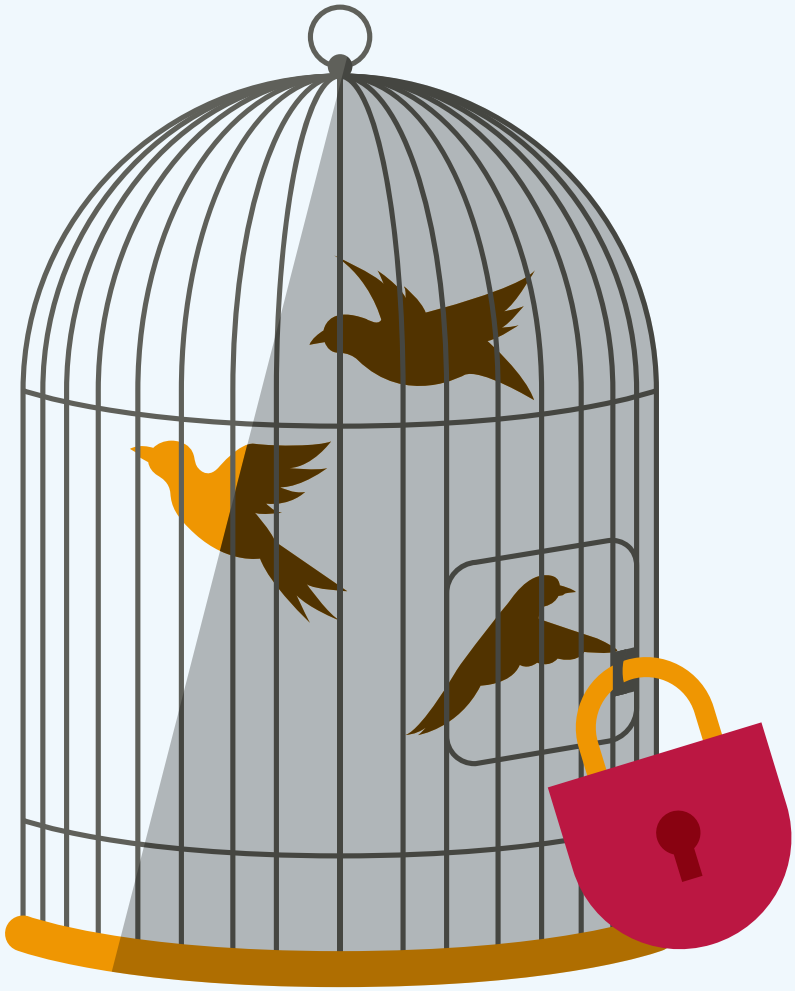
Abuse by the system:

Survivors of trafficking in immigration detention



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Working to end labour exploitation

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GLOSSARY

Assessment Care in Detention and Teamwork (ACDT): also known as 'suicide watch'): A national level policy to identify detained people at risk of self-harm and/or suicide and their care needs.

Adults at Risk policy (AAR): Home Office policy for determining whether a person is vulnerable and suitable for detention. The guidance states that vulnerable individuals or 'adults at risk' should not normally be detained and can only be detained when 'immigration factors' outweigh their indicators of risk.

Competent authority: The body that makes decisions regarding modern slavery and trafficking cases. In the UK, the Single Competent Authority and Immigration Enforcement Competent Authority make these decisions – both are part of the Home Office.

Conclusive grounds decision (CG): The second and final decision made by the relevant competent authority as to whether or not an individual in the UK's National Referral Mechanism for identifying victims of trafficking (NRM) has been found to have been a victim of modern slavery or human trafficking according to the balance of probabilities.

Detention Gatekeeper (DGK): The team who will review an individual's suitability for detention. If the DGK is not satisfied that detention is lawful and proportionate, a referral can be rejected or returned for further information. This includes recommending pre-planning the removal of an individual, if there is evidence that detention would be injurious to their health making their return complex.

Detention Centre Rules 2001: The statutory framework for the management of indefinite immigration detention. The Rules span all aspects of the regulation of IRCs including use of force, segregation, access to healthcare and safeguarding responsibilities.

First responder: An organisation authorised to refer a potential victim of human trafficking or modern slavery to the National Referral Mechanism. There are currently 19 statutory and non-statutory first responder organisations in England and Wales, including local authorities, specified NGOs, police forces and government agencies.

Immigration Enforcement Competent Authority (IECA): One of the competent authorities responsible for making reasonable grounds decisions and conclusive grounds decisions for individuals in a particular group.

Immigration Removal Centre (IRC): These are detention centres which hold people subject to immigration detention procedures.

Medico-legal reports: Following detailed assessments completed by independent clinicians these reports provide evidence for asylum cases and other legal decisions. These may include details of the person's physical and mental health, examination findings, forensic assessment of scars and psychological consequences of ill treatment or torture, consideration of the impact of detention on the person's health, consideration of the potential health effects of removal from the UK, and identification of unmet health needs. These assessments should be completed to medico-legal standards.

Modern Slavery: Modern slavery in the UK can take many forms, including forced sexual exploitation, domestic slavery or forced labour. To be formally identified as a victim of slavery in the UK you have to have been through the UK's NRM (see below).

Modern Slavery Victim Care Contract (MSVCC): The Home Office contract with an organisation providing care to adult victims of modern slavery in England and Wales, includes accommodation, financial support and access to a support worker.

National Referral Mechanism (NRM): The UK's identification mechanism for victims of trafficking and modern slavery.

Reasonable grounds decision (RG): A first stage NRM decision, made on the threshold of 'suspect but cannot prove'.

Recovery and reflection period: The period of time (at least 30 days) between a positive reasonable grounds decision and a conclusive grounds decision.

Rule 34: The legal requirement contained in the Detention Centre Rules 2001 for detained people to be offered an appointment with a GP at the IRC within 24 hours of arrival to provide a review of their physical and mental health needs.

Rule 35: The safeguarding mechanism contained in the Detention Centre Rules 2001 which aims to ensure that particular groups are brought to the attention of those within the Home Office with direct responsibility for reviewing detention and the power to order the person's release.

Single Competent Authority (SCA): One of the UK's decision-making bodies responsible for making reasonable grounds decisions and conclusive grounds decisions regarding individuals referred as potential victims of human trafficking or modern slavery.

