HELEN BAMBER FOUNDATION
strength to fly

NEW PLAN FOR IMMIGRATION

Helen Bamber Foundation Consultation Response

May 2021

The Helen Bamber Foundation ('HBF') is an expert clinical and human rights charity. Our multidisciplinary and clinical team works with survivors of human trafficking/modern slavery, torture, and other forms of extreme human cruelty. We provide a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries, specialist programmes of therapeutic care, a medical advisory service, a counter-trafficking programme, housing and welfare advice, legal protection advice and community integration activities and services. HBF runs a Medico-Legal Report Service and undertakes research and training to promote trauma-informed methods of working. HBF has produced a *Trauma Informed Code of Conduct for all professionals working with survivors of human trafficking and slavery*[1] and supported the drafting of the *Slavery and Trafficking Survivor Care Standards*.[2]

HBF's response to this consultation focuses on the proposals most pertinent to our work (in chapter 2, 4, 5 and 6) but even in those areas we have not answered any of the closed questions which we believe are phrased in a misleading way. However, we would like to make clear that silence on the other proposals does not mean we support them. We are extremely concerned about the whole of the New Plan for Immigration, the approach it takes and the harmful rhetoric used throughout. We would also like to make clear our concerns about the flawed nature of this consultation, due to its short timeframe,[3] leading questions, lack of accessibility and lack of engagement with the views of those with experience of seeking protection.

[1] http://www.helenbamber.org/wp-content/uploads/2019/01/Trauma-Informed-Code-of-Conduct.pdf
[2] https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf
[3] Normally consultations of this nature last at least 12 weeks. The NPI consultation has lasted just six weeks and covered a period that included the Easter holidays, a May bank holiday, Ramadan and an election period during which those involved in local, mayoral and devolved nation elections are restricted in what they can say publicly.

Foreword

Question 1: The foreword provides a high level outline of the New Plan for Immigration, including reforms to make the system fair, but firm. Overall, how far do you support or oppose what is being said here? Please refer to the foreword of the New Plan for Immigration to support your answer to this question. Strongly oppose

Chapter 1: Overview of the Current System

Question 3: Please use the space below to give further detail for your answer. In particular, if there are any other objectives that the Government should consider as part of their plans to reform the asylum and illegal migration systems.

We are unable to answer question (2) because it is based on assumptions about the government's intentions which are not supported by the proposals or evidence. The questions ask whether certain proposals would be effective or not in achieving the government's stated aims, but the headline proposal does not adequately reflect what the government intends to do. For example, while HBF would of course support reformed legal processes which 'ensure improved access to justice', we do not believe that the reforms suggested will achieve this. Therefore the way in which the questions are drafted do not allow for an accurate answer.

We believe that there is an urgent need for fundamental reform of the UK's immigration and asylum systems. The current very complex systems, with long delays and unreliable access to specialist legal advice and expert support, can exclude the most vulnerable, hinder recovery and fail to address the needs of traumatised people who have suffered extreme human cruelty.

However, the proposals set out in the New Plan for Immigration (NPI) will do little to achieve the reform that is needed. Many of the proposals to change the asylum and trafficking systems have been proposed or implemented before, such as the detained fast-track and 'one-stop' process. These are not supported by evidence and research, nor have they been developed in consultation either with those impacted or with other stakeholders. The NPI demonstrates little regard for the UK's international legal obligations, including under the 1951 Refugee Convention, the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) and the European Convention on Human Rights. Many of the proposals will create more work and put further strain on a Home Office already struggling with capacity and inefficiency issues.

The proposals fail to acknowledge that the UK's existing backlog of 109,000 outstanding asylum cases is a result of the Home Office's own failings and they do not set out what additional resources will be provided to decision makers to deliver on the commitments made on their behalf under the 'new' asylum system. HBF co-delivers training with Freedom from Torture to Home Office caseworkers. In our experience, many of the problems with the current asylum system are due insufficient resourcing, a lack of consistent training and

a culture which is driven by targets rather than a system of independent monitoring and evaluation of Home Office decision making. Home Office decision making on asylum claims has been criticised over decades with little change: this is where the energy for reform needs to go.

Throughout the NPI there are references to ensuring that the 'most vulnerable' people are able to have their claims heard, but there are no measures proposed at all that would further ensure that those needing protection are actually able to access it. Rather, many of the proposals are based on the flawed, unevidenced premise [4] which underpins the 'hostile environment' agenda: that punishing people after arrival and making their situation untenable will deter them from coming to the UK or force them to leave. The creation of a two-tier system that distinguishes between 'good' and 'bad' refugee, or 'deserving' or 'undeserving' survivor of trafficking will fail to protect those in need, cutting off and isolating some of the most vulnerable.

Many of these proposals will serve simply to increase fear and reduce the efficacy of the current systems. Where people are too frightened to engage with the British authorities and seek asylum and/or be referred into the National Referral Mechanism (NRM) this will result in their being left in situations of limbo and deprivation, more vulnerable to exploitation, abuse and, in the cases of survivors of trafficking, to re-trafficking.

Case study: Yousef

Yousef grew up in a Saharawi refugee camp in Algeria and is stateless. He was orphaned and trafficked as a street child, where he experienced physical and sexual violence. He fled the abuse he was facing in Algeria and finally arrived in the United Kingdom after experiencing abuse and mistreatment on multiple occasions en route to the UK. He spoke to Algerian people in the UK and they told him that if he claimed asylum he would be taken away from the community and sent back to Algeria. He did not claim asylum out of fear and lived under the radar in the UK, groomed and exploited by people traffickers, while his mental and physical health deteriorated. He was eventually sectioned under the Mental Health Act when he became delusional and is likely to experience life-long symptoms of mental illness and require life-long care.

HBF's clients, who have medico-legal documentation of their injuries from trafficking and torture and are supported, and often documented in detail by our multi-disciplinary team, will be significantly negatively affected by these proposals. Many more survivors, who lack this care, support and documentation but who are equally vulnerable, will be denied access to identification and protection. Far from 'breaking the model of criminal trafficking networks' this will provide a source of immediate supply for traffickers: people who are undocumented or are vulnerable in the asylum system are at risk of being trafficked and re-

[4] See National Audit Office, Home Office Immigration enforcement HC 110 Session 2019–2021, 17 June 2020 and Free Movement, Home Office doesn't know, doesn't care whether the hostile environment even works, June 2020

trafficked if they lack support and pathways to identification and the means to earn a living. Ultimately criminals will be strengthened, not weakened by these proposals.

Our work shows clearly that the sooner people get the unconditional support and assistance that they need, the easier it is to identify the most vulnerable, including survivors of torture and trafficking. By adopting a curious, trauma-informed approach to survivors whilst simultaneously supporting, listening and documenting, HBF can provide significant evidence in relation to torture and trafficking cases that informs and thereby supports Home Office and judicial decision making.

The government could make the asylum and trafficking systems fairer, more consistent and efficient if it concentrated on ensuring that its decision-making was as fair, clear, timely and reliable as possible (taking into account the low standard of proof) and that those seeking protection have access to quality independent legal advice and expert support at the earliest opportunity, enabling them to set out their case for protection. We need asylum and immigration systems in which the support is front-loaded, where decisions are made promptly, and where people are granted secure forms of status that allows them to recover and rebuild their lives. The government could also take steps to move towards a more inquisitorial initial decision making process, whereby this front-loaded legal support could ensure that the evidence necessary to establish such reasonable likelihood were set out together with the difficulties in providing more evidence. This could be combined with scrutiny of the evidence by an independent panel focused on the question of entitlement to protection rather than on targets and reducing immigration.

Any changes to systems should be based upon the UK's obligations to protect refugees and victims of trafficking and must focus on minimising the adverse effects of prolonged immigration 'limbo' and of flawed and unjust decision making that prolongs this limbo due to the necessary requirement for further appeals and fresh claims.

Separate from the additional misery visited upon asylum seekers, criminal networks will not be deterred by the proposals in the NPI. Creating a false dichotomy between the 'deserving' and 'undeserving' which is dependent on the route taken to asylum will make it easier for Organised Crime Groups – by ensuring individuals remain in exploitative situations for longer periods, as they will be more fearful of escape; by further conditioning those subject to slavery; and potentially also ultimately recruiting them. With conviction rates still low he UK needs to resource the police, courts and the criminal justice systems to tackle trafficking and ensure that traffickers do not benefit from confusing public messaging that lends the impression that it is the *victims of modern slavery*, rather than their traffickers, who present a threat to the UK.

The NPI refers to the government's "pride in fulfilling our moral responsibility to support refugees fleeing peril around the world" but its proposals are cruel and punitive and seek to undermine the very principle of asylum. The government *should* be taking pride in recognising and respecting its international asylum and human rights obligations, and should be taking all steps possible to ensure that those seeking protection in the UK are

supported from the outset to feel safe and secure. However rather than addressing its systemic failures in this regard, it is proposing draconian measures which will undermine its reputation for fairness towards refugees and 'world leading' initiatives for human trafficking victims.

Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny

Question 7: Please use the space below to give further feedback on the proposals in chapter 2. In particular, the Government is keen to understand: (a) If there are any ways in which these proposals could be improved to make sure the objective of providing well maintained and defined safe and legal routes for refugees in genuine need of protection is achieved; and (b) Whether there are any potential challenges that you can foresee in the approach the Government is taking to help those in genuine need of protection.

The NPI, when taken in its entirety, is a dangerous and harmful set of proposals that, if implemented, would take a significant step backwards in terms of ensuring that those who have fled persecution and harm are able to seek international protection, eventually rebuilding their lives and contributing as citizens of the UK. There have been very limited routes available to date and these have effectively come to an end, with little information provided as to what might replace them. HBF is concerned that if/when such routes are made available again they will not meet the needs of those seeking and entitled to refuge and the nature of the (often dangerous) journeys people make is not a valid factor in determining their entitlement to protection(see our answer to question 21 below).

The more supportive and welcoming approach the government is taking to refugees brought to the UK under resettlement schemes is one that should be available to all those with entitlement to protection.

Many of those who have been resettled to the United Kingdom have experienced horrific forms of mistreatment. Those identified for resettlement as particularly vulnerable and living in a refugee camp/displaced context may still be experiencing abuse at the time that they are identified for resettlement. When planning for integration schemes for resettled populations it is critical that access to trauma-focussed therapy is 'built-in' to the planning early on. This is an anticipated need and without this care resettled people can be left isolated and trying to battle mental health crisis alone, whilst also coping with the further displacement of resettlement, creating a barrier to integration. It can take years – and in some areas may not be realistically possible at all – to access specialist trauma-focussed therapy through the NHS. Specific funding should be ring-fenced for refugee and trafficked persons to access specialist trauma-focussed therapy and to allow the development of more consistent access to these services, which would have long term benefits for the wider population in the UK.

Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System

Question 19: To protect life and ensure access to our asylum system is preserved for the most vulnerable, we must break the business model of criminal networks behind illegal immigration and overhaul the UK's decades-old domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?

- **Ensuring that those who arrive in the UK, having passed through safe countries, or have a connection to a safe country where they could have claimed asylum will be considered inadmissible to the UK's asylum system. –** Not at all effective
- **Seeking rapid removal of inadmissible cases to the safe country from which they embarked or to another third country. –** Not at all effective
- **Introducing a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin (as it would breach international obligations) or to another safe country. –** Not at all effective
- **Bringing forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of inadmissible asylum seekers. –** Not at all effective
- **Making it possible for asylum claims to be processed outside the UK and in another country. – Not at all effective**

Question 20: To protect the asylum system from abuse, the Government will seek to reduce attempts at illegal immigration and overhaul our domestic asylum framework. In your view, how effective, if at all, will the following proposals be in achieving this aim?

- **Changing the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK. –** Not at all effective
- **Supporting decision-making by setting a clearer and higher standard for testing whether an individual has a well-founded fear of persecution, consistent with the Refugee Convention. –** Not at all effective
- **Creating a robust approach to age assessment to ensure the Government acts as swiftly as possible to safeguard against adults claiming to be children and can use new scientific methods to improve the Government's abilities to accurately assess age. –** Not at all effective

Question 21: The UK Government intends to create a differentiated approach to asylum claims. For the first time how somebody arrives in the UK will matter for the purposes of their asylum claim. As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?

HBF is firmly against the government's proposals to create a two-tier asylum system that differentiates between people seeking protection who have arrived through 'illegal' routes and those who have travelled via 'safe and legal' routes (i.e. resettlement or family reunification). The proposals would penalise those seeking protection by either not granting them asylum at all or only granting them a temporary form of immigration status simply because of the means by which they entered the country. There are no meaningful alternatives being offered for people who currently have no option but to take dangerous and irregular journeys. Rather, what is proposed is the *punishment* of people for exercising their right to seek protection in the UK, contrary to the UK's obligations under the Refugee Convention.[5]

Case study: Rachel

Rachel did not come directly to the UK. She was trafficked from Albania to Italy and then to the Netherlands. She fled her traffickers and was terrified they would find her. She travelled to the UK for safety because it is an island with border control, so she thought she would be safe here. She did not know about asylum or legal protection, but just thought about getting away from the criminal gang who abused her. She suffers from complex Post Traumatic Stress Disorder, Major Depressive Disorder and Anxiety and is six months pregnant due to rape. She would be punished by these provisions.

When people flee harm or exploitation there is rarely time to plan, and they leave their countries of origin, or situations of modern slavery with nothing but the clothes on their backs in desperate circumstances. Many people who claim international protection are under the control of people smugglers and human traffickers, risking abuse and exploitation on route and are powerless to deviate from the planned method of entry.[6] The NPI proposals serve to blame and punish refugees, who have fled war, torture and human cruelty, for the means by which they reached safety.

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[5] Article 31 of the 1951 Convention relating to the Status of Refugees provides as follows:
1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

[6] See, for example, https://www.ecpat.org.uk/precarious-journeys

No evidence is provided to demonstrate that granting an inferior form of status will have the effect of deterring people from seeking protection in the UK. Instead, it will only serve to worsen the insecurity and anxiety already faced by too many survivors of torture and trafficking who are waiting for decisions in their cases and living in permanent fear of being forcibly returned.[7] It will leave people languishing, potentially for years, in a system that is not fit for purpose, and create a 'second class' of refugees who are unable to integrate or build safe lives.

Granting only short and insufficient periods of leave to remain results in continuing insecurity and uncertainty, and has a significant negative impact on survivors' mental health.[8] A sense of (long-term) safety and security is a prerequisite for psychological treatment to be effective and for sustained recovery to be achieved. It is only with a grant of secure immigration status that a survivor of extreme human cruelty will be able to address their significant mental health issues, including PTSD and associated depressive and persecutory symptoms. Short terms of leave to remain are not acceptable to landlords, training and education institutions and the vast majority of employers: it therefore presents obstacles to survivors' safety, social inclusion, and financial independence and ultimately their contribution to the UK, which we know so many of them want to provide.

In addition, it is already very difficult for people to find lawyers to renew their leave (and the more vulnerable the person the more difficult this can be), which creates a high risk of vulnerable and disabled people becoming overstayers. Employers and benefits agencies often do not understand Section 3C leave and so short periods of leave also regularly cause vulnerable people to face destitution and homelessness at the point of renewal, which can also act as a trigger for mental health crisis. Refugees are a particularly at risk group in terms of health and welfare needs and outcomes, so would be hit disproportionately by the proposed downgraded form of leave. Furthermore the legal aid immigration advice sector is extremely poorly serviced – we are aware that in many areas of the country it is failed or failing in terms of advice deserts and access to specialist advice – and the more people who have shorter periods of leave (so require more renewals) the less capacity there is for lawyers, because they will be only able to take on fewer individual clients. The proposals would worsen the current barriers in accessing legal advice leaving people tied up in the system for years and at risk of becoming illegally present and vulnerable to exploitation. Where access to legal support is limited it is often the most vulnerable who fail to access it and/or are exploited.

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[7] See The Violence of Uncertainty - Undermining Immigrant and Refugee Health NEMJ https://pubmed.ncbi.nlm.nih.gov/30184446/ The results of study show a direct link between asylum waiting times and poorer self-report health upon grants of RS and a persistence effect almost 2 years later.

[8] 'Mental health of forced migrants recently granted leave to remain in the United Kingdom', Waler et ors, *International Journal of Social Psychiatry*, 1-9 (2020). http://www.helenbamber.org/wp-content/uploads/2020/08/2020.08-Walker-et-al-Transition-Study.pdf

The extra layers of complexity created by dividing the categories of refugee protection will also worsen the substantial delays and backlogs that already exist in the Home Office, with thousands more cases requiring review at regular intervals. This will create an enormous casework burden for a department that is already struggling. With more people living in uncertainty with No Resource to Public Funds the number of adults and families facing destitution will increase as will the numbers needed to make change of conditions applications. [9]

In cases where leave to remain is granted with no recourse to public funds, this increases the risk of more people being left in deprivation, homelessness and destitution, causing an increased community and public health burden/harm as well as increasing risk of exploitation, abuse and re-trafficking.

Question 22: The UK Government intends on introducing a more rigorous standard for testing the "well-founded fear of persecution" in the Refugee Convention. As the Government considers this change, what, if any, practical considerations should be taken into account?

The government is proposing to put in place a more rigorous standard for testing for a 'well-founded fear of persecution'. This will have two elements. The first is that the person is who they say they are and is experiencing a genuine fear of persecution, proven to the standard of 'balance of probabilities' and subject to a credibility assessment. Then the Home Office will consider if the person is likely to face persecution if returned to their country of origin, proven to the standard of 'reasonable likelihood'.

HBF is firmly against this proposal: raising the standard of proof and imposing a two-stage test is contrary to established case law, with the Courts having already held in a series of cases10 that having a split standard of proof in this way is overly complex and impractical. The lower standard of proof for asylum claims ("reasonable degree of likelihood") exists for a good reason. Survivors come to this country with nothing but their story and physical/psychological evidence on their bodies. They may secure expert evidence after arrival, but are still mainly reliant on testimony. Furthermore, the implications for the person of a wrong decision are potentially extremely serious – a real risk of torture, other types of persecution or even death if they are forced to return to the country they fled from. By comparison, in civil cases (where a balance of probabilities is used), people will have access to a range of evidence regarding the claim they are seeking to have adjudicated. In criminal cases, a far higher standard of proof ("beyond reasonable doubt")

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9 https://static1.squarespace.com/static/590060b0893fc01f949b1c8a/t/5d0bb6100099f70001faad9c/1561048725178/Access+Denied+-+the+cost+of+the+No+Recourse+to+Public+Funds+policy.+The+Unity+Project.+June+2019.pdf

10 *R v SSHD ex p Direk* [1992] Imm A. R. 330, *R v SSHD ex p Kaja* [1995] Imm A. R. 1, *R v SSHD ex p Sivakumaran* [1988] AC 958

is used to minimise the risk of innocent people being deprived of their liberty due to a wrong decision.

Even with the existing asylum system, the 2016 Freedom from Torture report 'Proving Torture' [11] found that Home Office decision makers were consistently failing to apply the correct standard of proof in cases where a medical report had been submitted. The foundation training for asylum decision makers is currently in the process of being reformed : HBF strongly recommends that that process is independently monitored and evaluated rather than introducing a new legal test that has no legal underpinning in case law or international law. There no evidence base to suggest there is any need to amend the test.

These proposals undermine the UK's existing asylum and human rights obligations, including the 1951 Refugee Convention. They would mean the UK was adopting a significantly more restrictive test to decide who is a refugee and should be granted refugee status. A likely consequence of this proposal is that more people will be refused, potentially adding additional pressure to the court system with further appeals. It is already difficult for people to meet the current level of proof, especially if given a very short period of time to do so, and is likely to achieve nothing more than leaving more refugees in limbo in the UK, unable to meet a unjustly higher test but also unable to leave the country because of the persecution of which they remain at risk.

Question 24: The Government is committed to strengthening the framework for determining the age of people claiming asylum, where this is disputed. This will ensure the system cannot be misused by adults who are claiming to be children. In your view, how effective would each of the following reforms be in achieving this aim?

- **Bring forward plans to introduce a new National Age Assessment Board (NAAB) to set out the criteria, process and requirements to be followed to assess age, including the most up to date scientific technology. NAAB functions may include acting as a first point of review for any Local Authority age assessment decision and carry out direct age assessments itself where required or where invited to do so by a Local Authority.** – Not very effective
- **Creating a requirement on Local Authorities to either undertake full age assessments or refer people to the NAAB for assessment where they have reason to believe that someone's age is being incorrectly given, in line with existing safeguarding obligations. –** Not very effective
- **Legislating so that front-line immigration officers and other staff who are not social workers are able to make reasonable initial assessments of age. Currently, an individual will be treated as an adult where their physical**

[11] https://www.freedomfromtorture.org/what-we-do/asylum-and-rights/decision-making/proving-torture/report-proving-torture

appearance and demeanour strongly suggests they are 'over 25 years of age'. The UK Government is exploring changing this to 'significantly over 18 years of age'. Social workers will be able to make straightforward under/over 18 decisions with additional safeguards. – Not very effective

- **Creating a statutory appeal right against age assessment decisions to avoid excessive judicial review litigation. –** Fairly effective

Question 25: Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and
(b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform. Please provide as much detail as you can.

