

## Home Affairs Committee inquiry into Human Trafficking

### Evidence from the Taskforce on Victims of Human Trafficking in Immigration Detention, March 2023

Deadline: 17 March 2023

[Call for Evidence - Committees - UK Parliament](#)

#### Introduction

1. The Taskforce on Victims of Human Trafficking in Immigration Detention (“the Taskforce”) is comprised of 13 expert organisations<sup>1</sup> who are all working with, or for, victims of trafficking. The Taskforce works to prevent victims of trafficking from being detained under immigration powers.
2. This response will concentrate specifically on issues surrounding the detention of survivors of trafficking and the impact of this. It draws on the findings and recommendations made in the report ‘Abuse by the System: survivors of trafficking in immigration detention’<sup>2</sup> (Abuse by the System report) which was authored and co-badged by members of the taskforce and was published by the Helen Bamber Foundation in October 2022.
3. The trafficking or modern slavery survivors<sup>3</sup> that the member organisations of the taskforce advocate for, have been or continue to be held in immigration detention. At the time a decision is made to detain them they may have already been referred into the National Referral Mechanism (the NRM<sup>4</sup>), or this may be done whilst they are detained. In some instances, they may not be identified as being survivors of trafficking and subsequently referred into the NRM until after their release despite indicators being raised during their time in detention.
4. If the ‘Illegal Migration Bill’<sup>5</sup> passes in its current form, or similar, many survivors who entered the UK irregularly will be shut out from the UK’s system for identification as a victim of trafficking (NRM) and will be left without access to entitlements<sup>6</sup> under Article 12 Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)<sup>7</sup>. The provisions

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<sup>1</sup> Focus on Labour Exploitation (FLEX) (coordinating organisation), Helen Bamber Foundation (Chair), Bail for Immigration Detainees, Anti-Slavery International, Duncan Lewis Solicitors - Public Law, Medical Justice, Association of Visitors to Immigration Detainees (AVID), Jesuit Refugee Service UK, ECPAT UK, After Exploitation, Unseen UK, Detention Action, Anti Trafficking and Labour Exploitation Unit (ATLEU)

<sup>2</sup> Helen Bamber Foundation, Medical Justice, ATLEU and Focus on Labour Exploitation, [Abuse by the system: Survivors of trafficking in immigration detention](#), October 2022

<sup>3</sup> The terms ‘survivor’ and ‘victim’ will be used interchangeably in this submission.

<sup>4</sup> The framework designed to identify and protect victims of trafficking and of modern slavery

<sup>5</sup> [Illegal Migration Bill, 2023](#)

<sup>6</sup> Measures which may be necessary to assist victims in their physical, psychological and social recovery

<sup>7</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 8414](#)

in the Bill would allow for a dramatic increase in the powers and use of immigration detention, for a group of people, many of whom are particularly vulnerable to suffering harm if placed in immigration detention.<sup>8</sup>

5. The Taskforce also endorses the evidence submitted by the Anti-Trafficking Monitoring Group, Helen Bamber Foundation, Jesuit Refugee Service UK and The Labour Exploitation Advisory Group (LEAG).

## What is the scale and nature of human trafficking?

6. Human trafficking takes many forms and the scale is difficult to estimate for a range of reasons. This evidence is focussed on the scale of survivors of trafficking who are or have been held in immigration detention, but we would like the Committee to note that detention can prevent survivors of trafficking from being formally identified and increases their risk of re-trafficking or further exploitation.
7. In recent years there has been a significant increase in the recorded number of survivors of trafficking who are being held in immigration detention. Survivors are detained either after imprisonment, with many having been wrongly convicted for offences they were forced to commit by their traffickers, and/or because they do not have permission to remain in the UK and have not received the support necessary to enable them to disclose that they have been trafficked. Many survivors of trafficking are detained after being picked up during raids on brothels, nail bars and cannabis farms. This suggests that those being detained have primarily been victims of sexual, labour, or criminal exploitation, although this is not an exhaustive list. It is important to recognise that immigration detention is a traumatic setting in which to disclose the trauma of abuse including trafficking and that disclosure must be made to a Home Office official acting as a 'First Responder' to the NRM, who is also detaining the individual. Disclosure in these circumstances is already against the odds and means the real number of trafficked people in immigration is likely to be higher than the official statistics show.
8. Research on the issue has already identified that locking up people who have been trafficked in immigration detention is resulting in the following:
  - o Deteriorating mental health, re-trauma, and reduced recovery<sup>9</sup>
  - o Increased risk of re-trafficking or further exploitation<sup>10</sup>
  - o Failure to identify and support victims and increased distrust of authorities<sup>11</sup>