Trafficking: The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. To be formally identified as a victim of trafficking in the UK you have to have been through the UK's NRM (see above). Many victims are never formally identified.

Note on terminology used in this report

The terms 'trafficking' and 'slavery' are used interchangeably throughout this report, with the primary term being 'trafficking'. The term 'survivor' is used throughout this report unless specific reference is being made to Home Office policy, where the language is mirrored and 'victim' is used.

EXECUTIVE SUMMARY

The Home Office routinely detains people who are subject to immigration control only to release them again back into the community,[1,2] causing them significant harm in the process.[3] This includes survivors of trafficking and slavery.[4] Survivors are detained either after imprisonment, with many having been wrongly convicted for offences they were forced to commit by their traffickers, and/or because they do not have permission to remain in the UK and have not received the support necessary to enable them to disclose that they have been trafficked. For example, many survivors of trafficking are detained for removal after being picked up during raids on brothels, nail bars and cannabis farms.

It is well recognised, including in the UK Modern Slavery statutory guidance,[5] that survivors can be highly traumatised, and afraid of sharing their experiences of trafficking and exploitation for a multitude of reasons, including but not limited to: shame, fear of stigmatisation, and threats from traffickers who may still be controlling them. Survivors are often fearful of authorities and those authorities frequently fail to identify trafficking indicators, or to act appropriately when such indicators are apparent. Numerous government-commissioned or parliamentary reports and inquiries have already highlighted that the Home Office is failing to identify vulnerable people, or even to release people from detention once identified as vulnerable or trafficked.[6]

Instead of taking urgent steps to address these existing problems, the government has introduced changes to law and policy over the past year that have worsened the situation.

While previous Home Office policy stated that victims of trafficking (among other vulnerable groups) were only suitable for detention in *exceptional circumstances*, in 2021 survivors of trafficking were brought entirely under the scope of the controversial 'Adults at Risk' (AAR) policy,[7] despite the government recognising that this would result in more survivors of trafficking being detained.[8] Under this policy, being a potential and confirmed victim of trafficking is only an 'indicator' that someone is an adult at risk who is more vulnerable to suffering harm in detention. The Home Office has stated that this policy should strengthen this presumption against the detention of those who are particularly vulnerable to harm in detention. However, it has actually increased the detention of victims of trafficking who now face increased evidential requirements to show the harm that detention is causing them. In addition, their immigration and criminal offending history, which could be linked to their trafficking experience, is more likely be weighed up in favour of their continued detention rather than understood in the context of the exploitation they have suffered.

Over the last decade, the daily population of immigration detainees has ranged from around 700 (when the impact of Covid-19 was most pronounced) to 3,500.[9] There has been a clear rise in the number of people referred to the UK's identification mechanism for victims of trafficking and modern slavery (the National Referral Mechanism, or NRM) from detention – data published by the government and shared via a Freedom of Information request

1 See Immigration Detention in the UK - Migration Observatory - The Migration Observatory.
2 Out of the 25,282 people who entered detention in the year ending March 2022, there were only 3,447 enforced returns (14%) - Home Office National Statistics, How many people are detained or returned?, May 2022
3 Helen Bamber Foundation, The impact of immigration detention on mental health – research summary
4 The terms 'trafficking' and 'slavery' are used interchangeably throughout this report, with the primary term being 'trafficking'. The term 'survivor' is used throughout this report unless specific reference is being made to Home Office policy, where the language is mirrored and 'victim' is used.
5 The Modern Slavery Act 2015 section 49 Statutory Guidance on Identification and Care recognises the impact of trauma and lists the reasons why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.
6 These include the 2016 Shaw Report, the 2018 progress report also undertaken by Stephen Shaw, and the 2019 reports by the Joint Committee on Human Rights and by the Home Affairs Select Committee.
7 Home Office, Draft revised guidance on adults at risk in immigration detention, February 2021
8 Home Office admits new immigration plans may see more trafficking victims locked up | The Independent
9 Home Office National Statistics, How many people are detained or returned? , May 2022

shows that **the number of referrals has tripled over the last five years from 501 referrals in 2017[10] to 1,611 in 2021**,[11] the year that victims of trafficking were included in the AAR policy. In 2021, **92% (1,420) of referrals received a positive reasonable grounds (first stage) decision.**[12] At the end of 2021 a new decision-making body, the Immigration Enforcement Competent Authority, was introduced to make decisions on NRM referrals from detention[13] and statistics for the first half of 2022 show that the IECA made positive reasonable grounds decisions in 95% of cases, and positive conclusive grounds (final stage) decisions in 97% of cases.[14] **In short, over 90% of people referred to the NRM from detention are found to be genuine victims of trafficking.**

This increase may in part stem from more survivors of trafficking being identified after being detained due to a greater awareness of trafficking and modern slavery and increasing familiarity with the referral process over time. However, it is likely that there are still many survivors of trafficking being detained because of the lack of proper opportunities to disclose or inadequate screening for indicators. Furthermore, identification is not then resulting in release. Survivors continue to be detained while waiting for a conclusive grounds decisions, when the average time for making these decisions is a staggering 17 months.[15]

Ongoing failings in the system include:

- UK authorities will conduct an initial screening before placing someone in immigration detention (or shortly after their arrival in detention) but people seeking asylum face significant difficulties in disclosing traumatic experiences – such as trafficking – in their screening interviews, which are usually conducted shortly after arrival. The screening process is not sufficient to identify survivors of trafficking, as illustrated by the number of survivors detained and issued with notices of intent for removal to Rwanda earlier in 2022.[16]
- The Detention Gatekeeper (DGK) assesses whether detention decisions are 'proportionate' and is supposed to identify instances where *'individuals may be at risk of harm in detention due to any vulnerabilities'*.[17] However, significant concerns have been raised that the DGK does not proactively screen for vulnerability, relying instead on information that the Home Office already has on file to assess if someone is vulnerable – for victims of trafficking who have not previously engaged with the Home Office this information will be minimal or non-existent.[18]
- The Detention Centre Rules 2001 are meant to function as a safeguard against the detention of vulnerable people.[19] Rule 34 stipulates that every detained person must have a mental and physical examination within 24 hours of admission to an Immigration Removal Centre (IRC). Rule 35 requires the IRC medical practitioner to report on any detained person whose health is likely to be injuriously affected by detention; who is suspected of having suicidal intentions; or who the practitioner is concerned may have been a victim of torture. However, the Rule 35 process is subject to long delays; there is too high an evidential burden; reports are routinely rejected for minor errors; and internal review panel recommendations are overturned by senior Home Office officials.[20]