HBF is extremely concerned about the government's proposals to expand the asylum estate, including "reception centres to provide basic accommodation while processing the claims of asylum seekers" and to "maintain the facility to detain people where removal is possible" with a "new fast-track appeals process".

Creating reception centres

HBF believes that the use of 'reception centres' is inhumane and in light of our significant knowledge and response to the use of military barracks and hotel contingency accommodation over the past year, this will be detention by another name. These forms of accommodation have the same impact as open prisons with groups of people with little to motivate or occupy themselves becoming increasingly desperate. In our collective experience, poor treatment and low standards of care and accommodation are likely to occur in any setting which mimics a detention setting. Furthermore, with the proposals suggesting that these centres would be "provided basic accommodation and process claims", it can be assumed that these would not be a short term option but rather people would be kept there throughout the asylum process. In light of the significant delays in asylum decision-making, survivors could end up living in such centres for years.

HBF's research has shown that contingency accommodation has a significant negative mental health impact on refugees. The features of this type of accommodation that contribute to worse mental health outcomes include isolation from communities, perceptions of being unwelcome, shared facilities, lack of privacy and freedom to move within and outside. It shows the extreme difficulties individuals have in disclosure whilst detained.

Expressions of distress in the form of self-harm and suicidality, numbing through substance/alcohol use or anger/distress are likely to result. All of these factors have been seen and documented during the use of Penally and Napier barracks as contingency

accommodation where HBF doctors have identified people who experienced suicidality or mental health crisis for the first time in their lives after being placed in the barracks sites.[12]

Re-establishing the discredited detained fast track

Accelerated asylum systems do not work; when such systems have been in place there have been court rulings finding them unlawful. This is neither a good use of court time nor tax payers' money. Many cases take time to prepare and require the engagement of quality experienced lawyers as well as medical and other experts.

In 2014 the detained fast-track was held to be operating unlawfully[13], with the courts finding that appeals brought under the fast-track system were structurally unfair as there was insufficient time for people to prepare for their hearings[14]. Additionally mandatory detention under that system was also found to be unlawful[15].

On 3 July 2015, the High Court approved a consent order in the case of R (JM & others) v Home Secretary[16] in which the government conceded that "the DFT as operated on 2 July 2015 created an unacceptable risk of unfairness to vulnerable or potentially vulnerable applicants".

This was because, "*there was an unacceptable risk of failure: a. to identify such individuals; and b. even when such individuals were identified, to recognise those cases that required further investigation (including, in some cases, clinical investigation). This created an unacceptable risk of failure to identify those whose claims were unsuitable for a quick decision within the DFT.*" This included "*asylum seekers who may be victims of torture, significant ill-treatment, human trafficking, or may be suffering from mental disorder or other physical or mental impairment which may affect their ability to present their claims in [the] DFT.*"

Notably, as recently as 2019, the Tribunal Procedural Committee upon considering the rules that govern appeals decided that a fast-track appeals system should not be reintroduced, and that the Principal rules for appeals allowed for sufficient case management and expedition:

"In order to ensure that such a system would deal with cases fairly, it would need to include rigorous procedural safeguards to ensure that unsuitable cases were not included within the fast track system. The importance of such safeguards must not be underestimated... The need for robust safeguards also means that specific rules would not lead to any greater certainty in relation to how long an appeal would take to conclude. An inevitable consequence of such safe-guards would be that many cases would be dealt with outside the fast track timescales, since the

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[12] Helen Bamber Foundation, Freedom from Torture, Doctors of the World and Forrest Medico-Legal Services, *Submission to the Home Affairs Select Committee on Asylum Accommodation: clinical harm caused by the use of barracks as housing for asylum seekers*, 2021

[13] *R (Detention Action) v Home Secretary* [2014] EWHC 2245 (Admin) ("DA1")

[14] *R (Detention Action) v First-tier Tribunal* [2015] EWHC 1689 (Admin) ("DA5")

[15] *PN (Uganda) v Secretary of State for the Home Department* [2020] EWCA Civ 1213

[16] [2015] EWHC 2331 (Admin)

purpose of such safeguards would be to identify unsuitable cases and ensure they were dealt with differently."[17]

As a multi-disciplinary and clinical organisation we are against the detention of victims of trafficking due to the significant harm and risk this is known to cause. We do not consider that there can be sufficient safeguards put in place to mitigate the risk to vulnerable individuals who are detained, including victims of trafficking and torture. Detention is not a place where victims can speak freely or obtain access to appropriate legal appointments, and it is often the cause of mental health difficulties and distress that make the process even more difficult. Many victims of trafficking we work with have passed through detention centres and have been traumatised and remain afraid of the authorities as a result. It is a duty to ensure that if any person in detention claims to be trafficked, or there are indicators they have been trafficked, their case should be fully informed and considered with a view to releasing them.

Given the Home Office's intention to incorporate survivors of trafficking under the Adults at Risk policy (which deals with vulnerable individuals in detention), there is a greater risk that survivors of trafficking will be detained and for longer periods. This has been accepted by the Home Office as an unintended consequence of the policy.[18] The Home Office's own guidance on Modern Slavery[19] states at 13.18 that

"Victims' disclosures of historic events are often delayed. This may be due to an unwillingness to self-identify, or due to the impact of trauma, particularly post-traumatic stress disorder [...] it is likely that a potential victim will not be able to fully explain their experience until they have achieved a minimum level of psychological stability...Disclosures often come slowly and in a piecemeal way, sometimes over years."

As such reintroducing an expedited process to a detained population that is likely to include more survivors of trafficking, will result in more vulnerable individuals suffering harm. This is in sharp contravention to the UK's obligations to survivors under the Council of Europe Convention on Action against Trafficking in Human Beings.

Nothing in the NPI sets out how a new accelerated procedure would address the previous systems failings. These proposals seek to repeat the failures of the previous system, without adequate detail, data or justification for doing so. The likely result is that reintroducing a new detained fast track would mean more vulnerable people are detailed for longer.

Age assessments

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[17] https://www.ein.org.uk/news/tribunal-procedural-committee-decides-fast-tracked-immigration-appeals-should-not-be

[18] See Home Office response to the evidence provided by NGOs to Secondary legislation Scrutiny Committee on SI 2021/184 https://committees.parliament.uk/publications/5085/documents/50376/default/

[19] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974794/March_2021_-_Modern_Slavery_Statutory_Guidance__EW__Non-Statutory_Guidance__SNI__v2.1_.pdf

Many young people arrive in the UK with no proof of their age and some do not know their age with any degree of accuracy. Successive UK governments have framed the need to carry out age assessments as an issue of safeguarding, emphasising that adults may be incorrectly placed in accommodation with vulnerable children to whom they may pose a danger. HBF believes the greater risk is to children being treated incorrectly as adults. While it may be undesirable for someone in their early twenties to be placed in accommodation with teenagers, the risk of harm to children living with adult supervision by living alongside a young adult must be weighed against the risk of having individual children as young as 14 placed in immigration detention, or alone in accommodation with adults of all ages. Occasionally there may be young adults treated as children, but given the supervision and care provided in children's placements, that is a lower risk and far safer than children being treated as adults and placed in places where there are no safeguarding measures or supervision because in these circumstances the authorities deny that here is any doubt about their age.

The age assessment process can cause a lot of confusion and frustration to many vulnerable young people, and can have a negative impact to their already poor mental health. It can prevent them from accessing school or college whilst their age is disputed, and isolate them from peers and prevent them from integrating and accessing educational opportunities. Lots of the young people do not understand the process, and feel humiliated it. It can be re-traumatising, and impact their sense of the identity.

Case study: T

T, a young person from Iran, saw his support interrupted due to the outcomes of age assessment. He abruptly lost his social worker, keyworker, placement, and psychological input from Child and Adolescent Mental Health Services, as well as not being able to access school. He was placed with adult men which he found very frightening. This lead to an acute mental health crisis that has recently culminated to an attempt to end his life, which lead to an inpatient hospitalisation.

Home Office guidance on Assessing Age20 was updated in 2019 in light of a successful legal challenge to its policy of determining that an individual claiming to be a child is an adult if their appearance and demeanour "strongly suggests" they are "significantly over 18".[21] Research, guidance and case law makes clear that physical appearance is not an accurate basis for the assessment of a person's age. Within different ethnic and national groups there are wide variations in young people's growth and ages of puberty, and young

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20 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947800/assessing-age-asylum-instruction-v4.0ext.pdf

21 https://www.refugeecouncil.org.uk/latest/news/court-of-appeal-rules-the-home-office-age-assessment-policy-as-unlawful/

people may look and act older than they are because of their experiences in their country of origin, or difficult journey to the UK. The Home Office will still make decisions based on physical appearance but now officials must find the individual to be over 25 to treat them as an adult. However, since the summer a significant number of individuals have arrived at Kent claiming to be children but have been assessed to be adults[22] and then sent to adult asylum accommodation, including the Napier and Penally barracks.[23]

We are extremely concerned by proposals that would allow the Home Office to treat a putative child as an adult based on visual assessment alone and their appearing to be over 18. In light of the well documented difficulties of trying to assess whether someone is under or over 18 based on appearance, we can see no value to legislating on this issue. It will not, and cannot, make the process any more reliable and simply creates unnecessary risks, including children being placed alone in immigration detention or in unsupervised accommodation with adults.

We are also very concerned at suggestions that new age assessment criteria would include "using the most up to date scientific technology". Professional medical bodies are unequivocal in their rejection of the use of scientific methods to assess age because it is imprecise the use of ionising radiation for this purpose is not appropriate. It is clear that "dental x-rays, bone age and genital examination will currently not add any further information to the assessment process""[24] and so it is unclear why the government wishes to revisit the use of scientific technology in the absence of any new techniques that could be used safely and accurately as part of a holistic, multi-agency age assessment.

Rather more time and energy should be devoted to creating a system that recognises the importance of developmental, not just chronological, age and accepts the need to ensure all vulnerable children and young people are safeguarded.

