

# Modern Slavery Strategy Review

## Written submission from the Helen Bamber Foundation

November 2021

The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. We believe that all survivors should have safety, freedom and power. Our work alongside survivors shows us that, with early and appropriate care and support, survivors build the strength to move on with their lives ('strength to fly'). Our multidisciplinary and clinical team provides 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.

## Introduction

HBF's expertise is in addressing the needs of individual survivors who are trafficked from other countries or are non-British citizens who are victims of domestic trafficking. A significant part of our work aims to prevent re-trafficking and further exploitation and abuse. We believe that trauma-informed techniques and methods of working help survivors of trafficking to feel that they are safe to speak to professionals about their backgrounds and the risks that they face and be supported appropriately to think through further planning and decisions. Our approach relies upon multi-disciplinary and multi-agency intervention. We work with each person for approximately five years or more because 'recovery trajectories' are not straightforward, and many challenges will be experienced. Re-trafficking risks can arise months or years after a victim has left the direct control of their traffickers.

The Modern Slavery Strategy (MSS) rightly aims to take a "victim-centric approach", described as "a focus on preventing vulnerable children and adults from becoming victims in the first place" and "improving the proactive identification of victims and enhancing the support provided to them". We urge the government to more clearly recognise in the MSS that preventing individuals from becoming victims must include the *prevention of re-trafficking* of persons who have previously been trafficked. It is a matter of concern that aspects of the current system of identification and support provision increase the risks of re-trafficking and further forms of harm taking place.

The Home Office has made clear that the stakeholder engagement process for the strategy review “will not reconsider issues that have been considered through the separate consultation on the New Plan for Immigration, or in relation to specific measures in the Nationality and Borders Bill”. However, there is inevitably cross-over (and conflict) with areas that should be a key part of the new strategy and provisions in the Bill. In our view, and that of the wider sector, the Nationality and Borders Bill presents an existential threat to any workable modern slavery strategy and so it is difficult to approach the topic without this focus at the forefront.

For example, with one of the case studies included in the MSS (Sarita from Nigeria, who was granted refugee status) the outcome of her case would have been very different if the Nationality and Borders Bill had been law at the time. It is likely that she would not even have had her asylum claim heard or, if she had, would only have been granted temporary leave as a refugee with no recourse to public funds, leaving her facing ongoing insecurity, fear of return and risk of destitution. As we are only too aware from our long-term experience of multi-disciplinary, frontline work with survivors of trafficking, this combination results in high re-trafficking risks.

We hope that at least some of the concerns raised about the provisions in the Nationality & Borders Bill can be alleviated through publication of guidance that is provided in consultation and collaboration with frontline experts in the sector and we would urge the Modern Slavery Unit to consider where this may be possible.

This submission responds to the following questions outlined by the Home Office:

- Whether the existing “4P framework” or an alternative would be most effective in organising the strategic response.
- How the strategy can ensure continued, sustainable and effective identification and needs-based support for victims, both adults and children.
- How the government should build on its work with international partners to address slavery in the UK and on a global level.

## Addressing the factors that increase the risk of re-trafficking

Re-trafficking risks arise due to survivors’ original vulnerability to trafficking; the trauma and impact of having been trafficked; and their extreme vulnerability and experience of poverty/dependence on others to help after they have left the direct control of their traffickers. Re-trafficking occurs if identification, protection, support, access to services and most importantly (in relation to the cases of people who do not have secure immigration status) legal recognition with appropriate grant of leave to remain are not provided in a timely and efficient manner.