10 Figure provided by the government in debate on the Nationality and Borders Bill in Parliament
11 Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities who were referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.
12 Ibid
13 This change was introduced via an update to the Modern Slavery Statutory Guidance
14 Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 – April to June
15 Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 – April to June
16 See UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15; The Independent, Asylum seekers selected for Rwanda removal identified as possible trafficking victims, 20 July 2022; The Independent Chief Inspector of Borders and Immigration's first inspection into the Adults at Risk policy, April 2020, recommended that there should be enhanced screening for vulnerabilities.
17 The DGK was introduced in June 2016 following the Shaw review. The DGK operates as a Home Office immigration system function, working independently of both referring operational teams and detained casework teams to ensure individuals only enter immigration detention where detention is for a lawful purpose – Home Office, Detention General instructions
18 Independent Chief Inspector of Borders and Immigration, Second annual inspection of 'Adults at risk in immigration detention', October 2021
19 The Detention Centre Rules 2001
20 See Joint Committee on Human Rights, Immigration detention Sixteenth Report of Session 2017–19, February 2019 and Medical Justice, Harmed Not Heard: Failures in safeguarding for the most vulnerable people in immigration detention, April 2022

- The Adults at Risk policy requires detainees to produce *'scientific levels of evidence'* that they are likely to suffer harm in detention before they might be considered for release.[21] Such evidence is difficult for victims of trafficking to obtain, particularly for the many who lack access to good quality legal representation. In practice, the policy encourages a 'wait and see' approach whereby vulnerable detainees are left to deteriorate in detention until avoidable harm has occurred and can then be documented.[22]

- It is only if a victim of trafficking has a positive conclusive grounds (final stage) decision *and also receives a grant of discretionary leave to remain*, that they can obtain automatic release. But discretionary leave is rarely granted – 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. In the instances where leave is granted, this is frequently following the submission of extensive evidence several months after the positive conclusive grounds decision is made.[23]

It is also feared that the Nationality and Borders Act 2022[24] will have a further negative impact on the identification and protection of survivors of trafficking. The Act makes the 'test' for deciding when someone might be a victim stricter[25] and states that if a person provides 'late' evidence, 'without good reason' the Home Office can refuse their trafficking claim on the basis of their 'damaged credibility',[26] despite the recognised barriers to disclosure many victims face. With the introduction of additional hurdles to victims being recognised, it is likely that more will be detained and removed from the UK without having had proper access to justice.

Immigration detention is an unacceptable environment for survivors of trafficking, who are particularly vulnerable to harm in detention, a setting which can prevent or discourage disclosure. Even if identified, detainees are not always released and detention continues to have an accumulative and damaging impact upon their physical and mental health. A high proportion of immigration detainees are diagnosed with depression, post-traumatic stress disorder (PTSD) and anxiety, and a significant number experience suicidal ideation with the risk of self-harm. Research shows that people who have experienced trauma are at greater risk of developing mental health problems while in detention.[27] It is impossible to envisage how a person's recovery needs can be met when they are in continuous distress.

For survivors of trafficking, immigration detention not only increases the risk of re-traumatisation and negative long-term physical and mental health outcomes; it can also prevent victims from being identified and from receiving the support they need and to which they are entitled. This can in turn affect their willingness and ability to engage in legal processes, such as supporting criminal investigations and prosecutions of their traffickers. It can leave them at risk of being re-trafficked or exploited further. Immigration detention itself can be used as a threat by exploiters to prevent survivors from approaching authorities for support or assistance.

Survivors of trafficking should not be detained. Instead, they should be provided with the support to which they are entitled under international and domestic law in the community, including secure accommodation, psychological assistance and legal information and support. This is crucial to enable them to recover and rebuild their lives.

21 Joint Committee on Human Rights, Immigration detention Sixteenth Report of Session 2017–19, February 2019
22 ibid
23 ECPAT UK, Government failing child victims of trafficking, exclusive data reveals, October 2020
24 Nationality and Borders Act 2022 – Parliamentary Bills – UK Parliament
25 Section 60, Nationality and Borders Act 2022
26 Section 69, Nationality and Borders Act 2022. For further explanation of the impact of these measures, see the Detention Taskforce briefing for the House of Lords Report Stage of the Bill, March 2022
27 Helen Bamber Foundation, The impact of immigration detention on mental health – research summary

RECOMMENDATIONS

The Home Office must once again commit to reducing the number of those detained and the duration of detention of removal. The Home Office must carry out an urgent, comprehensive review of the process for detaining and continuing to detain confirmed or possible victims of trafficking, as well as implementing the practical recommendations outlined below, with meaningful input from relevant stakeholders and those with lived experience.

DECISIONS TO DETAIN

- A more effective screening process prior to the decision to detain must be introduced.
- All government agencies with the power to make arrests under immigration powers should receive compulsory training on human trafficking identification.
- Everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain.
- Detention gatekeepers should have access to all documents and files including past immigration and medical records and previous NRM referrals, of anyone being considered for detention, and people identified as vulnerable by the detention gatekeeper should not be detained.

ADULTS AT RISK POLICY

- The three AAR levels of risk should be abolished. The Home Office should revert to its previous policy focusing on risk of harm, so that an individual who belongs to a category at increased risk of harm in detention is considered to be suitable for detention only "in very exceptional circumstances".
- A self-declaration of vulnerability should trigger a duty of inquiry into the asserted vulnerability.

REFERRALS INTO THE NATIONAL REFERRAL MECHANISM (NRM) FROM DETENTION

- There should be independent first responders in detention, instead of Home Office staff, to identify people and make referrals into the NRM with unrestricted access to immigration detention and prisons.

DECISIONS TO MAINTAIN DETENTION

- Criminal convictions arising directly from victims' exploitation must not be used as reasons to detain or to continue detention.
- Anyone who receives a positive reasonable grounds decision from within detention should be immediately released into appropriate and secure accommodation so that they can progress with the reflection and recovery to which they are entitled.
- Those with positive reasonable grounds decisions who nonetheless continue to be detained due to 'exceptional circumstances' must receive the full range of support that is also afforded to those in the community, including a support worker.