Chapter 5: Streamlining Asylum Claims and Appeals

Question 26: The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

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22 https://www.duncanlewis.co.uk/news/Judicial_Review_issued_challenging_Age_Assessments_at_Kent_Intake_Unit_(12_February_2021).html

23 https://www.gov.uk/government/news/an-inspection-of-the-use-of-contingency-asylum-accommodation-key-findings-from-site-visits-to-penally-camp-and-napier-barracks

24 Royal College of Paediatrics and Child Health, Refugee and unaccompanied asylum seeking children and young people - guidance for paediatricians, 2018

- Developing a "Good Faith" requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier. – Not at all effective
- Introducing an expanded 'one-stop' process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively – setting out full details and evidence to the Home Office and not adding more claims later which could have been made at the start. – Not at all effective
- Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the 'one-stop' process. – Not at all effective

Question 27: The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government's end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims:

- Providing more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims.- Don't know
- Introducing an expedited process for claims and appeals made from detention, providing access to justice while quickly disposing any unmeritorious claims. – Not at all effective
- Providing a quicker process for Judges to take decisions on claims which the Home Office refuse without the right of appeal, reducing delays and costs from judicial reviews. – Not at all effective
- Introducing a new system for creating a panel of preapproved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by parties. – Not at all effective
- Expanding the fixed recoverable costs regime to cover immigration judicial reviews (JRs) and encouraging the increased use of wasted costs orders in Asylum and Immigration matters. – Not at all effective
- Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation. – Not at all effective

Question 29: The Government propose an amended 'one-stop process' for all protection claimants. This means supporting individuals to present all protection-

related issues at the start of the process. The objective of this process is to avoid sequential and last-minute claims being made, resulting in quicker and more effective decision making for claimants. Are there other measures not set out in the proposals for a 'one-stop process' that the Government could take to speed up the immigration and asylum appeals process, while upholding access to justice? Please give data (where applicable) and detailed reasons.

A one-stop process was introduced by the Nationality, Immigration and Asylum Act 2002, with exactly the same aims as those outlined in the New Plan for Immigration. It was followed by repeated attempts to revise the appeal process.

If the proposal aims to remove the discretion to issue a one-stop notice (i.e. make them compulsory) then this will be particularly harmful for survivors of trafficking, who often have complex immigration histories and wider complexities in respect of their cases and often take time to disclose what has happened to them due to trauma (as recognised by the Home Office in their own guidance on Modern Slavery). This has been documented in the OSCE Report on Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment[25], where survivors are often only able to disclose (fully or partially) once a relationship of trust has been established as shame and stigma preclude 'full revelation'. Research has shown the effect of trauma on memory; the effect of shame on disclosure, the narrative dilemmas that victims of trafficking often face, and that "often false assumptions [are] made by decision makers regarding the credibility and reliability of testimony and there is well established research to show trauma impacts on memory recall and the ability of victims to verbalise what has happened to them."[26]

In addition, late disclose may occur because survivors are not aware of what information is relevant to their claim and are not asked the necessary questions; because survivors are fearful of authorities and afraid to disclose what has happened to them for fear of repercussions.

Case study: X

X is from Cote D'Ivoir, and was exposed to sexual violence and prolonged trauma from a very young age. The exploitation she experienced in her early childhood continued into her marriage, after she was sold to her husband by her grandfather. In order to escape this abuse, she fell victim to a group of traffickers in Cote D'Ivoir. She was held captive and repeatedly raped in exchange for somewhere to live. X was then trafficked to the UK where her exploitation continued. She was housed in various flats in London and was forced into prostitution for around 10 years.

[25] https://www.osce.org/files/f/documents/d/b/103085.pdf
[26] http://www.helenbamber.org/wp-content/uploads/2017/02/Briefing-Paper-Difficulties-in-providing-testimony-victims-of-modern-slavery.pdf

X escaped her traffickers and eventually applied for asylum. She failed to disclose her trafficking experience in the UK in some of her early interactions with the Home Office. These inconsistencies contributed to her receiving a negative conclusive grounds decision on her trafficking claim. X's initial non-disclosure should be understood in the context of her prolonged exposure to trauma at an early age. By the time she arrived in the UK, her PTSD symptomatology was complex and entrenched. Her symptoms include involuntary numbing, avoidance, dissociation and shame. The fear of reprisals by her traffickers and the stigma associated with her experience, meant she felt unable to disclose her experience to those whom she trusted, let alone immigrations officials or solicitors. It was only once X had built a trusting relationship with a female caseworker at a charity, was she able to describe her experience in the UK and be referred to the NRM. X has subsequently been granted leave as a victim of trafficking.

Research has highlighted that those seeking asylum "need time to process past traumatic events and to establish a sufficient level of trust and confidence to reveal the potentially painful and shaming details of their experiences" and that the asylum and immigration process needs to be sensitive to this.[27]

Too often, those seeking protection, including survivors of trafficking and torture, are not given the time they need to build trust with lawyers, disclose what has happened to them and gather evidence, while others are simply left in limbo without progress on their claim at all. This proposal would penalise those who have experienced trauma and will need more time to process what has happened to them and build trust before they feel safe to disclose this.

Over the past three years HBF has supported 178 clients who have subsequently had a grant of status post a fresh claim (just under 50% of our clients). In our experience a number of cases have ultimately been successful once expert evidence has been secured – many claims initially seen by the Home Office as unmeritorious turn out otherwise following proper scrutiny.

Case study: P

P is from India. As a child he was physically, emotionally and sexually abused by his elder brother and his friends. He was accused by his elder brother and his friends of behaving 'inappropriately' with his friend. A fatwa was issued by their local cleric in respect of the 'indecent deeds' and P and his friend were ambushed, dragged out onto the street and beaten. P and his friend were then raped in front of the crowd by a number of people. P's friend was stoned to death. P managed to escape and travelled to the UK to seek safety.

Upon arrival in the UK, P was exploited for labour. He was arrested following an immigration raid and taken to a detention centre where he was placed in the detained fast

[27] https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/impact-of-sexual-violence-on-disclosure-during-home-office-interviews/E52D8B008FF7D52ED6CC790704A334C4

track and interviewed. P found the process distressing and was overwhelmed by the number of questions he was asked about his experiences. He was only able to provide limited answers about his experiences and his claim was refused. His appeal was unsuccessful. When P was released due to an increase in his suicidality he returned to exploitation. Eventually he was picked up again by immigration enforcement and detained again. In light of his escalating vulnerabilities and following an unsuccessful suicide attempt he was released from detention.

Over five years, P disclosed his traumatic experiences to the Helen Bamber Foundation and eventually they were documented through a series of medico-legal reports. Despite indicators of modern slavery being present, P had never been referred into the NRM. HBF supported P to submit a fresh claim and he was subsequently granted refugee status.

HBF professionals who frequently attend court with victims of trafficking see the complicated and lengthy delays and errors in Home Office appeals hearings which often result in cases being adjourned or being inadequately heard. Judicial oversight of decisions remains essential, whether or not there is a 'one stop' process.

The Home Office could also assist the appeals process by being prepared to review and correct refusals when it is shown the decision was mistaken rather than requiring the appeal process to take its full course. Indeed this procedure already exists in relation to medico-legal reports and is contained in the asylum and policy instruction:[28]

'In cases where an MLR is submitted after the claim has been refused, the case should be reviewed before any appeal…Having considered the report it may be appropriate to withdraw the decision only if it is clear that a grant of Asylum, Humanitarian Protection or Discretionary Leave is appropriate.'

It is unclear why in practice this does not happen more frequently, save for the usual response in relation to resources.

Question 30: Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand:
(a) If there are any ways in which these proposals could be improved to make sure the asylum and appeals system is faster, fairer, and concludes cases more effectively;
(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around streamlining appeals.

Access to legal advice

28 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444410/MLR_Foundation_Cases__External_v4_0.pdf

Improved access to legal advice has a real potential to assist people and improve the asylum and appeals processes, providing such advice is independent, of sufficient quality and provided by legal representatives with relevant expertise. If people are able to access quality legal advice and representation as soon as they need it, they are more likely to be able to effectively engage in existing processes because they are supported from the outset; and it is more likely that these processes will result in the identification of people who should be granted asylum and/or recognised as a victim of trafficking. That could then lead to better, quicker decision-making.

The way to achieve this would be to increase the funding and support available to legal aid lawyers and develop the front-loading of advice.[29] The legal aid sector has been decimated over the last decade and HBF sees every day in its work with survivors of trafficking and torture how hard it is to access good quality legal advice at the start of the process.[30] The individuals we support need time, need to be able to build up trust and need access to quality expert support.

Legal advice should be available to potential victims of trafficking prior to referral into the National Referral Mechanism. This would help address the issue of survivors not being identified as potential victims of modern slavery and ensure that legal aid providers can advise on the NRM, and the implications and consequences of referral.

It is important to note too that this would not remove the need for legal advice and representation at later stages because not everyone will be able to engage effectively – if, for example, they are too afraid or traumatised to do so.

An 'expedited process for claims and appeals made from detention'

Expediting procedures and fixed timescales for asylum claims and appeals of people in detention have been tried before and failed (see above response to question 25). Rather than investing time and energy in creating parallel procedures with different processes for different individuals, the Home Office should focus on improving its existing decision making system so that cases are dealt with fairly, consistently and efficiently.

As a multi-disciplinary and clinical organisation we are against the detention of all refugees due to the significant harm and risk this is known to cause. Detention is not a place where victims can speak freely or obtain access to appropriate legal appointments, and it is often the cause of mental health difficulties and distress that make the process even more difficult. Many victims of torture, trafficking and extreme human cruelty we work with have passed through detention centres and have often been retraumatised and remain afraid of the authorities as a result.

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[29] See the Early Advice Project from 2013 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/199962/horr70.pdf

[30] https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf and https://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf

A panel of pre-approved experts who report to the court

The proposal to introduce a pre-approved panel from which a single joint expert is drawn is ill-thought through and lacking in any substantive detail, let alone justification for such a procedure. HBF and Freedom from Torture are involved in the joint training of Home Office decision makers on how to evaluate expert evidence and within this there is agreement on the existing (and positively viewed) mechanisms for evaluating expertise. In our view there is no need to fix a system that is not broken.

The Home Office seems to be labouring under the impression that there are needless requests for adjournments which therefore delay the appellate process. Little to no data has been provided to support this. Also, little consideration has been given to how appointing a single joint expert would work in an adversarial process; how any experts would be appointed to the panel; and how such a process would be implemented. The likely outcome of instituting an (unnecessary) extra level of bureaucracy and administration, is that further delays will occur which may lead to extraneous satellite litigation.