There are several factors which result in the continued vulnerability of survivors:

- **Fear and isolation:** Survivors will often be living in fear of the people who initially trafficked them and may receive, or fear, threats to their safety or that of their families. Many survivors are too afraid to come forward: they may be scared of the police because they have been forced to commit crimes by their traffickers; they may be frightened of the immigration authorities because they have irregular immigration status and could be

forcibly removed from the UK; or they may have spent long periods of time in immigration detention which is known to increase vulnerability and have a negative impact on mental health.<sup>1</sup>

- **Obstacles to being identified as a survivor of trafficking:** Often, front-line services do not have the appropriate skills or resources to recognise and successfully respond to a trafficking situation, resulting in many survivors falling through the gaps.
- **Delays and ongoing insecurity:** Lengthy legal procedures and delays in processes for granting leave, as well as lack of specialist legal representation (funded by legal aid), leave survivors at risk of re-trafficking due to lack of secure immigration status and legal protection. A lack of a secure immigration status can result not only in ongoing instability, with significant mental health impacts, but also in poverty, destitution and isolation as it prevents survivors from working, accessing services and being able to sustain recovery and rebuild their lives.
- **Poverty and unsafe accommodation:** Prolonged destitution and limited access to education and legitimate employment opportunities leaves survivors vulnerable to traffickers who isolate and manipulate their victims who may not know their rights and entitlements. The often appalling conditions in which victims live when they are put in asylum accommodation, or temporary council housing, makes them targetable by traffickers who can easily identify them as vulnerable. They are less likely to be able to ask for help from the police or to feel confident about seeking help and support.
- **Lack of appropriate care and support:** Little provision for long-term, trauma-informed support and trauma-focused therapeutic care means survivors can remain psychologically vulnerable to further exploitation and abuse.

## Ensuring continued, sustainable and effective identification and needs-based support for victims

We believe the strategy's existing four components – Pursue, Prevent, Protect and Prepare – provide a helpful framework. However, in the revised strategy, we believe that the 'Protect' and 'Prepare' sections should include further measures to address the factors outlined above, in order to decrease the risks of re-trafficking – in essence, the strategy needs to recognise that a key element of prevention lies in the protection that is provided to survivors. Success in both 'Protect' and 'Prepare' should mean that "fewer survivors of trafficking are at risk of further abuse or exploitation." The following essential areas should be covered by the strategy:

### 1. Identifying survivors of trafficking

It is our experience that a substantial number of statutory agencies do not have sufficient understanding of, or training in trafficking to fulfil their role as first responders. This leads to survivors not being identified in the first place, including refusals to 'first respond' despite clear trafficking indicators; delays in National Referral Mechanism (NRM) submissions; poor quality

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<sup>1</sup> See HBF's research on the impact of detention: <https://www.helenbamber.org/resources/research/impact-immigration-detention-mental-health-systematic-review>

referrals to the NRM; and, in some situations, statutory agencies refusing to preliminarily identify victims and refer them to the NRM due to lack of resources. Widespread lack of appropriate action can put victims at risk of not obtaining the protection and support that they need, and at risk of going missing and/or being re-victimised.

**Recommendation:** HBF believes that first responders could benefit from greater levels of training so that they are able to preliminarily identify victims of trafficking, slavery or other exploitation and that they would welcome commitment in the revised Modern Slavery Strategy to introduce this. It is important that first responders are centrally trained and accredited. We recommend training which reflects best practices set out in the Slavery and Trafficking Survivor Care Standards<sup>2</sup> and the Skills for Care Training Framework for the Identification and Care of Survivors.<sup>3</sup>

## 2. 'Reasonable grounds' (RG) decision-making

The New Plan for Immigration states that the government will “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” (emphasis added).<sup>4</sup> We do not believe that this will clarify or improve the process, but rather create more barriers which impede the identification of survivors and the work of first responders.

Data from the NRM end of year report for 2020 shows that 92% of reasonable grounds decisions were positive and 89% of conclusive rounds decisions were positive.<sup>5</sup> Research has also shown that 81% of reconsidered claims at initial reasonable grounds stage were also later found to be positive.<sup>6</sup> So it is unclear why the reasonable grounds test would need to be made more stringent, particularly as the legal threshold was purposely made low in international law due to the complexities of initial identification and the high risks of re-trafficking or further harm for victims who did not have access to immediate protection, support and services. In consideration of the widely held concerns about the complexities of identification, and the lack of expert training for first responders, raising the threshold of the RG decision makes no sense.