INTRODUCTION

The government has wide powers to detain and continue to detain people who are subject to immigration control,[28] either while they wait for permission to enter the UK or before they are to be removed or deported from the country.[29] However, in using these wide powers, the Home Office routinely detains people only to release them again back into the community.[30] In such cases, their detention serves no purpose either in successfully concluding their immigration case or in securing their removal from the UK.[31] By locking people up and depriving them of their liberty, the government is causing them significant harm. Many of the people detained in this way have already experienced a range of traumatic experiences which can include serious crimes and human rights violations. They are in desperate need of support and protection. In this report we focus on the situation for detainees in the UK who are survivors of modern slavery or human trafficking.[32]

The UK's continuing detention of vulnerable people, including victims[33] of trafficking or modern slavery, has long been criticised. Prior to 2021, research into detention practices had already highlighted that insufficient understanding of the needs and risks of victims of trafficking together with a disproportionate focus on immigration enforcement was leading to the detention and enforced removal of victims of trafficking from the UK. Various reports identified the following key issues:

- Poor quality of casework and victim identification practices.[34]
- A lack of transparency around data and information on victims of trafficking in detention.[35]
- A high risk of survivors being re-trafficked due to the poor management of releases from detention.[36]
- Insufficient training for immigration authorities on the identification of human trafficking indicators.[37]
- Inadequate support provision for vulnerable people within detention.[38]

A frequently repeated but unsubstantiated claim from the Home Office is that people 'abuse' the detention system by claiming to be vulnerable or trafficked to try to secure their release.[39] This was part of the justification for the narrowing of protections for survivors recently implemented under the Nationality and Borders Act 2022. When the Independent Chief Inspector of Borders and Immigration published the 2021 report, Second Annual Inspection of 'Adults at risk in immigration detention'[40] he expressed concern that "*though awareness of vulnerability issues among Home Office staff has grown considerably in recent years, a perception within the department that Adults at Risk safeguards are widely abused engenders suspicion towards claims of vulnerability. Robust evidence to substantiate this perception was lacking, and concerns about abuse of safeguards at times appeared to serve as a justification for slow, poor-quality caseworking*". Recent statistics, outlined in this report, strongly suggest that there is no evidence of the system being abused.

Instead of taking urgent steps to address these existing problems, the government has introduced changes to law and policy over the past year that make the situation for victims of trafficking held in detention significantly worse.

28 The power to detain an illegal entrant or person liable to removal is set out in the Immigration Act 1971 (as amended), Schedule 2, paragraph 16 (2). A free-standing power to detain in cases where the Home Secretary has the power to set removal directions is provided for in the Nationality, Immigration and Asylum Act 2002, section 62. Powers to detain people liable to deportation are set out in the Immigration Act 1971, Schedule 3, paragraph 2, and the UK Borders Act 2007, section 36.
29 Often confused with 'removal', deportation can be ordered when an individual commits a criminal offence, is sentenced to more than 12 months' imprisonment, or their deportation is "conducive to the public good and in the public interest".
30 See Immigration Detention in the UK - Migration Observatory - The Migration Observatory.
31 Out of the 25,282 people who entered detention in the year ending March 2022, there were only 3,447 enforced returns (14%) - Home Office National Statistics, How many people are detained or returned?, May 2022
32 These terms will be used interchangeably throughout this report, with the primary term being 'trafficking'
33 The term survivor is used throughout this report unless specific reference is being made to Home Office policy, where the language is mirrored
34 Labour Exploitation Advisory Group, Detaining victims: human trafficking and the UK immigration detention system, 2019, section 2.2
35 ibid, section 2.4
36 Review into the welfare in detention of vulnerable persons: a report to the Home Office by Stephen Shaw. January 2016
37 Labour Exploitation Advisory Group, Detaining victims: human trafficking and the UK immigration detention system, 2019, section 2.2,
38 British Medical Association, Locked up, locked out: health and human rights in immigration detention, 2017.
39 New Plan for Immigration: policy statement
40 Independent Chief Inspector of Borders and Immigration, Second annual inspection of 'Adults at risk in immigration detention', October 2021

Prior to these changes in the majority of cases, if a person was identified as a potential victim of trafficking they would not be considered suitable for detention, except in limited circumstances.[41]

However, since 2021 victims of trafficking have been brought under the scope of the controversial 'Adults at Risk' policy which means that they are more likely to be detained. Concerns raised by organisations working with survivors of trafficking and by parliamentarians about this change were ignored, despite the government admitting it would result in more survivors of trafficking being detained.[42]

In addition, a new decision-making body for detained trafficking cases has been introduced, called the 'Immigration Enforcement Competent Authority' (IECA), and changes under the Nationality and Borders Act 2022 makes the 'test' for deciding when someone might be a victim stricter and penalises 'late' disclosure.[43] These developments have raised concerns that far fewer people who have suffered the crime of trafficking will be identified and recognised, and that more will be detained and removed from the UK without having had proper access to justice.[44] Many could be at risk of being re-trafficked, either by returning to the control of their traffickers or because they are targeted by new perpetrators due to their multiple vulnerabilities (which include insecure immigration status).

The government has stated its commitment to tackling modern slavery and putting victims *"at the heart of everything that we do"*.[45] Despite this expressed intention, there has been a significant increase in survivors of trafficking being locked up in immigration detention centres in the UK. This report provides an overview of recent changes and the current process that allows survivors of trafficking to be detained, supposedly for the purposes of removal, and the impact that this has on them.

41 Home Office, Victims of Modern Slavery – Competent Authority Guidance, Version 3, 21 March 2016
42 Home Office admits new immigration plans may see more trafficking victims locked up | The Independent
43 See the Detention Taskforce briefing for the House of Lords Report Stage of the Bill, March 2022
44 Detention Taskforce, Nationality and Borders Bill 2022, House of Lords Second Reading Briefing
45 HM Government, Modern Slavery Strategy, 2014

CASE STUDY: SAM[46]

Sam is a Vietnamese survivor of trafficking who arrived in the UK aged 16 under the control of his traffickers, having been exploited in various countries and brought to the UK under the promise of a 'better life' for Sam and his family. Sam was detained on arrival and claimed asylum the next day, but was put into an immigration detention centre. He remained in detention for two weeks before being released without any support and, almost immediately after his release, he was recaptured by his original traffickers. He was then re-trafficked into cannabis production and forced to live in a locked warehouse. He remained there for two years under constant control and enduring violence from his traffickers. Sam was then arrested, tried and convicted for cannabis production and sentenced to 20 months imprisonment. Trafficking indicators had not been acted upon by the immigration authorities nor by the criminal justice system before his case went to court.