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<sup>8</sup> [Detention provisions in the Illegal Migration Bill - Free Movement](#)

<sup>9</sup> [The impact of immigration detention on mental health: a systematic review | Helen Bamber](#)

<sup>10</sup> Review into the welfare in detention of vulnerable persons: a report to the Home Office by Stephen Shaw. January 2016

<sup>11</sup> Labour Exploitation Advisory Group, Detaining victims: human trafficking and the UK immigration detention system, 2019, section 2.2

9. The threat of immigration detention provides a tool for exploiters to coerce and control the people they exploit. This will be compounded if the 'Illegal Migration' Bill becomes law. The 'Illegal Migration Bill' in its current form will block the identification of any trafficked person who arrived in the UK irregularly<sup>12</sup>. It will remove almost all protection that are currently available to victims of trafficking who are targeted for removal. The impact of this will be far reaching and is an abrupt reversal of efforts which have been in place since before 2009 when the National Referral Mechanism was established in the UK, in compliance with obligations under the Council of Europe Convention on Action Against Trafficking in Human Beings, to identify victims and facilitate their disclosure.
  
10. Despite this evidence of harm, the government introduced changes to law and policy that significantly worsened the situation. Prior to 2021, Home Office policy stated that victims of trafficking (among other vulnerable groups) were only suitable for detention in **exceptional circumstances**, however survivors of trafficking have now been brought entirely under the scope of the widely criticised 'Adults at Risk' (AAR) policy<sup>13</sup>, despite the government recognising that this would result in more survivors of trafficking being detained<sup>14</sup>. The AAR policy requires a detainee to provide '*scientific levels of evidence*'<sup>15</sup> that they are likely to suffer harm in detention before they might be released. In addition, their immigration and criminal offending history, which could be linked to their trafficking experience, is more likely to be weighed up in favour of their continued detention rather than understood in the context of the exploitation they have suffered.
  
11. There has been a clear rise in the recorded number of people referred to the UK's identification mechanism for victims of trafficking and modern slavery (the National Referral Mechanism, or NRM) from detention – data published by the government and shared via a Freedom of Information request shows that the number of referrals has tripled over the last five years from 501 referrals in 2017<sup>16</sup> to 1,611 in 2021<sup>17</sup>, the year that victims of trafficking were included in the AAR policy. In 2021, 92% (1,420) of referrals received a positive reasonable grounds (first stage) decision. At the end of 2021 a new decision-making body, the Immigration Enforcement Competent Authority, was introduced to make decisions on NRM referrals from detention<sup>18</sup> and statistics for quarter 4 of 2022 show that the IECA made positive reasonable grounds decisions in 91% of cases, and positive conclusive grounds (final stage) decisions in 93% of cases<sup>19</sup>. In short, over 90% of people referred to the NRM from detention are found to be genuine victims of trafficking. Meanwhile, over a 21-month period,

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<sup>12</sup> Clause 21

<sup>13</sup> <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>

<sup>14</sup> Home Office admits new immigration plans may see more trafficking victims locked up | The Independent

<sup>15</sup> Joint Committee on Human Rights, Immigration detention Sixteenth Report of Session 2017–19, February 2019

<sup>16</sup> Figure provided by the government in debate on the Nationality and Borders Bill in Parliament

<sup>17</sup> Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities who were referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.

<sup>18</sup> This change was introduced via an update to the Modern Slavery Statutory Guidance

<sup>19</sup> [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK. Quarter 3 2022 – July to September - GOV.UK.](#)

938 suspected victims were only referred after being released from detention and into the community.<sup>20</sup> This shows that people are being identified despite the barriers to disclosure and identification which they face in immigration detention. It is important to note, as stated above, that the changes to identification (and corresponding entitlements) proposed in the 'Illegal Migration' Bill will result in a significant drop in the number of people identified as trafficked. This will not unfortunately mean that fewer people are trafficked, only that they are being prevented from coming forward.

