to protect them. They may not even be able to provide informed consent to certain legal processes.

Choosing the right course of action involves fine judgement, experience and close working with other professionals, as well as extensive consultation with the victim of trafficking themselves, making sure they understand and are able to make their own decisions.

Following through on the other principles outlined in this section should ensure that a case is paced accordingly.

## **3.6 ELI - Communication with Clients and Partners**

### **3.6.1 Availability and Accessibility**

The pilots require to be visible to key specialist agencies and other key stakeholders who will refer into the pilot. The pilot therefore requires to have systems in place where victims can meet a lawyer as quickly as possible.

Lawyers should then not place unnecessary barriers in the way of victims being able to access the pilot. Depending on the national context for each pilot, the pilots may require to think creatively and outside the box regarding accessibility. This could include the use of telephone advice lines and/or using technology to access potential clients in remoter areas of a country. This is of course dependant on the national context.

However, ensuring accessibility should be coupled with the setting of professional boundaries.

### **3.6.2 Regular Client Liaison**

The pilots should ensure that lawyers keep in regular client with victims regarding (1) their case and (2) other services they have engaged with.

At the start of any engagement, this ensures that victims understand what is happening at each stage of their case. This includes the smallest of details such as who the lawyer is phoning and why. It includes sorting out an accommodation issue or access to a service which will provide material assistance. The victim is able to see that the lawyer has done what he or she said they would do. Therefore, when it comes to bigger decisions, trust is hopefully established through the lawyer demonstrating this through a series of smaller actions.

Keeping in contact with victims, coupled with accessibility, is a deliberate technique to give control back to victims who have been disempowered and to reassure them whilst at the same time enabling the lawyer to build a relationship of trust.

### **3.6.3 Victim-Centred Approach which is Trauma Informed**

Particular care should be taken within the pilots to reassure victims throughout their involvement with the legal process.

How this is provided in practice will be dependent on the context that each pilot will operate within but should include the following:-

- A safe environment must be created for a victim of trafficking. This is as basic as taking time to welcome a victim when they arrive in the office, making sure they are comfortable and offering a drink.
- Steps should be taken to encourage other agencies to adopt more client friendly approaches – for instance interviews by immigration and law enforcement agencies

taking place in the lawyer's offices or the offices of a specialist agency where the victim feels comfortable. This would include the use of multi-disciplinary partnership meetings.

- Being extremely sensitive as to how information is communicated to a victim. This extends to planning the timing and pace of each legal meeting to ensure this reflects a victim's ability to talk about their experiences.

Extensive checking of a victim's understanding also assists lawyers to identify potential cognitive problems which can be linked to age, mental health, trauma and disability. This also ensures that any such problems are passed on and understood by the specialist and statutory agencies engaged with the victim.

Experienced and well trained staff should be skilled at building a level of trust, getting to know the victim, letting the victim consolidate information for themselves and taking a disclosure slowly and confidently.

Staff should also employ a trauma informed approach. This is about understanding the needs of a particular client - the fear, shame and humiliation that may be experienced - and taking these needs into account in every element of legal service provision.

A trauma informed approach is however also about knowing what to ask and how to ask it. It is about consistently asking the right questions at the right time for the right reason.

#### **3.6.4 Backup following any decision**

An effective and successful legal intervention is not just about achieving a successful legal outcome but ensuring that a victim of trafficking has been protected throughout any legal process and is able to move on successfully with their lives.

This means that any pilot will need to ensure that work is carried out post legal result (whether this is a successful or unsuccessful result) to ensure that a victim fully understands the legal decision made and the ramifications for them as well as feeling supported for the next steps whatever they may be.

## 4. INTER-AGENCY CO-OPERATION

### 4.1 Overview

One of the aims of the ELI Project is to ensure increased inter-agency co-operation between civil society and the state with particular emphasis on co-operation amongst law enforcement and legal practitioners. It is therefore imperative that the pilots take this into account within their implementation in each country.