Having served his criminal sentence, Sam was transferred, once again, to immigration detention where his mental health deteriorated to the point that he was placed on ACDT ('suicide watch') following a suicide attempt. The Home Office were informed that there were indicators to suggest he was a victim of trafficking. However, removal directions remained set and it was only when an emergency judicial review challenge was made by his lawyer that his removal was prevented.

Eventually, after being prompted by his legal representatives, the Home Office referred Sam into the UK National Referral Mechanism (NRM) which provides identification, protection and support for victims of trafficking. He received a positive reasonable grounds (preliminary identification) decision and was released the following day. He was granted a 'recovery and reflection' period before finally receiving a positive conclusive grounds (final identification) decision, and was eventually granted refugee status. Sam was recently awarded substantial damages following a claim for false imprisonment, which included medico-legal evidence on the impact the detention had had on Sam.

Sam's initial experience of detention is a prime example of why vulnerable victims of trafficking have difficulties trusting authorities, when he was released without support and was placed in the hands of his traffickers again. This reinforced his belief that he had little option but to remain with the traffickers as the only alternative was immigration detention. It is possible that his four years of unnecessary suffering could have been avoided if the right system had been in place to identify him as a survivor of trafficking and he had not been detained.

46 Case study provided by the Helen Bamber Foundation

Immigration detention

Home Office policy states that immigration detention may be used when:

- a person is *"likely to abscond" if granted immigration bail and released*;
- there is insufficient reliable information to decide whether to grant immigration bail;
- when a person's removal from the UK is imminent;
- where detention is needed whilst alternative arrangements are made for the person's care; and
- when release is not considered *"conducive to the public good"*.[47]

'According to Home Office policy, immigration detention is only lawful if there is a realistic prospect of removal within a reasonable period and detention should be used "sparingly, and for the shortest period necessary".[48] There is also a presumption in immigration policy that a person will not be detained and, wherever possible, alternatives to detention (such as temporary admission with reporting restrictions, electronic monitoring, or release on bail) should be used. It states that detention should be reviewed at fixed intervals and continued detention must be authorised at certain levels of seniority. The general principles are that the decision maker has to question whether detention is necessary to effect removal and, if yes, then they need to determine how long the detention is likely to last. If the length of detention is likely to cause the individual harm they should not be detained unless are public interest grounds for doing so.

However, in the UK there is no maximum time limit for the use of detention[49] despite repeated calls from NGOs and Parliamentarians for a 28 day maximum time limit and more judicial oversight for people who are held in detention centres.[50]

Immigration detainees who may be removed from the country are held in Immigration Removal Centres (IRCs).[51] Foreign national offenders held for immigration purposes can also be detained in prisons (typically after serving their criminal sentence and pending their removal from the UK). 25,282 people entered immigration detention in the year ending March 2022. Over the last decade, the daily population of immigration detainees ranged from around 700 (when the impact of Covid-19 was most pronounced) to 3,500. At the end of March 2022, there were 1,440 people in immigration detention.[52] The Home Office has made clear its intention to return to using immigration detention at full capacity and are looking at plans to expand the detention estate.[53]

47 Home Office, Detention General instructions, p 26
48 Home Office, Detention General instructions, p 7. The 'test' as to whether a person should be detained and for how long (known as the Hardial Singh principles, derived from the case *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB). and confirmed in the case of *Lumba* [2011] UKSC 12
49 In contrast to most EU countries who are subject to the EU return directive which limits detention to six months, with many electing for a shorter timeframe.
50 End indefinite immigration detention – joint letter from 20 organisations – Detention Action
51 Separate to prisons and short-term holding facilities, IRCs are used solely for the detention of people detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002.
52 Home Office National Statistics, How many people are detained or returned? , May 2022
53 Prime Minister's speech on action to tackle illegal migration: 14 April 2022

WHY SURVIVORS OF TRAFFICKING MIGHT BE DETAINED

Trafficking is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. That exploitation includes forced labour, domestic servitude, sexual exploitation or organ harvesting.[54]

Survivors of trafficking are often detained either after imprisonment, with many having been wrongly convicted for offences they were forced to commit by their traffickers, and/or because they do not have permission to remain in the UK and have not received the support necessary to enable them to disclose that they have been trafficked.[55] For example, many victims of trafficking are detained for removal after being picked up during raids on brothels, nail bars and cannabis farms.

It is well recognised, including in the UK Modern Slavery statutory guidance,[56] that survivors can be highly traumatised, and afraid of sharing their experiences of trafficking and exploitation for a multitude of reasons, including shame and fear of stigmatisation. The clinicians from organisations who conduct medical assessments see this on a frequent basis and this is documented in medical literature.[57] It is far from unusual for those who have experienced trauma to have difficulties recounting their story and this often results in accounts being provided 'late', being muddled, incomplete or withheld.[58]

Survivors are also frequently afraid of the national authorities and coming forward,[59] with traffickers employing a range of methods to ensure this fear persists long after they have left their control. This can include ritualised violence, threats against the victim or family members, and in our experience, attacks, re-trafficking and reprisals.

Crucially many victims do not self-identify as having been trafficked and may not see the relevance of disclosing their experience nor know to whom to disclose. Others may have buried their trauma in order to be able to function on a day-to-day basis. Those who are unable to report that they were trafficked at the point of arrest or detention can find they are not subsequently identified as trafficking victims, with 'late' disclosure being taken as an adverse credibility issue rather than a reflection of their trauma. Lack of self-identification is compounded by a lack of awareness amongst survivors that there is a system to protect people who have experienced exploitation.