We are extremely concerned at proposals to control who is able to provide evidence, the limiting of instructions and the proposed level of involvement by the Home Office in instructing a single joint expert. There is no detail in the proposal as to what further resources will be provided to the Home Office to allow them to engage prior to an appeal, on instructing a single joint expert. If there are concerns about the quality of expert reports, then these can be adequately addressed through the relevant regulators. Experts are bound by their duties under various legislative regimes and ultimately an Immigration Judge can apply less weight to that particular piece of evidence where it does not meet the standards set out in the Tribunal Practice Directions. There is insufficient evidence of the problem, let alone the benefits of introducing a system which will add a further layer of complexity and delay.

Such a proposal is likely to reduce overall capacity of experts in the sector (thus reducing further an already limited pool) and therefore access to expert opinion. It is the delays in decision making at first instance that lead to further reports being commissioned in order to update on mental health, the country situation etc. in response to the time that had passed since the last report was prepared. There are real concerns regarding access to justice for vulnerable individuals in a system where the decision-maker is also trying to determine who should provide evidence to the Tribunal. Additionally, little to no thought has been given to the varying shades of evidence that may be provided in an appeal, including but not limited to medical records, doctors' letters and other expert reports. There is nothing in the proposal that address how evidence other than that produced by the single joint expert will be treated, and what weight will be given to it.

Finally, the proposals do not allow for the lived reality of the process of disclosure of traumatic experiences by vulnerable survivors of trafficking and torture. Elsewhere the Home Office accept in published policy that disclosure maybe delayed or that individuals

may be unwilling to disclose if the appropriate relationship of trust is not established and this should be maintained.

Case study: H

H is from Albania. In Albania, she was manipulated into a relationship with a man who turned out to be a trafficker. She escaped the situation of exploitation and tried to leave Albania to escape the shame and rejection by her family and peers. She could not obtain a visa herself, so paid an agent. This man was also a trafficker. Her passport was removed by him and she was given fake documents. She was to be forced into a situation of sexual exploitation on her arrival in the UK, in order to pay off her debt to him.

On arrival in the UK she was detained, arrested, charged and imprisoned due to possession of counterfeit documentation. She was not provided with adequate access to interpretation or legal representation. She was frightened of returning to Albania and did not understand the legal processes to which she was subject. She did not disclose her trafficking experience. She was imprisoned for 6 months where she claimed asylum, before being transferred to an IRC.

H was released from the IRC. At interview, she once again did not disclose that she was trafficked in Albania or that she had been trafficked by the agents who arranged her travel to the UK. She believed that the Albanian authorities would be informed and that her experience would become public knowledge in Albania. Her case was refused with no right to appeal. She was detained once again. When she was released on bail she stopped reporting at the Home Office and corresponding with her solicitors as she was so frightened of being detained. Eventually H was supported to disclose her experiences, but this was slow and careful process. She was not referred to the NRM or recognised as victim of trafficking until six years after her arrival in the UK.

As can be seen from the above, there are numerous points at which H came into contact with the authorities but owing to her acute fear was unable to disclose her experiences. It is not clear how the proposal of a single joint expert would have facilitated disclosure any earlier and indeed given the expert's nexus with the Home Office, is likely to have inhibited disclosure.

Having a single joint expert that is co-instructed by the Home Office is likely to inhibit disclosure given survivors fear of authorities[31], thus delaying proceedings further. However, significantly there is insufficient evidence of the problem to be addressed by the imposition of a single joint expert panel.

Expansion of the fixed recoverable costs regime

[31] https://pubmed.ncbi.nlm.nih.gov/17602129/ - this study concluded that judgments in 'late' disclosure is indicative of a fabricated asylum must take into account the possibility of factors related to sexual violence and the circumstances of the interview process itself. The results indicate the importance of shame, dissociation and psychopathology in disclosure and support the need for immigration procedures sensitive to these issues.

There is already the power to impose costs orders. If the government is proposing that there be a presumption of a wasted costs order against solicitors/counsel when a case is lost (as opposed to it being discretionary as it is at present), this would be a serious threat to access to justice. It is already incumbent on solicitors and counsel to comply with their duties in acting reasonably by bringing meritorious cases, indeed Legal Aid provision is dependent on a case being arguable. As such there is no need to expand a regime that already exists to address if a person has acted unreasonably in bringing, defending or conducting proceedings.

A new fast-track appeal process

There is no detail in the proposals regarding what criteria will be applied to determine when a claim will be deemed 'manifestly unfounded'. Further there is a complete misunderstanding about the reason why a referral for modern slavery might be made 'late'. We address this in detail in our answer to question 29.

As well as delayed disclosure, there are systemic barriers that can result in 'late' claims. For example, in the UK, the NRM is the only way the government grants recognition of someone's experiences of trafficking. In order to be referred to the NRM, an individual must be identified as having trafficking indicators by 'First Responders' such as the police, Home Office or a specified charity.[32] Yet, despite the important role NRM recognition can play in ensuring access to support to enable survivors to begin to recover, there are many instances in which victims are not being referred.

Last year, 2,178 suspected trafficking victims were recognised by First Responders, but never referred for consideration. Whilst UK nationals were most likely to be referred for support, the top nationalities of those bypassing the NRM last year were Albanian (16%; 331) and Romanian (15%; 314), followed by the UK (12%; 266)[33]. A 2019 investigation by the Independent Chief Inspector of Borders and Immigration (ICIBI) concluded that the Home Office tends to focus "on the fact that someone is working illegally rather than that they may be a victim of abuse, exploitation and slavery."[34]

Case study: K

K was brought to the UK from Nigeria as a child, and given false documents to work in the care sector. She did not receive any pay, and her wages when straight to her trafficker who

[32] College of Policing (2020). First Response and the National Referral Mechanism. Accessible: https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/modern-slavery/nationalreferral-mechanism/

[33] Home Office (2021). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf pg 11

[34] Independent Chief Inspector of Borders and Immigration (2019) An inspection of the Home Office's approach to Illegal Working (August – December 2018). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

sexually abused her after working hours. Her movements were controlled night and day. When Immigration Officials attended the care home, she was arrested and later convicted for possession of false documents. Despite her experiences of severe exploitation, K's trafficking indicators were not acted upon by the police or the criminal solicitors representing her. She went through the criminal justice system without appropriate care or safeguards and was only referred into the NRM after her experiences were picked up at a legal advice surgery following transfer to detention from prison.

In the above case study, the most appropriate point for K to have been referred in to the NRM was when the immigration officials attended the care home. However despite this, K was put through the criminal justice system and convicted before she received adequate legal advice. This emphasises the need to ensure good quality legal advice from the outset both in respect of her criminal proceedings as there is a statutory defence available to survivors of trafficking whose offences are committed as part of their trafficking experiences

Each case must be considered with the full opportunity for victims to be legally represented and heard in full.

Chapter 6: Supporting Victims of Modern Slavery

Question 31: The Government believes there is a need to act now to build a resilient system which identifies victims of modern slavery as quickly as possible, and ensures that support is provided to those who need it, distinguishing effectively between genuine and vexatious accounts of modern slavery. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

- **Improving First Responders' understanding of when to make a referral into the National Referral Mechanism (NRM) and when alternative support services may be more appropriate. –** Not at all effective.
- **Clarifying the Reasonable Grounds threshold. – Not at all effective.**
- **Clarifying the definition of "public order" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security. –** Not at all effective.
- **Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain. –** Don't know
- **Bringing forward other future legislation to clarify international obligations to victims in UK law. Continuing to strengthen the criminal justice system response to modern slavery, providing additional funding to increase prosecutions and build policing capability to investigate and respond to organised crime. –** Don't know
- **Introducing new initiatives (as set out in Chapter 6 of the New Plan for Immigration) to provide additional support to victims, improve the**

Government's ability to prevent modern slavery in the first place, and increase prosecutions of perpetrators. – Don't know

Question 32: Please use the space below to give further feedback on the proposals in chapter 6. In particular, the Government is keen to understand:
(a) If there are any ways in which these proposals could be improved to make sure the objective of building a resilient system which accurately identifies possible victims of modern slavery as quickly as possible and ensures that support is provided to genuine victims who need it is achieved; and (b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around modern slavery. Please provide as much detail as you can.

HBF is concerned that most of the proposals in chapter 6 of the NPI will not result in a 'resilient system' nor the accurate, and timely identification of possible victims of trafficking. Rather they risk undoing much of the positive work that has been done in the UK's 'world-leading' response to modern slavery. HBF is leading on the forthcoming international NRM Handbook by OSCE/ODIHR and is keenly aware of the UK's reputation and the progressiveness of the Modern Slavery Act and its Statutory Guidance. Many of the government's proposals are in conflict with the UK's human rights obligations and will undermine many of the globally recognised achievements that have been made in this area.

An effective strategy for addressing modern slavery must take a human rights and survivor focused approach to identification, protection and support. It must ensure that survivors are safeguarded and supported to recover and integrate and take all possible steps to reduce the risk of re-trafficking. Many of the NPI proposals fixate on addressing entirely un-evidenced 'problems' of 'abuse of the system' and in doing so will serve to exclude more people from the trafficking system. This will provide a source of immediate supply for traffickers: people who are undocumented or are vulnerable in the asylum system are at risk of being trafficked and re-trafficked if they lack support and pathways to identification and the means to earn a living.

A new reasonable grounds test threshold

HBF is deeply concerned about proposals to amend the Modern Slavery Act definition of "reasonable grounds to believe that a person is a victim" and consult on amending the Statutory Guidance definition to make clear that the test would be "reasonable grounds to believe, based on objective factors but falling short of conclusive proof, that a person is a victim of modern slavery". The current test for making a 'reasonable grounds' decision has an intentionally low threshold for good reason – identifying a victim of trafficking is a process that takes time, requires the gathering of information, and it is essential that potential victims are safeguarding, supported and not removed from the country while this process is being undertaken. As the Explanatory Report to ECAT outlines:

"The Convention does not require absolute certainty – by definition impossible before the identification process has been completed – for not removing the person concerned from the

Party's territory. Under the Convention, if there are "reasonable" grounds for believing someone to be a victim, then that is sufficient reason not to remove them until completion of the identification process establishes conclusively whether or not they are victims of trafficking."[35]

There is no other type of crime, including serious crime, where a victim would have to prove they are a victim before accessing safeguarding and support. Instead, in cases of rape or domestic violence for example, their allegation would be sufficient to ensure a victim of crime is appropriately safeguarded and supported.