12. Despite the increase in referrals to the NRM from detention, the barriers to disclosure and identification, particularly from immigration detention, mean that many survivors are not being identified, even when clear indicators or disclosures are made, as was set out in the recent Independent Chief Inspector of Borders and Immigration's (ICIBI) third annual inspection of the Adults at Risk policy.<sup>21</sup> A failure to identify is only going to increase the risk to a person of being re-trafficked or exploited further if eventually released or returned.
13. It is only by ensuring that survivors of trafficking are identified and supported properly to access legal entitlements to recovery and support that we can encourage people to leave exploitation and enable those who are ready to provide evidence to police. This will in turn help dismantle criminal slavery networks and prevent more people from becoming victims in future. This requires ensuring we have efficient asylum and trafficking systems that function properly in practice and treat those going through them fairly and humanely, providing long-term support and protection.
14. Instead, the 'Illegal Migration' Bill being rushed through parliament will create chaos. It will drive people underground, creating fear of coming into contact with authorities and providing no options for anyone who entered irregularly to ever regularise their status in the UK. The fear of indefinite detention will be abused by exploiters to prevent victims accessing help. Clause 21, subsection 3 of the Bill disapplies subsection 2 on removal for people cooperating with the authorities. However, evidence, lived and frontline experience shows that the lack of trust or any certainty or longer term security, created by the Bill, will undermine cooperation with the authorities. People will not know whether they will be viewed as a victim, or disbelieved as an immigration offender, or whether their case will be investigated in any case. Recent rhetoric from the government which makes claims of people 'gaming the system' will further deter people from coming forward. This has been recognised by UN experts who have warned that this rhetoric:

*"not only imperils protection for victims of trafficking and contemporary forms of slavery, but may also embolden human traffickers.*

*This has a chilling effect on those willing to come forward as victims and those willing to provide legal representation to victims, impeding efforts to identify and protect victims and persons at risk of trafficking and hold perpetrators accountable,"<sup>22</sup>*

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<sup>20</sup> <https://afterexploitation.files.wordpress.com/2021/02/survivors-behind-bars-after-exploitation-2021.pdf> pg 9

<sup>21</sup> [Third annual inspection of 'Adults at risk in immigration detention' - June – September 2022 - GOV.UK](#)

<sup>22</sup> [UK: UN experts condemn attacks on credibility of slavery and trafficking victims | OHCHR](#)

## How effective is the UK's approach to discouraging the demand that leads to trafficking?

15. The government has introduced increasingly restrictive immigration policies and measures. The fear of being detained and removed risks victims being driven 'underground' as they will be less likely to approach authorities, thus placing them at greater risk of being re-trafficked or exploited further. Government rhetoric, which has, without evidence, increasingly portrayed victims of trafficking as 'abusing' the UK's systems, will, as highlighted above, also discourage victims from speaking out.
16. This combined with the inclusion of survivors in the AAR policy is resulting in the number of survivors being detained under immigration powers increasing. It is evident from the statistics that detention is being used significantly more than 'sparingly', as was envisaged by Home Office policy and it is not doing anything to discourage the demand that leads to trafficking. Indeed there are significant concerns that immigration detention is increasing the risk of a person being re-trafficked or exploited further.
17. All the more concerning, the government is in the process of expanding the detention estate. This involves the reopening and expansion of Campsfield House IRC and Haslar IRC, increasing the detention capacity by 1,000 places (a 33% increase). In addition, the Home Office opened new Short Term Holding Facilities (STHF) at Swindon STHF (at the site of former MortonHall IRC) and at Manston, a former military barracks. At Manston, there is capacity for 1,600 places, 600 of which are planned to be part of a new residential holding room, under the new STHF (Amendment) Rules 2022. This represents a clear reversal of the government's previous work and commitments, made since 2016<sup>23</sup>, to reduce numbers in detention<sup>24</sup>. The Illegal Migration Bill will further facilitate a dramatic expansion due to the new powers to detain. Clause 11 introduces a new power to detain if the person is or seems to be subject to the duty to remove. The Home Secretary's duty to remove is set out in Clause 2 as the duty to remove those who satisfy all of the following four conditions:
  1. Entered the UK in breach of immigration law;
  2. Entered or arrived in the UK on or after 7 March 2023;
  3. Entered or arrived from a safe third country;
  4. Required leave to enter or remain in the UK but does not have it.
18. These provisions would allow for a dramatic increase in the powers and use of immigration detention, including for victims of trafficking.