Research demonstrates that a co-ordinated joined up approach involving many actors is best practice in the area of human trafficking. This also applies to ELI.

For ELI to be successful, it must engage and link in with other key actors and partners in the sector. This is because lawyers do not work in a vacuum but within a socio-political context that informs their work but to which they can also contribute.

All key statutory and non-statutory agencies require to be informed about the legal standards. They need to be informed about the need for ELI, its benefits and its importance in order to buy in to each pilot. Without this level of awareness and understanding, ELI will not occur.

Due to the complex picture of where potential victims are located and the multiple processes they can be involved with, multi-agency partnership working is essential in order to establish and effectively implement referral routes (both in and out of the ELI pilot).

How effective this will be is somewhat dependant on the political landscape; the importance placed on anti-trafficking efforts and where victim care is viewed within these; as well as relationships with key partners who have the specialist knowledge to engage and link in with it is a concept. This includes law enforcement agencies.

The following are, however, key principles in establishing inter-agency co-operation for the Pilots:-

- Identify key partners;
- Establish formal agreements regarding ELI; and
- Ensure broader learning and training through the pilots.

Each of these will be examined in turn below.

## **4.2 Identification of Key Partners**

In each country, there will be key “gatekeepers” for victims accessing ELI who may be a mix of statutory and non-statutory agencies. These are the agencies that are more likely to come into contact with victims whether they have a formal remit to do so or not.

It is imperative that the pilots identify who these gatekeepers are and ensure that the gatekeepers have robust processes and procedures in place to ensure that a victim has access to early effective legal intervention.

This may mean referral routes operating outside structures set up that relate to formal identification mechanisms.

### Good Practice – Lithuania

In Lithuania, NGOs use their own definition of human trafficking. They therefore provide assistance, including legal assistance, to those victims who have not been recognised as such through formal procedures such as the court.

Consideration should also be given to the identification of “hidden” groups within the trafficking population of a country already discussed earlier in this report. Access to ELI for these groups will require specific targeting with partner support.

## **4.3 Establish Formal Agreements regarding ELI**

Despite the recognised importance of ELI, the Comparative Report noted that ensuring access to ELI remains an informal non co-ordinated process. There is no formal route, protocol or procedure in place to ensure that access to early legal advice is provided to all victims of human trafficking regardless of the legal processes they are involved with. Routes into legal advice depend on where the individual is within the legal process, the type of exploitation suffered and the support they are accessing.

Therefore it is essential that Protocol/Memoranda of Understanding or other formal agreements are established between the pilots and the key partner/"gatekeeper" agencies.

These agreements should cover the following:-

- The specific role and remit of each organisation and their responsibilities in relation to a victim of human trafficking.
- Ensure that potential victims of trafficking are offered ELI as standard.
- Agree the point of referral to the pilot. This should be as soon as there is an indication of human trafficking and prior to any formal engagement of the client with formal proceedings such as immigration or law enforcement.
- Agreement regarding specific indicators that identify an individual as a potential victim of human trafficking in each state and the legal definition employed in relation to human trafficking.
- The location of advice.
- The type of advice provided.
- How the partner will be involved in the provision of ELI.
- Under what circumstances will information be shared.
- What other services the victim could be referred into.
- The formalisation of key promising inter-agency practices for instance multi-agency conferences.

#### Good Practice – Ireland

The Immigrant Council of Ireland (ICI) currently have a referral system with RUHAMA and the Women's Health Service. Therefore, women who disclose trafficking or exploitation are given details about the ICI Independent Law Centre and offered a consultation.

#### 4.4 Broader Learning from the Pilot

The Comparative Report notes that specialised legal practitioners play a key role in up-skilling other legal practitioners, can provide much needed training on a national basis and can ensure active campaigning and lobbying for political change ensuring that the rights of victims are protected.

Within the confines of each pilot and taking into account the national context, consideration should be given as to how each pilot could contribute to an increase in knowledge and understanding on a broader level. Examples of good practice within Bulgaria and the UK are noted below.