These barriers to disclosure are compounded by the failure of authorities to identify trafficking indicators when in contact with victims of trafficking, or to act appropriately when such indicators are apparent. Numerous government-commissioned or parliamentary reports and inquiries have already highlighted that the Home Office is failing to identify vulnerable people, or even to release people from detention once identified as vulnerable or trafficked.[60]

54 Protocol to Prevent, Suppress and Punish Trafficking in Persons, GA Res 55/25 (15 November 2000), Article 3(a); Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series No.197 (16 May 2005), Article 4(a),

55 A referral into the National Referral Mechanism can only be made by a designated first responder. At the time of writing there is no process by which organisations can apply to become a first responder.

56 The Modern Slavery Act 2015 section 49 Statutory Guidance on Identification and Care recognises the impact of trauma and lists the reasons why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.

57 The texture of narrative dilemmas: qualitative study in front-line professionals working with asylum seekers in the UK | BJPsych Bulletin | Cambridge Core

58 This is accepted in the Home Offices own Modern Slavery statutory guidance and is recognised in the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para 164

59 Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland p105

60 These include the 2016 Shaw Report, the 2018 progress report also undertaken by Stephen Shaw, and the 2019 reports by the Joint Committee on Human Rights and by the Home Affairs Select Committee.

National Referral Mechanism (NRM)

The National Referral Mechanism (NRM) is the UK's framework for recognising and supporting survivors of modern slavery and trafficking. The NRM is the system designed for the Organisation for Security and Co-operation in Europe (OSCE) member states for provision of identification, protection, support, criminal justice and redress for victims of human trafficking.[61]

In order to be referred into the UK NRM, a person must be identified as having trafficking indicators by a designated 'first responders', such as the police, Home Office, local authorities or a specified charity.[62] When determining this, the first responder need only have a suspicion that someone may have been a victim of trafficking.

Once a person has been referred to the NRM, they should receive a decision from the 'competent authority' (the decision-making body that sits within the Home Office) within five working days, stating whether or not there are 'reasonable grounds' to believe they are a victim of trafficking. If this 'reasonable grounds' (preliminary identification) decision is positive, the person is entitled to a recovery and reflection period for a minimum of 30[63] days,[64] although it is taking significantly longer than this in practice.[65] During that period, the competent authority must decide whether there are 'conclusive grounds' to accept that the individual is a victim of trafficking (this is a final identification decision). The person cannot be removed from the UK until a conclusive grounds decision has been made.[66] This is important to note given that under Home Office policy a person should only be detained where there is a 'realistic prospect of removal' within a reasonable period and if there is evidence which suggests that the individual would not be likely to be removed without the use of detention. There is no formal definition of what amounts to a 'realistic prospect of removal' nor what a 'reasonable period' is but it would generally be the case that if there is a barrier to removal, such as an outstanding immigration or NRM decision, that would satisfy this test. The Home Office is required to undertake regular detention reviews[67] to establish whether continued detention can be justified.

As the first responder available in immigration removal centres,[68] the Home Office is the only body that can decide whether a person who is detained is a potential victim of trafficking and refer them to the NRM. This is problematic for a number of reasons, not least because the primary function of the Home Office casework staff dealing with detained cases is to effect removal or deportation of all detainees. This arguably conflicts with their role to identify victims, because in identifying victims any prospect of removal or deportation is significantly reduced. Also, most victims of trafficking are known to fear national authorities and this fear will only be amplified in a detention setting.

61 Home Office, National referral mechanism guidance: adult (England and Wales), May 2022
62 Home Office guidance, Report modern slavery as a first responder, September 2021
63 Recently reduced from 45 days by the Nationality and Borders Act 2022. The average time that this is currently taking for a conclusive grounds decision is almost a year.
64 Unless there are "public order grounds" (currently undefined in UK domestic law that is in force) to prevent it or alternatively because there is firm, objective evidence that an improper claim has been made. See paras 8.20, 14.232-14.235, Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.10. Until present there have been no reported cases where either "public order grounds" or "improper claims" being applied in practice, however when s63 of the Nationality and Borders Act comes into force a potentially large group of potential victims (those who have criminal sentences of over one year, amongst other categories) will both be excluded from Article 12 ECAT support, at risk of immediate removal from the UK. Also see Article 13(3) ECAT
65 The average (median) time taken from referral to conclusive grounds decisions made in quarter 1 2022 was 448 days - Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2022 – January to March - GOV.UK (www.gov.uk)
66 Article 10, Council of Europe Convention on Action against Trafficking in Human Beings: Treaty Series No. 37 (2012)
67 Rule 9 of the Detention Centre Rules 2001 requires people to be provided with written reasons for detention at the time of their initial detention and thereafter monthly (every 28 days). A detention review must be done within 24 hours of detention, then after 7 days, 14 days and thereafter monthly. Additional reviews may be required where there has been a change in circumstances that is relevant to the continued detention
68 The Salvation Army will occasionally act as first responder in immigration detention but this is rare.

After the establishment of the UK's NRM in 2009 there were two designated competent authorities: the Home Office division responsible for Visas and Immigration (which made decisions for all non-British and EEA national people) and the UK Human Trafficking Centre within the National Crime Agency, which made identification decisions for all other persons. It was argued that this system was discriminatory and unjust, due to a disproportionate emphasis on immigration control that undermined and diminished the UK's obligation to identify victims of trafficking and modern slavery.[69] This, and the Home Office's own review of the NRM,[70] resulted in the introduction in 2019 of a Single Competent Authority (SCA), a move which was welcomed by all stakeholders across the anti-trafficking sector, ranging from NGOs to police and prosecutors, as a means of both simplifying and speeding up referrals into the NRM.[71]