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<sup>23</sup> Home Office, Government response to the review on welfare in detention of vulnerable persons, January 2016

<sup>24</sup> [Immigration detention: Government Response to the Committee's Fourteenth Report of Session 2017-19](#)

19. Clause 12 provides that someone may be “detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the examination or removal to be carried out, the decision to be made, or the directions to be given”. The period of detention is based on the opinion of the Secretary of State and is indeterminate. It also provides for the power to detain to be extended for a further indeterminate period “*to enable such arrangements to be made for the person’s release as the Secretary of State considers to be appropriate.*” Current practice is that this can be for prolonged periods particularly for those with significant mental illness, which victims of trafficking have a high rate of. The Bill further limits how detention can be challenged (it will only be able to be challenged by applying for a writ of *Habeus Corpus*) and when bail may be granted by the First Tier Tribunal (only after someone has been detained for 28 days). This effectively means that whilst the powers of administrative detention are being expanded, the judicial scrutiny and effective remedies to challenge unlawful and unjustified detention are being curtailed.
20. These detention powers, along with the new provisions on Modern Slavery, will mean indefinite, and often long, periods of detention for significant numbers of people who are also ineligible for identification as victims of trafficking. The impact of detention on victims of trafficking has been widely documented, so the impact of this will be harmful.
21. A case study in the ‘Abuse by the System’ report highlighted the case of a Vietnamese survivor of trafficking who was re-trafficked directly from detention:

“Sam arrived in the UK aged 16 under the control of his traffickers, having been exploited in various countries and brought to the UK under the promise of a ‘better life’ for Sam and his family. Sam was detained on arrival and claimed asylum the next day but was put into an immigration detention centre. He remained in detention for two weeks before being released without any support and, almost immediately after his release, he was recaptured by his original traffickers. He was then re-trafficked into cannabis production and forced to live in a locked warehouse. He remained there for two years under constant control and enduring violence from his traffickers.

Sam was then arrested, tried and convicted for cannabis production and sentenced to 20 months imprisonment. Trafficking indicators had not been acted upon by the immigration authorities nor by the criminal justice system before his case went to court. Having served his criminal sentence, Sam was transferred, once again, to immigration detention where his mental health deteriorated to the point that he was placed on ACDT (‘suicide watch’) following a suicide attempt. The Home Office were informed that there were indicators to suggest he was a victim of trafficking. However, removal directions remained set and it was only when an emergency judicial review challenge was made by his lawyer that his removal was prevented. Eventually, after being prompted by his legal representatives, the Home Office referred Sam into the UK National Referral Mechanism (NRM). He received a positive reasonable grounds decision and was released the following day. Sam subsequently received a positive conclusive grounds decision, and was eventually granted refugee status.

Sam was recently awarded substantial damages following a claim for false imprisonment, which included medico-legal evidence on the impact the detention had had on Sam. Sam's initial experience of detention is a prime example of why vulnerable victims of trafficking have difficulties trusting authorities, when he was released without support and was placed in the hands of his traffickers again. This reinforced his belief that he had little option but to remain with the traffickers as the only alternative was immigration detention. It is possible that his four years of unnecessary suffering could have been avoided if the right system had been in place to identify him as a survivor of trafficking and he had not been detained."