##### Good Practice – Bulgaria

In Bulgaria, there is an annual training programme and co-ordinated mechanism with the State Institutions and the NGO Sector.

##### Good Practice- UK, AIRE Centre

The AIRE Centre provides second tier advice by e-mail to other professionals working in the field to increase skills and awareness within the sector and help other professionals work better with their clients. It also provides legal intervention in certain cases.

This is a vital way of extending an informed, human rights-based approach to other clients and professionals.

In one case, the AIRE Centre provided second tier advice to LSA in a compensation case. This advice was transferred into a formal legal opinion lodged in the case in question. This resulted in a successful result from the victim of human trafficking and is indeed highlighted as a successful case study within the LSA Evaluation.

In summary, the LSA evaluation noted that an enhanced legal service, committed to the wider dissemination of its learning and experience in this way, provided considerable 'value for money' for those who fund it. This is because successful outcomes are being achieved not only for extremely marginalised clients, but that best practice is being established, learning disseminated widely to others, and causes of disadvantage – for example policy and practice gaps – addressed.

## 5. CONCLUSION

To summarise, this paper has set down the following best practice principles to inform the ELI pilots:-

- ELI should be available for all legal proceedings.
- ELI is available as soon as there is an indication of human trafficking.
- Unmet areas of legal need in the area of ELI require to be identified and services targeted appropriately.
- For there to be effective ELI, ensure:-
  - Partnership relationships and co-working.
  - Evidence is obtained which supports a victim's case.
  - Frontloading.
  - Holistic support.
  - Tenacity.
  - Establish previous interventions and redress any inaccuracies.
  - Specialist legal knowledge.
  - Clarity about legal boundaries.
  - Checking of records and interviews.
  - Initial time is spent with a victim so that they can consider all options.
  - The pacing of the case.
  - Availability and accessibility.
  - Regular liaison.
  - Client reassurance and person centred approach.
  - Backup following any decision.
- Identify key inter-agency partners.
- Establish formal agreements regarding ELI.
- Ensure broader learning and training through the pilots.

The following is a case study from Scotland, where these principles were in operation. It demonstrates the clear link between ELI and the protection and promotion of a victim's human rights in this area. It also demonstrates the positive complementary impact on law enforcement and the increased intelligence and information provided to them as a direct result of the ELI.

### Case Study – Scotland

V is 17 year old Vietnamese male who was arrested by police following a raid on a house that was being used as a site for cannabis cultivation. V was criminally charged with drugs offences in connection with the cannabis cultivation and held on remand at a young offenders institution, pending trial on those charges.

V had decided to plead guilty to these charges, on his criminal solicitor's advice, as he believed he had no other choice, although he maintained that he had been forced by others to cultivate cannabis. V understood that he did not have lawful permission to live in the UK, and was fearful that he would be forcibly returned to Vietnam following completion of his criminal sentence. V was also fearful of the other men in the UK who had placed him in the house in which he was arrested and forced him to work there.

V was referred to the Scottish Guardianship Service, a non-statutory organisation that provides support to unaccompanied asylum seeking and trafficked children across Scotland. V's guardian met with him and discussed his understanding of his case and his fears. V's guardian told V that he could access legal advice free of charge with respect to these issues and took his permission to make a referral to LSA. They immediately referred him to LSA.

LSA met with V and provided advice on his rights as a potential child victim of trafficking. LSA also assisted V with other issues, including his right to claim asylum, and his rights to health care, education and equal treatment whilst in detention.

LSA contacted social work services, who visited him at the young offender's institution and made a referral under the National Referral Mechanism for Victims of Trafficking (NRM) with respect to him. The police authority, following up on this referral, met with V several times, and found he was able to give detailed and useful evidence to support their criminal investigation.

The police officer investigating the case wrote a letter to the state prosecution authority, requesting that the prosecution be withdrawn on the basis that the police believed V to be a child victim of trafficking. The prosecution accordingly withdrew their charges and V was freed.