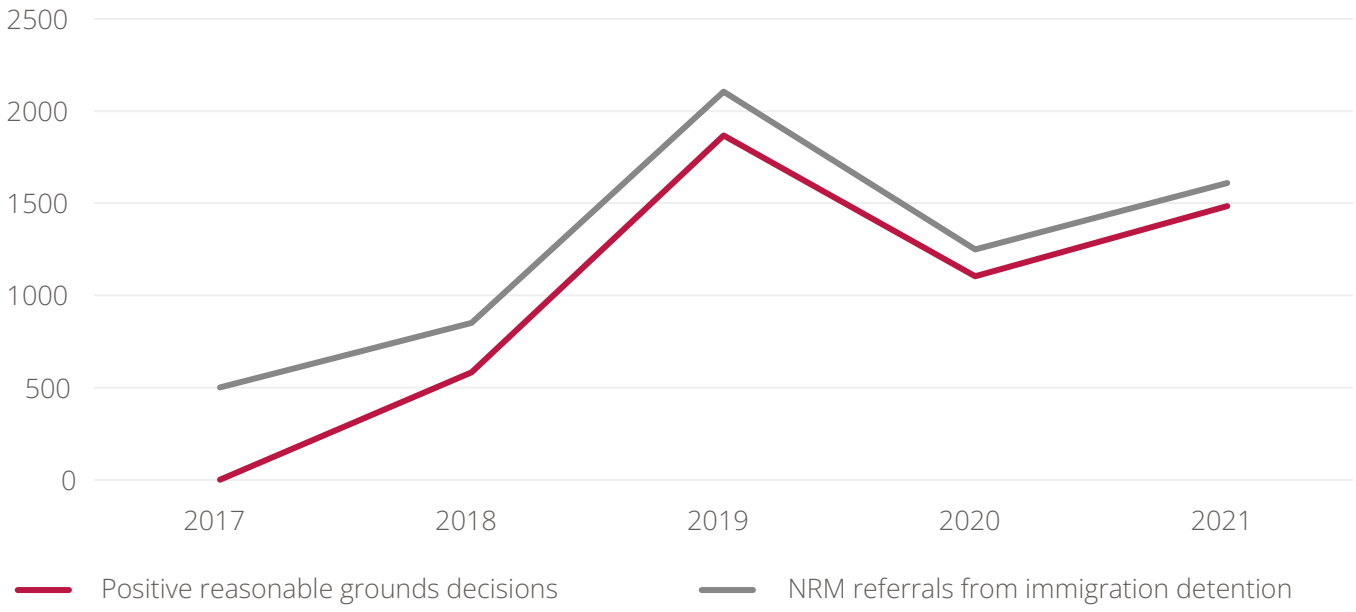
However, without consultation, in November 2021 the Home Office reversed this change and created a new decision-making body: The Immigration Enforcement Competent Authority (IECA).[72] The IECA makes NRM identification decisions for many adults who are subject to forms of immigration control. This includes all adults who have been categorised as 'Foreign National Offenders' (FNOs) detained in an Immigration Removal Centre (IRC) or in prison, and all people detained in an Immigration Removal Centre that is managed by the National Returns Command (NRC), including those in the Detained Asylum Casework (DAC) process.[73] All other potential victims of modern slavery will continue to have identification decisions made by the existing Single Competent Authority.

Traffickers routinely threaten their victims that, if they speak to the police or immigration authorities, help will be refused, they will be detained and forcibly removed from the UK, possibly back into the control of their traffickers or where they will be vulnerable to re- exploitation. It has long been argued that to make it safe for victims to seek help, and to build trust with victims, the NRM must be completely separate from immigration enforcement. The creation of the IECA is a return to a two-tier system, and there are concerns that this will lead to differences in decision making and so further undermine trust in the NRM, support greater exploitation and re-exploitation of migrants by traffickers who will know that they can use their immigration status as a tool for coercion.

69 Anti-Trafficking Monitoring Group (ATMG), The National Referral Mechanism: A Five Year Review, February 2014.
70 Home Office, Review of the National Referral Mechanism for victims of human trafficking, November 2014
71 Home Office, New system to simplify and speed up modern slavery referrals, September 2019
72 This change was introduced via an update to the Modern Slavery Statutory Guidance
73 Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland, para 4.14. The IECA also deals with non-detained adult 'foreign national offenders' where action to pursue cases towards deportation is taken in the community and all individuals in the Third Country Unit (TCU)/inadmissible process irrespective of whether detained or non-detained.

DATA ON VICTIMS OF TRAFFICKING IN DETENTION

There has been a clear rise in the number of survivors of trafficking referred to the National Referral Mechanism (NRM) from detention – data published by the government and shared via a Freedom of Information request shows that **the number of referrals has tripled over the last five years from 501 referrals in 2017[74] to 1,611 in 2021**, the year that victims of trafficking were included in the Adults at Risk policy (albeit it with a dip where numbers of detainees overall reduced as a result of the pandemic).[75]