22. The threat of detention and subsequent removal is a tried and tested method by traffickers to prevent a person from escaping or reporting their trafficking experience. Therefore, the increased use of immigration detention, alongside other punitive measures such as the government's plans to remove people seeking asylum to Rwanda, and the 'Illegal Migration' Bill which will shut out large numbers of people from any protection claim or identification as trafficked in the UK is likely to lead to fewer survivors being identified and being provided with the support and protection needed to prevent further exploitation. The report published by Taskforce member, Medical Justice 'Who's paying the price?' September 2022 highlighted the devastating impact that the prospect of removal to Rwanda was having on the mental health of the people selected for the scheme, whilst in immigration detention.<sup>25</sup> The report analysed 36 people who received a notice of intent for potential removal to Rwanda, whilst in immigration detention, between May and August 2022. This included 17 people who had indicators of trafficking, 15 of whom had been referred to the NRM and three of whom had been issued their NOI after they had received their positive reasonable grounds decision. The report found that the prospect of removal to Rwanda exacerbated people's mental health conditions, caused people to experience fear, confusion, uncertainty and a loss of hope. For some, it increased risk of self-harm and suicide. It evidenced that there was no effective screening in place, meaning the victims of trafficking, amongst other vulnerable individuals, were subjected to this process.

## **To what extent do support services meet the needs of victims who have been trafficked in or to the UK?**

23. The level of support available to those in the detention setting is significantly limited, compared to those who are in the community. There is no access to individualised casework contact support, something that has often been found to be of vital assistance to those that receive it.
24. In any event Immigration detention is an unacceptable environment for survivors of trafficking, who are particularly vulnerable to harm in detention, a setting which can prevent or discourage disclosure. Even if identified, detainees are now less likely to be released and detention continues to have an accumulative and damaging impact upon their physical and mental health. A high proportion of immigration detainees are diagnosed with depression, post-traumatic stress disorder (PTSD) and anxiety, and a significant number experience

<sup>25</sup> [https://medicaljustice.org.uk/wp-content/uploads/2022/08/2022\\_WhosPayingThePrice\\_Final.pdf](https://medicaljustice.org.uk/wp-content/uploads/2022/08/2022_WhosPayingThePrice_Final.pdf)

suicidal ideation with the risk of self-harm. Research shows that people who have experienced trauma are at greater risk of developing mental health problems while in detention<sup>26</sup>.

25. Research has indicated a high level of mental illness amongst survivors of trafficking.<sup>27</sup> However, immigration detention is not an appropriate setting for effective mental health treatment. This is because of the subjective lack of safety that many experience in detention, the inability to make plans due to the uncertainty of release or removal, and the fear of removal. Management of complex mental health conditions may require specialist therapies, which are not available in IRCs. For example, there are no equivalent specialist teams for people in mental health crisis, psychosis, and PTSD, as there are in the community.
26. As the Royal College of Psychiatrists states: “Crucially, a background context of basic physical and emotional security, including an assurance of safety and freedom from harm, is a key factor in recovery from most if not all mental disorders. Many people with a mental disorder will not even be able to engage in specialist psychological treatment without this.”<sup>28</sup> Detention centres are not therapeutic environments, they cannot provide a sense of physical or emotional stability.
27. The third version of the 'Adults at Risk: Detention of potential or confirmed victims of modern slavery policy'<sup>29</sup> sets out how a person's recovery needs should be assessed whilst in a detention setting. This assessment involves an interview by Detention Engagement Teams to identify specific recovery needs and a referral to the relevant healthcare provider in the detention centre to assess any physical and mental recovery needs. Information is then shared with the relevant casework team to decide whether support for recovery can be provided within detention. However, there are significant concerns that a person's recovery needs can simply not be met in a detention setting and that the support being provided is wholly inadequate.
28. Being held in detention undermines the purpose of the 'recovery and reflection period' as set out in international law under Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). This period is intended to be a time when a person can 'recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities'. During this time a person is entitled to various assistance measures as set out in Article 12 of ECAT with an aim to 'assist victims in their physical, psychological and social recovery'. It is difficult to envisage how a person can do this whilst detained. This was argued before the Court of Appeal<sup>30</sup> which found that

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<sup>26</sup> [The impact of immigration detention on mental health - research summary | Helen Bamber](#)

<sup>27</sup> Royal College Psychiatrists Position statement: The Detention of people with Mental Disorders in Immigration Detention PS02/21, (April 2021) 13.

<sup>28</sup> Royal College Psychiatrists Position statement: The Detention of people with Mental Disorders in Immigration Detention PS02/21, (April 2021) 8.