Proposals to raise the evidence threshold for deciding whether someone is a potential victim are said to be necessary to stop people claiming to be trafficking victims in order to prevent removal from the UK. References to identifying 'genuine victims' suggests that there are a number of 'fake' victims that need to be sifted out during the same process. Yet, while so many victims have difficulty in coming forward and being identified by the UK authorities, there is no evidence presented at all that demonstrates that individuals fraudulently claiming to be victims of trafficking are a significant problem. Data from the National Referral Mechanism (NRM) end of year report for 2020 shows that 92% of reasonable grounds decisions were positive and 89% of conclusive rounds decisions were positive.[36] The majority of people in immigration detention who are referred into the NRM are subsequently recognised by the Home Office as potential victims of trafficking. [37] The government has not providing impact assessments which would measure the overall impact of these changes on potential victims coming forward, receiving assistance and cooperating with a police investigation.

A higher standard of proof at the reasonable grounds stage will result in more people left in dangerous situations and/or at risk of re-trafficking. There is no evidence to support the suggestion that the standard of proof needs to be revised and to do so would complicate a process intentionally simplified by the drafters of the Council of Europe Convention on Trafficking due to the serious trafficking risks faced if victims are not identified. . It would simply result in the exclusion of more survivors of modern slavery from the protection and assistance they need and keep them in the hands of their traffickers, breaching obligations under ECAT and the ECHR. It would place additional burdens not only on survivors of trafficking but also on First Responders many of whom would not have the resources and skills required to investigate cases. It is also completely unclear what would be meant by "objective factors" in this context. At the current time there continues to be issues raised concerning the nature of First Responders' role who are neither paid, nor trained

[35] https://rm.coe.int/16800d3812 para 132

[36] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf

[37] https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2020-july-to-september/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2020-july-to-september

sufficiently and will be further disadvantaged with the confusing and unclear raising of the 'reasonable grounds' test threshold.

With many of our colleagues in the anti-trafficking sector we stand by ECAT and its Explanatory report, which underwent careful consideration by legal drafters. We also stand by the progressive provisions of the Modern Slavery Act and urge that these not be dismantled.

Training for First Responders

In addition, the government is proposing training for First Responders so that they can "quickly identify genuine victims and assess whether an account of modern slavery is credible". HBF accepts that First Responders could benefit from greater levels of training so that they are better able to identify victims of trafficking, slavery or other exploitation. We recommend training which reflects best practices set out in the Slavery and Trafficking Survivor Care Standards[38] and the Skills for Care Training Framework for the Identification and Care of Survivors.[39] However, we do not believe that the role of a First Responder is to assess whether someone is a 'genuine victim' or to assess credibility. That is the role of the decision maker i.e. the Single Competent Authority, based on all the evidence and information provided by all the agencies the survivor has interacted with, including information which comes to light during the recovery and reflection period including via international sources. This is made clear in the current Statutory Guidance on Identification and Care.[40]

The notion that First Responders can 'quickly identify genuine victims' with a high level of accuracy flies in the face of all research and experience in this area, including the government's own Modern Slavery Act Statutory Guidance. The key purpose of training ought to be to ensure the identification of potential victims and to allow First Responders to engage with them in a trauma-informed and supportive way that will help ensure they seek and receive the appropriate protection and assistance. Introducing credibility assessments for first responders will limit access to the NRM.

Further assessment of credibility

The NPI also outlines that in making both reasonable grounds and conclusive grounds decisions the government will "consider providing for a more careful analysis of credibility including carefully considering the implications of contradictions and previous opportunities to have raised modern slavery matters. It should be expected that any

[38] https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf
[39] https://www.antislaverycommissioner.co.uk/media/1468/training-framework-identification-care-and-support-of-victims-and-survivors-of-modern-slavery-and-human-trafficking.pdf
[40] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974794/March_2021_-_Modern_Slavery_Statutory_Guidance__EW__Non-Statutory_Guidance__SNI__v2.1_.pdf

modern slavery issues which have a bearing on immigration status should be raised as part of a one-stop process where relevant."

Statutory Guidance already provides guidance around issues of credibility and, as stated above, it should be the role of the decision maker not the first responder to assess credibility issues taking into account all the circumstances of the case including evidence from specialist organisations and expert evidence. The very fact that often specialist evidence including expert evidence may be required is an indication of the complexities of issues which can arise and therefore it should not be the role of the first responder to assess credibility. It should be the role of the decision maker taking into account all the evidence presented from all the agencies involved in the case.

As explored in our answer to question 29 above, the 'expectation' that modern slavery issues which have a bearing on immigration status that should be raised as part of a 'one-stop' process fails to consider any of the existing, well documented research and understanding about survivors and disclosure. It is well recognised that survivors of trafficking can be highly traumatised, afraid of disclosing their situation of exploitation due to shame and fear and the control methods used by exploiters and be fearful of authorities. In addition, a public authority may not have asked the appropriate questions to identify that a person may be a victim or they may have been inappropriately interviewed. There are numerous reasons why a victim may 'fail' to have disclosed their situation of exploitation, documented by HBF and many other experts working in the anti-trafficking field, as well as the Home Office in its own published guidance. The Modern Slavery Act 2015 section 49 Statutory Guidance on Identification and Care also recognises the impact of trauma lists the reasons why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.

<u>Definition of public order</u>

The NPI proposes clarifying the definition of 'public order' to enable e UK to withhold protections afforded by the NRM where there is a link to serious criminality/serious risk to national security. It claims that the aim is to "identify victims as quickly as possible and enhance support they receive whilst distinguishing more effectively between 'genuine' and 'vexatious' accounts of modern slavery and enabling the removal of serious criminals and people who are a threat to the public and UK national security." Serious criminality is subsequently defined as those who have a prison sentence of 12 months or more or there are risks to national security. The decision to apply to the exemption would be issued alongside the RG decision.

The government has provided no evidence to demonstrate that changes are needed to prevent 'vexatious accounts' of modern slavery made by serious criminals to evade deportation. Existing data shows a very small number of Foreign National Offenders raising the issue of NRM referral in detention – just 79 people in 2018 (1%) and 182 people in 2019

(3%).[41] When compared to the total number of potential victims entering the NRM system in the same years (6,993 and 10,627) these are very low numbers.[42]

Article 13 of the European Council Convention Against Trafficking (ECAT) states that "each party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim" unless "grounds of public order prevent it or if it is found that victim status is being claimed improperly". ECAT purposely does not define public order and leaves it to the signatory states to define. Article 45 of the Modern Slavery Act[43] is already limited and restricted, with serious crimes not included.

Aside from the lack of rationale for the changes, the proposal does not adequately address how individuals who are survivors of trafficking, where criminality is linked to their exploitation, will be treated. Therefore the public order grounds exemption is likely to further penalise many victims who have already been through the criminal justice system and wrongly convicted of offences they were compelled to commit as a result of their experience of exploitation.

Case Study: S

S is a 20 year old male Vietnamese potential victim of trafficking (PVoT) who has a conviction for cannabis production, having been exploited and beaten for two years in a locked warehouse under the control of his traffickers who brought him to the UK under the promise of a 'better life'. Having served his criminal sentence (trafficking indicators having not been identified so the statutory defence was not available to him), he was then transferred to immigration detention where he was then referred into the National Referral Mechanism. He received a positive reasonable grounds decision, recognising that he may be a PVoT and was granted a period of reflection and recovery.

If the public order test is 'clarified' as proposed, S would have remained in detention rather being released into the community for his reflection and recovery period. Given the well-documented harm to an individual's mental health that can occur by continuing detention, S's mental health would likely have deteriorated. There is little understanding of the fact that S's crimes were committed whilst he was under the control of his trafficker, and that he

[41] Home Office Data on Detention Section 5 Table 2 (b) https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/issues-raised-by-people-facing-return-in-immigration-detention#data-tables

[42] National Referral Mechanism Data 2018 sourced at https://www.antislaverycommissioner.co.uk/media/1208/2017-nrm-end-of-year-summary.pdf; 2018 data sourced at ationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file and 2019 sourced at https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019

[43] https://www.legislation.gov.uk/ukpga/2015/30/section/45/enacted

is therefore entitled to care and support rather than further detention, where recovery is not possible.

It is well documented that victims are almost universally afraid of the national authorities and coming forward. Traffickers have many methods of ensuring this fear persists long after they have left their control - their methods include ritualised violence, threats against the victim or family members, and in our experience, attacks, re-trafficking and reprisals. One of the most effective ways to keep victims in fear is to force them to commit crimes, so they will be criminalised if they come forward to the authorities. If vulnerable adults and children are denied access to the NRM system on the basis of previous convictions they are unlikely to come forward in the first place and their exploitation will not be addressed It is also essential to fully understand cases by offering victims the protection and support of the NRM rather than dismissing them due to offences to public order, so that the influence of traffickers can be investigated and the statutory defence invoked for cases where that applies.

Grants of leave and further support for survivors of trafficking

The government is proposing to make clear in legislation, that confirmed victims "with long-term recovery needs linked to their modern slavery exploitation" or "who are helping the police with prosecutions and bringing their exploiters to justice" may be eligible for a grant of temporary leave to remain. The government is also promising to "ensure that modern slavery victims receive ready access to specific mental health support", with an enhanced needs-based assessment. From the proposals it is not clear what is meant by these this promise.

HBF firmly believes that the regularisation of a survivor's immigration status with recourse to public funds is crucial to enable them to access the services they need, to make progress in their recovery and to integrate. As outlined above in our response to question 21, secure status is fundamental to survivors' recovery. We would like to see the enshrining in law of a grant of leave but believe that *all* survivors should be granted leave to remain on a pathway to settled status (indefinite leave to remain and then citizenship).

The current Guidance on Discretionary Leave for Victims of Modern Slavery is extremely restrictive especially around leave granted for personal circumstances.[44] This is not reflective of Article 14 or the Explanatory Report to ECAT which provides a wide view as to the granting of leave taking into account all the circumstances.[45] Currently the number of applications for leave granted is extremely low – from 2016 to 2019, 4,695 adults and

[44] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf

[45] Explanatory Report to ECAT paragraph 184 which states "The personal situation requirement takes in a range of situations, depending on whether it is the victim's safety, state of health, family situation or some other factor which has to be taken into account."

children subject to immigration control were confirmed as victims of trafficking but just 521 adults (and an even more shocking 28 children) were granted discretionary leave to remain in the UK.[46] Furthermore, grants of leave are routinely provided for just 12 months.