Additionally, in our professional, multi-disciplinary experience of identifying and working with survivors of trafficking, we can say that the raising of the RG threshold is unnecessarily restrictive for those who are accountable for making such decisions. The reason that trafficking indicators are universally utilised for identification at this initial stage is because of the time required further to the RG decision to gather evidence for a Conclusive Grounds decision. It is not clear what factors are considered 'objective', and this places an onerous and unrealistic burden on victims of the

<sup>2</sup> <https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf>

<sup>3</sup> <https://www.antislaverycommissioner.co.uk/media/1468/training-framework-identification-care-and-support-of-victims-and-survivors-of-modern-slavery-and-human-trafficking.pdf>

<sup>4</sup> <https://ilpa.org.uk/wp-content/uploads/2021/03/New-Plan-for-Immigration-Policy-Paper.pdf>

<sup>5</sup> [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](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)

<sup>6</sup> New data: Majority of trafficking claims found to be 'positive' after reconsideration, After Exploitation (2 July 2021): <https://afterexploitation.com/2021/07/02/new-data-majority-of-trafficking-claims-later-found-to-be-positive-after-reconsideration/>

serious crime of human trafficking in order for them to be preliminarily identified. Our concern is that these changes would only result in potential victims not entering the NRM at all and being denied access to support, with more people left in dangerous situations and at risk of re-trafficking.

It is vital that the reasonable grounds threshold remains low, and that decisions are made on the basis of trafficking indicators – as stated in the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT):

*“The Convention does not require absolute certainty – by definition impossible before the identification process has been completed... 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.”<sup>7</sup>*

Survivors of trafficking should not have to provide objective evidence of their exploitation at the reasonable grounds stage.

**Recommendation:** We urge the MSU to commit in the revised Modern Slavery Strategy to ensure that no changes to the reasonable grounds threshold are made. This will negate the rights of identification and therefore protection and support for survivors.

### 3. Statutory guidance

The MSS included the commitment to issuing “statutory guidance to ensure that frontline professionals understand how to identify victims and help them access support, which will be developed in close collaboration with a wide range of organisations who have expertise in this area.” HBF has been involved in the development of the Modern Slavery Act statutory guidance as a member of MSSIG, and sits on the Statutory Guidance Reference Group, which benefits from the input of a group of experts who work on the ground and in a variety of key fields with victims of trafficking. We believe strongly that the statutory guidance should be retained and any further changes to it must follow a transparent and meaningful public consultation process.

Any guidance developed to accompany the Nationality and Borders Act should accord with the Modern Slavery Act statutory guidance, which has a framework of reference to decades of progress made in the area of victim identification, protection, support and access to healthcare.

**Recommendation:** The revised MSS should commit to ensuring that any changes to the Modern Slavery Act statutory guidance and the development of guidance to accompany the Nationality and Borders Act only take place following close consultation with survivors and with the wide range of organisations with expertise and experience in supporting victims. They should also only be introduced after a full formal consultation period with the wider public.

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<sup>7</sup> [CETS 197 - Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings \(coe.int\)](#), para 132

#### 4. Access to support

The MSS outlines a commitment to ensuring that potential victims of trafficking are “provided with tailored care and support”, including “trauma counselling and psychological support” and “access to legal advice and assistance”. The revised strategy should retain this commitment but more is needed to make it a reality.

The recent UK report from the Group of Experts on Action against Trafficking in Human Beings (GRETA) recommended that the government “should guarantee timely access of victims of trafficking to psychological assistance and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion.”<sup>8</sup> We would echo this - mental health services must be improved if re-trafficking is to be prevented and are a fundamental component for victims to be able to sustain long term recovery and rebuild their lives. Social inclusion is also an essential safeguard against re-trafficking.