<sup>29</sup> [Adults at risk in immigration detention: modern slavery - GOV.UK](#)

<sup>30</sup> EM v SSHD [2018] EWCA Civ 1070 (see paragraph 40 for the list of provisions for victims of trafficking in detention at that time); ZV (Lithuania) v Secretary of State for the Home Department [2021] EWCA Civ 1196



the level of assistance and support that was being provided in detention met the state's domestic and international legal obligations. However, it is important to note that this judgement related to an individual case and the existing guidance at the time stated that 'it will normally be necessary to release a detained individual identified as a [potential victim of trafficking] PVOT after a positive reasonable grounds decision....[except where] can be justified on grounds of public order' It was acknowledged by the judge that 'it is relatively unusual for a PVoT to be in detention'. The position is arguably very different now, as many survivors are now kept in detention for the entirety of their reflection and recovery period and beyond.

29. The guidance is vague around how the Recovery Needs Assessment (RNA) is carried out and how it is determined whether a person's needs can be met in detention. The Modern Slavery Needs interview template includes insufficient information and primarily focuses on support with interpreters and legal proceedings, with just one question regarding emotional support, which asks whether a person 'would like to be referred to a counselling service for emotional support, to help with your recovery from modern slavery'. There is no information about what this 'counselling' will entail, who would provide it and how long it would be provided for. It is well established that long-term engagement is needed to help a person to develop a relationship of trust in order to enable disclosure and begin their recovery<sup>31</sup>. The recently published National Referral Mechanism (NRM) handbook outlines how a phased approach to treatment is needed to allow survivors to engage in their recovery in a gradual and paced way and details the recommended 3-phase model of therapy to aid sustained recovery. The first of the three phases is 'safety and stabilisation'. This is echoed in the NICE guidelines which state that a person is likely to need a level of stability to engage with therapeutic support and it is recommended that trauma-focused therapy is only offered when a person is in a position of relative stability and perceived safety. It is inconceivable that a person would be able to engage adequately in such therapy while they are detained. There is also no information or question on the need for individual support worker contact; this greatly undermines the importance and value that support workers offer.
30. It is notable that detention staff are required to provide support and information to detainees, whereas survivors of trafficking who reside in a community setting have an allocated independent support worker under the Modern Slavery Victim Care Contract. It is entirely inappropriate and unrealistic for detention staff to be providing this support, particularly given that it is recognised that victims often distrust persons perceived to be in positions of authority, and the potential conflict of interests in the role of Home Office casework or detention staff. The Home Office's approach to recovery and reflection periods may lead to more victims of trafficking being detained and their recovery needs being left unmet, which in turn leads to a higher risk of long-term difficulties and an increased risk of being re-trafficked or exploited further.
31. It is important to note that measures proposed in the 'Illegal Migration' Bill will shut out anyone who entered the UK irregularly, and also shut out their families including children<sup>32</sup>, from identification and corresponding entitlements to support and access to justice. It also risks shutting out individuals who did not enter irregularly but who, having no control over

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<sup>31</sup> See recommendations on how to establish a mutual relationship of trust in the Trauma-Informed Code of Conduct for all Professionals working with Survivors of Human Trafficking and Slavery, Helen Bamber Foundation, 2018.

<sup>32</sup> Further discussion on issues relating to children can be found in the submission by the Anti-Trafficking Monitoring Group

their travel to the UK, or knowledge of their immigration status, do not know whether they entered regularly or not and whose exploiters use the threat of the authorities and detention and removal to maintain control and keep them in exploitation.