While we believe strongly that survivors of trafficking need further mental health support, we are concerned by any suggestion that they will have be in receipt of therapy in order to be eligible for grant of leave to remain. This would undermine ECAT. Long-term support is crucial alongside long-term grants of leave to ensure that survivors can recover and do not fall through gaps in the system.

Removal of victims of trafficking to ECAT-signatory countries

The government is proposing to "consult on seeking bilateral or multi-lateral agreements with safe, ECAT-signatory countries which would enable the removal of victims of modern slavery ensuring their needs are met in a country to which they are removed in line with our obligations under ECAT."
We are deeply concerned about this focus on the forced removal of victims as opposed to voluntary returns in line with the needs and wishes of the individual and with appropriate objective information, legal advice and risk assessments being conducted in line with the Slavery and Trafficking Survivor Care Standards.[47] Article 16 of ECAT states,

"When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary."

There is often a significant risk not only from perpetrators but also of re-trafficking even to "safe" countries and if cases are not heard fully and fairly, the UK can breach its international obligations in enforcing removal.

Public Sector Equality Duty

Question 42: From the list of areas below, please select any areas where you feel intended reforms present disproportionate impacts on individuals protected by the Equalities Act. Please expand on your answer for any areas you have selected, providing data (where applicable), further information and detailed reasons.

- **Protecting those Fleeing Persecution, Oppression and Tyranny (Chapter 2)**
- **Ending Anomalies and Delivering Fairness in British Nationality Law (Chapter 3)**

[46] https://www.ecpat.org.uk/news/government-failing-child-victims-of-trafficking-exclusive-data-reveals
[47] See in particular pages 73 – 80 sourced at https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf

- **Disrupting Criminal Networks and Reforming the Asylum System (Chapter 4)**
- **Streamlining Asylum Claims and Appeals (Chapter 5)**
- **Supporting Victims of Modern Slavery (Chapter 6)**
- **Disrupting Criminal Networks Behind People Smuggling (Chapter 7)**
- **Enforcing Removals including Foreign National Offenders (FNOs) (Chapter 8)**
- **None of these**

We believe that most of the proposals in the NPI will cause harm and to a range of those with protected characteristic. The analysis below only focuses on the protected characteristic of disability, because that is an area where HBF has particular expertise[48] but should not be taken as meaning that we do not think there will be a disproportionate impact on other individuals protected by the Equalities Act.

Under section 6 of the Equality Act 2010 a person has a disability they have a physical or mental impairment, and the impairment has "a substantial and long-term adverse effect" on their ability to carry out normal day-to-day activities.

Article 2 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) defines discrimination on the basis of disability as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation" (Article 2)

Disability can itself be a reason for persecution. In some countries, people with specific conditions (whether physical, mental or both) may face violent and/or degrading treatment from the state, their own family, and/or wider society.

A history of torture, trafficking or other forms of extreme human cruelty is associated with extreme adversity, trauma and poor mental health. Research studies on the mental health consequences of torture and trafficking have consistently found high levels of Post-traumatic Stress Disorder (PTSD), Complex PTSD, depression and anxiety disorders. Some survivors' mental health problems can place them at higher risk of suicide or accidental death, including suicidal behaviour, self-harm, and substance dependence. There is also research that those with a history of human trafficking, exploitation and abuse can have less rather than more resilience to future abuse or may have pre-mistreatment vulnerabilities which place them at greater risk of further abuse, such as a learning disability. These factors add to the mental health consequences of the abusive experiences themselves.

Chapter 2: Protecting those Fleeing Persecution, Oppression and Tyranny

[48] See for example our 2021 research on Disability and Asylum, http://www.helenbamber.org/wp-content/uploads/2021/04/Bridging-a-Protection-Gap-Disability-and-the-Refugee-Convention.pdf

A history of torture, trafficking or other forms of extreme human cruelty are also associated with physical health consequences and poorer health outcomes. People may suffer lasting injuries from torture or abuse, may suffer consequences of food deprivation and each year several clients of HBF usually require surgical intervention due to the results of abuse. People fleeing war or kept in an abusive situation may not have had important immunisations or age-relevant healthcare screenings. The interaction between physical and mental health amongst trauma survivors is complex. Trauma symptoms can be experienced as somatic physical pains and abusive/traumatic experiences can devastate a person's coping ability, resilience and ability to self-care leading to minimisation of health care symptoms and creating difficulties with help-seeking. This means that even when a trauma survivor has access to a GP, they may not receive the care they need without third party assistance. At HBF we run a Medical Advisory Service to facilitate this, so we have considerable experience in this area.

The above is outlined to demonstrate that any responsible resettlement programme needs to plan to meet the health, care and support needs of traumatised or disabled persons relocated to the United Kingdom. Many people fleeing conflict areas will experience a period of mental and often physical health crisis on arrival in the United Kingdom, based on their own history and feelings of distress around the ongoing problems faced by those they care about abroad. With the right care and treatment many people will recovery or stabilise sufficiently that they can integrate independently, but at the outset of resettlement access to trauma-specialist services is critical.

At the moment there is not reliable access to trauma-specialist services within the NHS. There is a postcode lottery and there can be a two year+ waiting list to be seen even in areas where there is a trauma clinic. HBF accepts referrals for trauma-focussed therapy within our Model of Integrated Care and we often receive referrals from GPs. Ours is a charitable service with very limited capacity and a fairly intensive referrals process, but GPs often indicate in referrals that they have nowhere else to refer their patient.

What is needed is greater investment in NHS trauma clinics so that these are accessible in a reliable and timely way. In the short-term, as part of a resettlement programme a pot of funding should be ring-fenced to commission a trauma service from a specialist clinic for resettled persons requiring this. In order to effectively identify individual need for therapeutic and trauma-specialist support a designated professional should undertake a care/support/safeguarding/risk assessment of resettled people on arrival, with referral into therapy as an onward option.

This is important in terms of the equality impact analysis of the proposals, because the public sector equality duty includes an anticipatory duty to include clearly predictable needs and disadvantage that some groups would face.

In addition, disabled resettled refugees under the current proposals could suffer disadvantage in accessing the proposed employment support arrangements and there will be people who would need additional support to access the proposed schemes around

"*language training, skills development and work placements*". Due to the prevalence of minimisation of symptoms amongst trauma survivors it is important not to wait for people to ask for the help they need to access these schemes and instead to proactively build an inclusive system, including for people who need help to recover from traumatic experiences, but also for other disabled people, such as those with physical conditions, neuro-diversity and learning difficulties. This will partly be done through a differentiated curriculum and/or engagement with local disability services (for example many local authorities already fund accessible college courses to promote independent living).

Chapter 4: Disrupting criminal networks and reforming the asylum system

This is the section of the intended reforms which has the greatest potential inequality impact for those with protected characteristics. From an Equality Act perspective these proposals are extremely damaging.

Inadmissibility

For a disabled person arriving and claiming asylum the inclusion in an extremely legally technical inadmissibility process may be extremely distressing and confusing. Experiences of torture and human trafficking forcibly take agency and autonomy away from people and the experience of being rapidly rejected and placed into an inadmissibility process is likely to trigger feelings of helplessness and powerlessness which would be harmful to a mentally unwell trauma survivor.

At HBF we have considerable experience of seeing the harm that refusals of asylum claims cause for traumatised people, who then feel their experiences are invalidated, and conversely the positive impact that a positive decision can have, where people's experiences are recognised. With the Dublin III arrangements one of the areas of greatest concern to HBF was the cohort of cases where a person was in principle identified for a third country removal, but in fact there were specific welfare reasons why a third country removal was inappropriate.

For example, we work with people who experience long term health issues and/or may be very suicidal where the process of trying to forcibly remove them to a third country would itself be cruel, inhumane and harmful to health. Under the Dublin III returns process this was one of the most distressing kinds of cases: for example we even saw people who had been admitted to a mental health unit as an in-patient and were extremely high risk in terms of suicidality being told to report for removal.

As another example, we work with people who did transit through an EU country, but fled that country in part because they were subject to rape or human trafficking there or where they were identified by people involved in their persecution that were placed in the same refugee accommodation and so they fled again. These are issues that it can be difficult for a vulnerable adult to discuss, but also were the kind of issues that were poorly identified under the 'one size fits all' Dublin III process. For disabled people even accessing legal advice can be impossible, because in the UK people are not offered an asylum legal

representative, but left to find their own from a fairly small pool of lawyers. HBF works with many disabled clients who were left without legal representation for years at a time, despite having an underlying strong claim.

This kind of accelerated inadmissibility and third country removals process will cause greater harm to disabled people, whose distress at being included in the process may be greater, who will often find it much more difficult to effectively make submissions on why they should be exempted from the process, even in the very strongest humanitarian conditions, and who may face harm at each stage of the process.

For people with significant and/or immediate care needs there will also be concerns about how they would be treated during and after any return abroad. What may seem to be a basically 'safe' country for a person of normative health and resilience may be completely unsuitable for a disabled person. At present Home Office country information policy documents are often unsatisfactory from the perspective of addressing the situation for disabled people.

A further problem with the proposed admissibility procedure is the lack of fairness and injustice of refusing claims based not on their merit, or the strength of the asylum claim, but on the means by which they entered the UK. The UK has signed up to meet rehabilitative obligations to survivors of torture and especially towards survivors of human trafficking and survivors of childhood mistreatment and child soldiers. For a person who has reached British soil to seek help to then be turned away with no analysis of their claim and no understanding of their recovery needs is unjust, denies rehabilitative care and will result in the further persecution of survivors of torture, human trafficking and other human rights abuses.

Reception centres

This is an alarming proposal from an Equality Act perspective. HBF doctors undertook medical assessments of people placed in Napier and Penally barracks. Disabled and extremely vulnerable people were placed in wholly unsuitable and risky conditions without adequate care pathways. The Chief Inspector of Borders and Immigration and Her Majesty's Inspectorate of Prisons made urgent initial findings of the utmost seriousness about the failures in the system, the Home Affairs Select Committee urgently investigation and the All Party Parliamentary Group on Immigration Detention is also investigating. There is ongoing litigation on this issue.

It is critical that a proper evaluation of the equalities impact of the institutional contingency accommodation used between September 2020 and the current date is undertaken before any proposal to introduce this kind of facility more widely is taken forward.