There must be clear recognition and engagement with the significant obstacles survivors experience in accessing healthcare services. These include difficulties in speaking English, fear of stigmatisation and fear of being charged fees which they cannot afford. We believe that a 3-phased model of therapeutic care, consisting of stabilisation, evidence-based therapy (e.g. trauma-focused therapy for PTSD) and re-integration should be provided and disseminated across the UK. It is a model that is recommended by in the NICE guidelines for PTSD (2018): however, the vast majority are unable to access it. It should be recognised that sustained recovery is a long-term process and that even where significant symptomatic improvement has been achieved, survivors remain liable to relapse or suffer setbacks if under stress, and they also remain vulnerable to re-trafficking and to other forms of exploitation.

**Recommendation: The MSS should set out steps to improve access to specialist mental health support that accords with the needs, risk and challenges of individual survivors.**

The MSS committed to extending legal aid provision for victims of human trafficking to all modern slavery victims. Clauses 54 and 55 of the Nationality and Borders Bill rightly aim to identify and support individuals who may be potential victims of modern slavery or human trafficking by ensuring they receive advice on referral into the NRM to understand what it does and how it could help them and provide informed consent to be referred into it. However, as currently written these clauses would not achieve that aim. Instead they would ensure that advice on the NRM could only be received as an ‘add on’ for victims of trafficking who are already receiving legally-aided advice on their asylum, immigration or public law matter, either because it is in scope or because Exceptional Case Funding (ECF) has successfully been applied for.

This does not address the crux of the problem - that people who are unrepresented do not understand the complexities of NRM procedures nor legal immigration matters and that, because nearly all immigration advice is no longer covered by legal aid, it is extremely difficult to get quality

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<sup>8</sup> [GRETA publishes its third report on the United Kingdom - News \(coe.int\)](https://www.coe.int/en/gre/gre-reports/gre-reports-2020/gre-report-on-the-united-kingdom-2020)



expert advice at the outset, at the stage where it is most needed. The ECF scheme has been shown to be complex, lengthy and unworkable for many legal aid service providers and is not a meaningful way to ensure access to justice.<sup>9</sup> Therefore, gaps will continue to exist for those who do not have access to legally aided legal representation already.

Advice on referral to the NRM is key for all victims of trafficking. In light of further changes to the process for identifying and recognising survivors of trafficking in the Bill, it is all the more vital that they are able to access legal advice at the earliest opportunity. It should be funded by legal aid regardless of the immigration status of the individual and without them already having to be eligible for legal aid - it should be brought into scope fully, without reliance on it being an 'add on' to an immigration/asylum matter or ECF application.

**Recommendation:** In line with the recommendation in GRETA's recent report, the revised MSS should set out steps to ensure that survivors receive legal advice and representation, funded by legal aid, during the identification process and that they are properly informed of their rights and options before entering the NRM. Access to free legal aid must be ensured across the UK and granted in a timely manner.

## 5. The right to work

We fully support the points raised in the submission to this review from the Anti-Trafficking Monitoring Group on the need for survivors of trafficking to be given the right to work. We believe that access to appropriate education, training and employment is a vital part of the fight to prevent re-trafficking and to enable survivors to rebuild their lives.

**Recommendation:** The MSS should set out a commitment to ensuring that all potential victims of modern slavery or trafficking who are in the NRM, and all those with positive Conclusive Grounds decisions, should have access to work. To be effective, access to work must not be restricted and should be granted automatically at the Reasonable Grounds decision stage.

## 6. The needs of young people

The MSS rightly acknowledges the need to address the specific needs of child victims of trafficking. We would urge the Modern Slavery Unit to extend this further to look at the needs of young people aged 18 or over who arrived in the UK as children. For young people who arrived in the UK as unaccompanied children and claimed asylum, upon turning 18 they can often find themselves without leave (permission) to be in the UK and at risk of removal. This is a crucial time which results in high re-trafficking risks as traffickers target vulnerable young people who lack help and support. Their support from the local authority as a care leaver may be inconsistent or cut off entirely if their immigration status was not regularised as a child, and many are left vulnerable to exploitation in the UK, as they try to avoid destitution. This group is often overlooked.