## Access to legal aid and advice

32. In the Taskforce's collective experience, positive trafficking/immigration/asylum decisions are often dependent on the quality and knowledge of legal representatives and services who advocate for survivors. Survivors of trafficking require individual support throughout these complex procedural systems, and assistance with providing the requisite evidence to substantiate their case, including medical evidence. However, chronic underfunding has decimated the legal aid sector. Trafficking and modern slavery cases are utterly unsuited to payment by legal aid fixed fees which do not change to reflect the complexity, amount of time taken or length of time awaiting a decision. Civil legal aid rates are woefully low and the legal aid billing process for immigration cases is a bureaucratic and administrative nightmare. As a result of these flaws in the legal aid funding system, providers are being deterred from taking on trafficking and modern slavery cases, resulting in a legal advice crisis whereby it is increasingly difficult to secure any, let alone specialist, legal representation for those in immigration detention.
33. Whilst a Detained Duty Advice scheme does exist, which allows people in detention to book a half-hour appointment with a legal aid immigration lawyer via telephone, it is not automatic, and it relies on people being made aware of it in the centre. Recent research has proven that many people are unaware of how to access the scheme, have not been told of it, or are unaware that they are entitled to the scheme.<sup>33</sup>
34. When people in detention have requested to use the scheme, the appointments are often never made for them. If they do receive an appointment, the quality of advice people receive on the scheme also varies considerably, and people are not able to choose a lawyer, effectively forcing them to continue with the same lawyer despite the bad quality of advice. Some solicitors would not call people back or would not take on their case without explaining why and people did not receive any advice in writing.<sup>34</sup>
35. Additionally, whilst there is internet access in detention centres, 95% of websites are blocked.<sup>35</sup> People detained have expressed their difficulty using the internet to research their case to find information which may help them prepare for their immigration case. Detention is supposed to be an administrative process and not a punishment. With the increasing importance of the internet and social media to people's everyday life, restrictions on most websites appear disproportionate and impede access to justice.

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<sup>33</sup> Bail for Immigration Detainees - [Autumn Legal Advice Survey](#) - December 2022 - page 6

<sup>34</sup> Ibid, page 7

<sup>35</sup> Ibid

36. The recent changes to the evidential threshold for a reasonable grounds decision under the Nationality and Borders Act 2022<sup>36</sup> means that the requirement for quality legal advice is more vital than ever. The threshold is no longer ‘suspects but cannot prove’ and is now ‘based on objective factors’. This means that a person is now required to provide objective evidence, such as medical or expert evidence, at the first reasonable grounds stage, something that is almost impossible for those in detention. This is likely to result in an increased number of negative reasonable grounds decisions and in many instances the first responder, who in detention is the Home Office, may not even make the NRM referral. The Detention Taskforce is concerned that this will result in survivors of trafficking being effectively frozen out of the modern slavery protection and support framework.
37. In addition to this when making a conclusive ground decision, the competent authority can now ask a victim for information or evidence to be provided within (a minimum) of 14 days. This places pressure on any legal representative but particularly for those representing someone in detention, where communication and access to appointments is hampered.

### **What evidence is there, if any, that the National Referral Mechanism process is being exploited by individuals seeking asylum in the UK?**

38. The number of people referred into the National Referral Mechanism from detention has tripled over the last five years. The Government frequently claims that the general increase in NRM referrals is evidence of flaws in the system and of people ‘abusing’ the system. This was part of the justification for the narrowing of protections for survivors implemented under the Nationality and Borders Act 2022. Despite repeated requests the Government have failed to provide any evidence that this is the case and recently both the Office for Statistics Regulation<sup>37</sup> and the Special Rapporteurs that form part of the Special Procedures of the Human Rights Council<sup>38</sup> have recently condemned these unsubstantiated claims.
39. It is important to recognise that the National Referral Mechanism is a Home Office controlled system from start to finish. Referrals into the NRM can only be made by a government designated First Responder and in detention this is the Home Office. This means that individuals who are wary of trusting the authorities will find disclosure all the more difficult. This is compounded by the increase in the evidence threshold which means that First Responders who previously operated on the threshold of ‘suspect but cannot prove’ now have to work with a potential victim to secure ‘evidence’ of trafficking, before any safety or support is available. This is impractical on many levels and is likely to lead to increased and prolonged detention.
40. A positive final stage decision (conclusive grounds decision) rarely results in leave to remain with only 6% of positive conclusive grounds decisions resulting in the grant of a leave to remain in 2020 to 2021. This means that people risk disclosing to the authorities, giving evidence against their trafficker and putting their lives on hold only to eventually be told to

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<sup>36</sup><https://www.labourexploitation.org/news/raising-threshold-recent-government-changes-modern-slavery-syst-em-will-significantly-harm>

<sup>37</sup> [Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics \(statisticsauthority.gov.uk\)](#)

<sup>38</sup> [UK: UN experts condemn attacks on credibility of slavery and trafficking victims | OHCHR](#)

leave the UK. The increase in Duty to Notify statistics<sup>39</sup>, where adults have not consented to a referral, is a clear indication that many potential victims do not see the NRM as working in their interest.