The detention-like conditions of centres like this make the delivery of effective trauma-focussed therapy impossible or ineffective in many cases (because for proper clinical treatment for PTSD or Complex PTSD a person usually requires sufficient stability and personal resource to cope with therapy). Placement in institutional accommodation can

also be particularly triggering for survivors of torture who were tortured in similar facilities or when they felt a similar powerlessness. For many survivors, particularly sexual abuse, the reduced privacy in this kind of facility is particularly harmful. In our work with Napier, Penally and other contingency accommodation we have also seen increased levels of communicable health issues (including scabies), digestive problems (due to lack of autonomy and difficulties with food) and dramatically increased or new mental health symptoms.

The Home Office will be aware of the academic literature review conducted by HBF (shared as part of the Napier litigation – we can provide a further copy if useful), which showed international evidence of the harm caused by placing asylum seeking and refugee populations in institutional accommodation. This is not a system that can be 'made good' from an equalities perspective by agreeing to transfer people out once it becomes clear they are unable to cope. A great many disabled people would struggle to access a system like that effectively, early or at all and the burden should not be placed on them to self-identify in a way that will mean many people would come to harm first. Instead the anticipatory responsibility to provide an inclusive system means that accommodation should not be used which would harm disabled people. Furthermore, this kind of institutional accommodation is harmful to asylum seeking and refugee populations overall.

Our medico-legal report writers assessed many survivors of abuse who experienced placement in immigration detention under the detained fast track. This included people who became disabled due to their experiences of the detained fast track: where detention has made people so unwell that they have suffered a substantial and long-term impairment to their ability to carry out day to day activities.

There are delays in the current asylum system: people at the moment might wait more than a year for a decision on their first claim and sometimes they experience a delay of several years. Similarly, people may have further submissions pending for years at a time waiting for a decision. People may even be waiting for more than a year for their initial asylum interview. These experiences of delay – where people are often living in poverty, in unstable accommodation – impacts on the recovery and ability to access treatment of disabled trauma survivors. HBF's clinical staff are regularly having to write letters of clinical concern about the serious harm that case delays cause very vulnerable and disabled people. On the other hand, before the pandemic hit, many First-tier Tribunal asylum hearings were listed very quickly of the Tribunal's own initiative – within around six weeks of the date the appeal was lodged. The way to fix the delays in the system is not to introduce a procedurally unfair expedited process where some individuals will face an arbitrarily much less accessible and fair process than others, but to invest in delivering timely initial decisions.

Any accelerated process will substantially disadvantage traumatised people. Avoidance of confronting or thinking about traumatic events is a symptom of PTSD, PTSD can impact adversely on recall and memory and PTSD and especially Complex PTSD interferes with interpersonal relationships and can impact on emotional regulation. For very

understandable reasons many survivors of torture and persecution also find it difficult to trust people, especially people in positions of authority. This makes disclosure of traumatic experiences a gradual process. This is a very basic and fundamental equalities principle when working with an asylum-seeking population where trauma conditions are so prevalent. Any accelerated process will deny disabled asylum seekers the basic reasonable adjustment of sufficient time to access the asylum process and cope with the process of disclosing their history. We hope that understandings around disability have come on a long way since the early days of the Detained Fast Track and the need for an inclusive and accessible process is now accepted. The re-introduction of an accelerated process is contrary to the Public Sector Equality Duty to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Temporary Protection Status

The reduction in stability, loss of family reunion rights and the introduction of an NRPF condition will drive people into poverty and will substantially reduce the recovery options for disabled people. Stability and consistency is absolutely critical for helping disabled people to establish a care and support plan. It is particularly important that people can remain in the same local area (because different areas structure and commission disability services so differently) and that people's entitlement to public funds does not phase in and out, given that disability benefits eligibility is a gateway to so many integration services.

Disabled people may have substantially greater difficulty in repeatedly renewing their leave to remain and at HBF we have experience of the devastating impact when disabled people cannot manage this and become illegally present as a result. Given the extremely severe consequences of the hostile environment it is extremely high risk for someone's leave to expire because they cannot renew it. This kind of crisis is that experienced by many during the Windrush scandal and will hit disabled people and people lacking mental capacity to renew their leave to remain the hardest.

The leave granted with Refugee Status is currently a fairly stable route to settlements and one where the process of applying for settlements is less slightly less complicated than many other immigration routes. It is extremely important that this stability and accessibility is not rolled back for disabled refugees. In some of our client's cases they have to be granted Indefinite Leave to Remain outright as a reasonable adjustment under the Equality Act, because there is no prospect of them being able to renew their leave due to their individual needs and disabled status. This option needs to remain for appropriate cases.

Family reunion is also particularly important for disabled refugees trying to adjust to life in a new country, because it provides additional support and resilience in the family unit in the UK and it also reduces the harm caused by stress and anxiety about relatives trapped in difficult situations abroad. At HBF we have had clients whose child has been killed while awaiting family reunion when the parent has been receiving therapeutic services from us and naturally for an already unwell and vulnerable person this kind of event can have the most severe life-changing and devastating consequences, causing an unmanageable

deterioration in their health. The risk of this kind of tragedy can be reduced by fast, straightforward and accessible family reunion channels.

Changing the well-founded fear of persecution test

It is unclear what the evidence base is to suggest there is a need to make it more difficult for people to be recognised as refugees. It is understood that this kind of two-stage test was found unworkable in the past. At present the Home Office is already repeatedly subject to criticism of adopting too high a threshold of evidence and standard of proof – beyond what is realistic in international law and in light of the experiences and diversity of refugees.

It is already the case that "*If previous opportunities to make a claim have not been taken, or if a claim is contradictory, that could impact on the credibility of a person's testimony*." However immediacy of making a claim and consistency in account are not accurate or reliable measures of credibility. Trauma can be a cause of late or gradual disclosure and impacts on recall and memory. A rigid application of these criteria would exclude many survivors of torture, human trafficking and other forms of abuse from refugee protection directly because of the impact of their disability on their ability to give a prompt, complete and consistent narrative.

Chapter 5: Streamlining asylum claims and appeals

Reducing access to appeals

The lack of statistics of evidence base in this section of the consultation is concerning. The elision of the asylum and deportation processes is inappropriate and inaccurate.

There is no evidence that there is a problem with 'over-access' to the current asylum appeals system. In reality the very high percentage of allowed appeals indicates that the appeals process is a key part of what makes the UK asylum system potentially fair.

It is currently difficult to get legal aid funding for a medical report before appeal stage in an asylum claim, so for disabled people whose disability affects their risk profile or their ability to present their claim then the appeal stage is often the first opportunity they have to obtain the evidence they need to substantiate their claim. Reducing access to this would lead to disabled refugees not having their claims recognised and being left at risk of serious harm.

Reducing access to fresh claims processes

The proposal to reduce the right to make further submissions will hit disabled people particularly hard. HBF works with many disabled refugees who could not effectively participate in the 'one-size fits all' standardised asylum process during their initial claim. Some could not access legal advice or did not understand they had a right to do so. Others had difficulties with legal advice. Others had their claims misunderstood or could not

engage effectively with the interview processes and could not collect the evidence they needed themselves. It is often only at the point of further submissions that expert evidence is commissioned and this evidence can be of critical importance to a disabled person who struggles to articulate the claim themselves.

When making an asylum claim people are not just asked to explain that they are in fear, they are also asked to explain the socio-economic context, cultural situation and attitudes and resources of the state in another country. Depending on a disabled person's situation this may be impossible for them to do, particularly when combined with the increased levels of poverty, lack of education and lack of agency that disabled people may have faced in their lives. In this context the additional evidence that is often provided with further submissions is critical: this is often both expert evidence about the country of proposed return and person's history (such as a medico-legal report produced using an Istanbul Protocol informed methodology) and also professional evidence that has developed the longer a person has been in the UK (such as a report from their social worker who has been delivering a care plan to them for some time now).

For some disabled people the further submissions/fresh claim route is the first chance they realistically have to establish their claim. Reducing access to this or punishing access to it will disadvantage further disabled people who are already excluded by the initial asylum claims process in a way that is contrary to the Public Sector Equality Duty.

Reducing access to medical evidence

The proposal that only experts on a specific 'panel' can give evidence in asylum appeals is unworkable. This proposal refers to "medical and other experts", so it is unclear if this includes country experts.

When disabled people need to establish what the situation would be for them on return to a specific country then it is often challenging to find an appropriate medical or country (or both) expert. For example an expert on autism and Afghanistan will not necessarily be the same person as an expert on the Taliban's activity in Afghanistan. Often then disabled people's claim depend on specialists working within the country of return who have expertise in a highly specialist area. Judges and the Home Office can already challenge the asserted expertise of an expert and there is a highly developed series of case law and regulation by the courts of expert evidence. There is no need for further restriction in the way proposed, which would prevent people with complex health needs and disability-linked claims from presenting their cases fairly.

In addition, the idea that a panel would be used to 'police' who is allowed to give evidence runs contrary to principles of open and fair justice. It is important that traumatised people who have been persecuted and tortured by the authorities of their own country are able to instruct experts they know to be independent of the Home Office which has refused their claim. Medical assessments can be very invasive. For some kinds of asylum claim they are necessary (for example a claim based on partial Female Genital Mutilation that a person says will be completed if they return may require a genital examination). The feeling of

having to go through an invasive medical examination by an untrusted government medic could itself be traumatising and violating and akin to torture.

Question 44: Thinking about any potential equality considerations for the intended reforms in each of the areas, are there any mitigations you feel the Government should consider?

We have provided a substantial amount of evidence in our response as to the harm that will be caused to people by these proposals, including serious damage to their mental health. Various mitigations have also been outlined but our main belief is that these proposals should be abandoned in their entirety and energy and resource directed towards co-producing reforms to the asylum process with those affected by the process and the organisations supporting them. These reforms should include measures to ensure that the Home Office is properly trained and resourced to make quality decisions quickly.

Question 45: Is there any other feedback on the New Plan for Immigration content that you would like to submit as part of this consultation?

As stated in the introduction, we would like to make clear that silence on the other proposals does not mean we support them. We are extremely concerned about the whole of the New Plan for Immigration, the approach it takes and the harmful rhetoric used throughout. We would also like to make clear our concerns about the flawed nature of this consultation, due to its short timeframe, [49] leading questions, lack of accessibility and lack of engagement with the views of those with experience of seeking protection.

[49] Normally consultations of this nature last at least 12 weeks. The NPI consultation has lasted just six weeks and covered a period that included the Easter holidays, a May bank holiday, Ramadan and an election period during which those involved in local, mayoral and devolved nation elections are restricted in what they can say publicly.