Recent research by the Migrant & Refugee Children's Legal Unit has highlighted that young Albanians for example, "are at exceptionally high risk of being trafficked within the UK" and that

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<sup>9</sup> <https://publiclawproject.org.uk/resources/legal-aid-for-immigration-bring-it-back/>

delays in both NRM and asylum decision making cause mental ill health, social isolation, poverty, and distrust of authority. These “are the vulnerabilities that traffickers prey upon. All evidence examined suggests that Home Office delays are causing young people to be at greater risk of trafficking within the UK, and specifically of labour exploitation and criminal exploitation”.<sup>10</sup>

The government does not have a specific or targeted strategy to prevent the re-trafficking of children and young people. Inadequate protection arrangements, poor quality and unsafe accommodation while waiting for decisions, feelings of isolation, not being believed, and lack of trust with professionals all contribute to a greater risk of going missing and being re-victimised by traffickers.

**Recommendation:** The MSS should detail clear procedures to guarantee that long-term, individual support and appropriate protection and assistance are provided to all unaccompanied or separated children in the transition to adulthood and beyond, in order to reduce the risk of re-victimisation, to ensure their effective access to justice and facilitate their social reintegration and recovery.

## 7. Grants of leave to remain for conclusively recognised survivors of trafficking

The MSS recognises the benefits of survivors of trafficking receiving grants of discretionary leave to remain, but also that this is not widely used at the time it was written, with only 52 cases granted this form of leave in 2013. Despite the commitment made in the MSS to changing this, we have seen little improvement - from 2016 to 2019, 4,695 adults and children subject to immigration control were confirmed as victims of trafficking but just 521 adults (and even more shockingly just 28 children) were granted discretionary leave to remain in the UK – just one in ten.<sup>11</sup> Even in cases at HBF, where clients are usually very well documented, clients routinely receive no leave to remain with their positive conclusive grounds decision.

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 well as a being a key component of ensuring a survivor is not subject to further abuse and exploitation or re-trafficked. As recommended by GRETA, all survivors of trafficking who have received a positive Conclusive Grounds decision and whose immigration status requires should be issued with a renewable residence permit when their personal situation warrants it or when they are cooperating with the authorities in criminal investigations or proceedings and their presence in the UK is required for this purpose, in accordance with Article 14(1) of the Convention.

**Recommendation:** The MSS should outline measures to ensure that leave to remain is provided to all confirmed victims with irregular immigration status, with the option of granting longer periods of leave and a clear route to settlement.

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<sup>10</sup> [Into the Arms of Traffickers - Migrant & Refugee Children's Legal Unit \(miclu.org\)](https://www.miclu.org/en/into-the-arms-of-traffickers-migrant-refugee-childrens-legal-unit)

<sup>11</sup> <https://www.ecpat.org.uk/news/government-failing-child-victims-of-trafficking-exclusive-data-reveals>



## Building on the UK's work with international partners

The UK government has previously set out its aim to be 'world leading' in combatting trafficking and modern slavery. This has been supported by the ratification and implementation of the Council of Europe Convention on Action against Trafficking in Human Beings; the government's endorsement of the UK Slavery & Trafficking Survivor Care Standards; and the Modern Slavery Act and its recently published Statutory Guidance. In order to preserve our international relationships and reputation, we must carefully preserve the significant progress seen to be achieved over the past two decades and ensure that we lead by example as a nation.

We recommend that the UK seek and follow the guidance of GRETA in observing the provisions and principles of the Council of Europe Trafficking Convention and its Explanatory Report. We also recommend reference to the international monitoring of NRMs and anti-trafficking guidance (including the forthcoming NRM Handbook) and national anti-trafficking legislative review that can be provided via invitation from the Organisation for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR).

In our view and collective long-term experience in this field, international relationships can only be held together by common adherence to the principles of international anti-trafficking law and recognised international standards for care of survivors.

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