41. As evidenced in the 'Abuse by the system' report over 90% of people referred to the National Referral Mechanism as potential victims of trafficking are subsequently confirmed as victims. This suggests that where referrals are being made this is with good reason.
42. There is no available evidence of the process being abused. Instead, the evidence indicates that the systems that are supposed to protect and provide support are failing those they were designed for and are not fit for purpose. Rather than 'deterring' people from making 'bad faith' claims the system is preventing victims from being identified and from receiving the support they desperately need. It is well recognised, including in the UK Modern Slavery statutory guidance, that survivors can be highly traumatised, and afraid of sharing their experiences of trafficking and exploitation for a multitude of reasons including shame and fear of stigmatisation. In addition to this there are a plethora of practical reasons why a person may not have been identified as a potential victim of trafficking before they are detained. This includes but is not limited to; recent arrival in the UK, fear of authorities, lack of awareness that it should be disclosed, limited or no access to specialist legal advice or professionals to explain the process, being under the control of traffickers prior to detention, threats from traffickers and there are many who will not have yet self-identify as a survivor of trafficking.

## **How can legislation, including the Modern Slavery Act 2015, policy and criminal justice system practice be improved to prevent and address human trafficking?**

43. In relation to the specific issues identified for survivors of trafficking in immigration detention, the government must carry out an urgent, comprehensive review of the process for detaining and continuing to detain confirmed or possible victims of trafficking, with meaningful input from relevant stakeholders and those with lived experience. The current policy and decision-making process is not fit for purpose.
44. The following practical recommendations raised in the 'Abuse by the system' report, alongside those raised in the recent Independent Chief Inspector of Borders and Immigration's (ICIBI) third annual inspection<sup>40</sup> of the Adults at Risk policy,<sup>41</sup> should be implemented as a matter of urgency:
  - a. The Home Office must once again commit to significantly reducing the number of those detained and put a time limit on all forms of detention and at the same time conduct a

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<sup>39</sup> In quarter 4 2022, the Home Office received 1,307 reports of adult potential victims via the DtN process compared to 1,160 in quarter 3 2022. The number for quarter 4 2022 is the highest ever recorded. [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 4 2022 – October to December.](#)

<sup>40</sup> The Home Secretary has since discontinued the standing commission for the ICIBI's annual review of the Adults at Risk policy.

<sup>41</sup> [Third annual inspection of 'Adults at risk in immigration detention' - June – September 2022 - GOV.UK](#)

- meaningful and thorough review of the current system for detaining survivors of trafficking.
- b. A more effective screening process prior to the decision to detain must be introduced.
  - c. All government agencies with the power to make arrests under immigration powers should receive compulsory training on human trafficking identification.
  - d. Everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain.
  - e. Detention gatekeepers should have access to all documents and files including past immigration and medical records and previous NRM referrals, of anyone being considered for detention, and people identified as vulnerable by the detention gatekeeper should not be detained.
  - f. The three 'Adults at Risk' levels of risk should be abolished. The Home Office should revert to its previous policy focusing on risk of harm, so that an individual who belongs to a category at increased risk of harm in detention is considered to be suitable for detention only "in very exceptional circumstances".
  - g. A self-declaration of vulnerability should trigger a duty of inquiry into the asserted vulnerability. There should be independent first responders in detention, instead of Home Office staff, to identify people and make referrals into the NRM with unrestricted access to immigration detention and prisons. Criminal convictions arising directly from victims' exploitation must not be used as reasons to detain or to continue detention.
  - h. Anyone who receives a positive reasonable grounds decision from within detention should be immediately released into appropriate accommodation so that they can progress with the reflection and recovery to which they are entitled.
  - i. Those with positive reasonable grounds decisions who nonetheless continue to be detained due to 'exceptional circumstances' must receive the full range of support that is also afforded to those in the community, including a support worker.
45. The Government should establish secure reporting pathways and procedures to guarantee a clear separation of powers and prevent automatic data sharing between statutory services and Immigration Enforcement.
46. The 'Illegal Migration' Bill must be stopped from progressing through parliament and becoming law.

**For more information on the issues contained in this briefing, please contact:**  
[beth.mullanferoze@helenbamber.org](mailto:beth.mullanferoze@helenbamber.org)