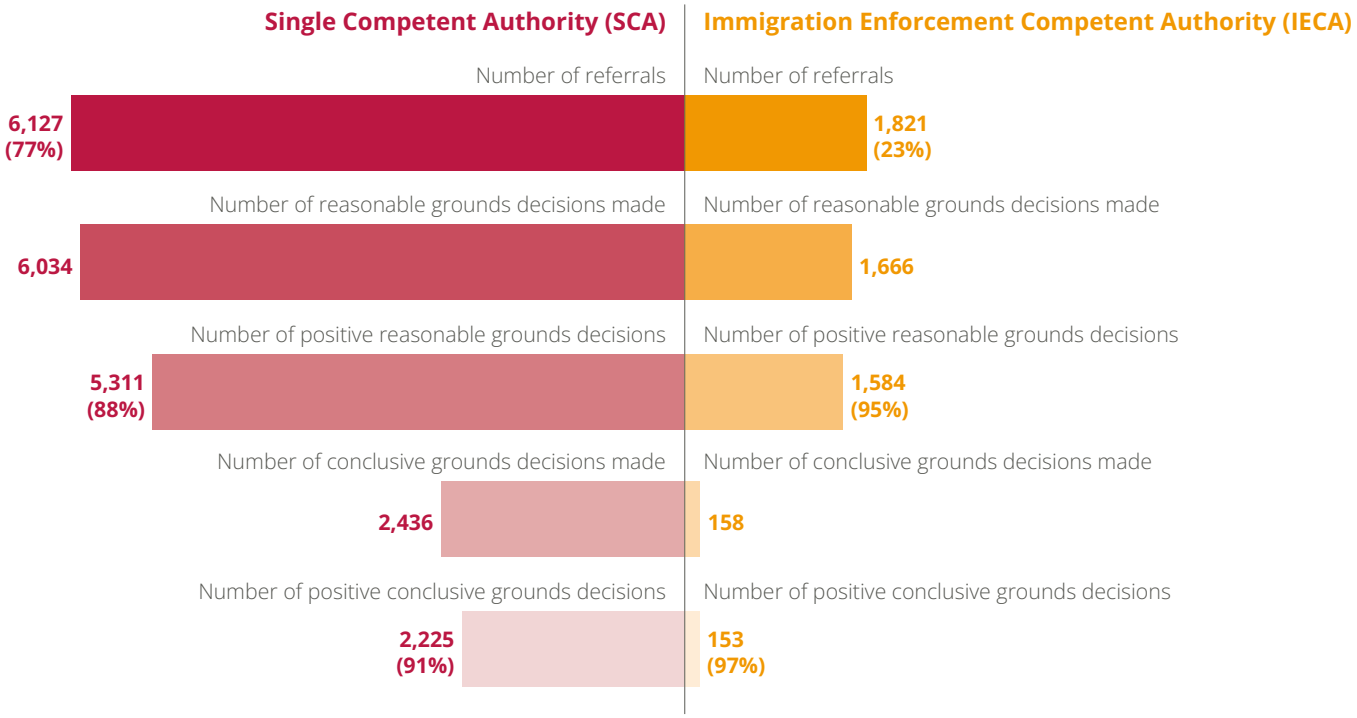


The government has claimed that people who are held in immigration detention are falsely claiming to be survivors of trafficking 'late in the process' in order to 'frustrate immigration action' and to secure their release.[76] The facts do not support this. The overwhelming majority of those who are referred into the NRM from detention are found at the first stage of the identification process (preliminary identification) to have been trafficked: **In 2021, of the 1,611 detainees were referred into the NRM, 92% (1,420) received a positive reasonable grounds decision, an increase on the previous year when 88% (1,105 of 1,249 referrals) received a positive conclusive grounds decision.[77]**

Statistics for the first half of 2022 show an even higher recognition rate, with the Immigration Enforcement Competent Authority (IECA – the competent authority making decisions on referrals from detention since November 2021) making **positive reasonable grounds decisions in 95% of cases, and positive conclusive grounds decisions in 97% of cases.**[78]

74 Figure provided by the government in debate on the Nationality and Borders Bill in Parliament
75 Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities who were referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.
76 See New Plan For Immigration – Consultation on the New Plan for Immigration: Government Response. These claims were used to justify measures in the Nationality and Borders Act which make identification and protection as a potential victim harder and despite repeated requests from the anti-trafficking sector for evidence this has not been forthcoming.
77 The FOI response only provided very limited data on conclusive grounds decisions so this has not been included.
78 Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 – April to June

NRM DECISION MAKING, JANUARY TO JUNE 2022



It is clear that these figures do not show abuse of the system but reflect the fact that victims of trafficking are being placed in significant numbers in immigration detention without proper opportunities to disclose or screening for indicators. It may be that more are being identified after being detained due to a greater awareness of trafficking and modern slavery and increasing familiarity with the referral process over time.[79] However, it is likely that there are still victims who are not being identified due to issues such as lack of trust of authorities; the Home Office consistently failing to pick up on trafficking indicators; and detention settings not being conducive to disclosure.[80]

It is also important to note the relatively small number of final 'conclusive grounds' decisions made by the IECA to date, and the huge delays in these decisions being made across the board. The average (median) time taken from referral to conclusive grounds decisions made in the second quarter 2022 across the competent authorities was a staggering 17 months. For conclusive grounds decisions made by the SCA, the average time taken was 19 months, whilst the IECA took an average of 23 weeks (roughly 5 months). Decision-making times for the IECA are currently much shorter than the SCA as the IECA has fewer cases in its backlog, having only taken on new referrals since November 2021.[81]

So at present a survivor of trafficking held in detention whilst awaiting a final decision in their trafficking could be detained for *over a year and a half* before receiving a positive conclusive grounds decision and then even longer before they might be granted leave to remain, at which point they would need to be released, their detention having served no purpose but to cause untold harm.

79 Indeed the Home Office in their own press release on NRM reforms in October 2017 cited the increase in referrals as evidence of the success of the NRM – Home Office, Modern slavery victims to receive longer period of support, October 2017
80 Detention Action, Trafficked into detention: How victims of trafficking are missed in detention, November 2017
81 Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 – April to June

THE IMPACT OF DETENTION ON SURVIVORS OF TRAFFICKING

"The safety, protection and support of the potential victim must always be the first priority. Victims of modern slavery are a vulnerable group and should be treated with the same sensitivity as other vulnerable groups, such as victims of domestic violence." **Modern Slavery Act Statutory guidance**[82]

Immigration detention is an unacceptable environment for survivors of modern slavery and trafficking. It can cause severe mental and physical suffering. Trafficking survivors are among those particularly vulnerable to harm in detention.[83] The highly publicised Brook House enquiry[84] recently heard evidence of 'a complete systems failure'[85] of safeguards to identify and release vulnerable people in detention and of the clinical impact that *'inappropriate and inadequate – sometimes woefully inadequate'* clinical care has had on those with mental disorders. There has been a wealth of evidence put before the Home Office about the impact of detention on vulnerable people since at least 2012 and the failure of the Home Office and its contractors to take appropriate action.[86]

For victims of trafficking, the environment of a detention setting and the fear they may experience within it can be a triggering reminder of their trafficking.

An urgent matter for concern is that even once detained people are identified as victims of trafficking, they are not always released. This means that detention continues to have an accumulative and damaging impact upon their physical and mental health. A high proportion of immigration detainees are diagnosed with depression, post-traumatic stress disorder (PTSD) and anxiety, and a significant number experience suicidal ideation with the risk of self-harm. Research shows that people who have experienced trauma are at greater risk of developing mental health problems while in detention.[87] In the experience of those working with survivors, the immigration detention causes a person's mental health to deteriorate and it is not possible to envisage how a person's recovery needs could be met whilst they are in continuous distress.

For survivors of trafficking, immigration detention not only increases the risk of re-traumatisation and negative long-term physical and mental health outcomes; it can also prevent victims from being identified and from receiving the support they need and to which they are entitled. The NGO Medical Justice[88] has seen concerning examples of the Home Office failing to refer people into the National Referral Mechanism (NRM) when there are clear indicators that they had been victims of trafficking. Examples of this include people who have been subjected to forced labour in Libya: despite the Home Office being aware of their journey history, they have failed to make an NRM referral. This can leave them at risk of being re-trafficked or exploited further.[89]

82 Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland
83 Helen Bamber Foundation, The impact of immigration detention on mental health – research summary September 2022
84 See Brook House Inquiry website. The second phase of hearings finished on 6 April 2022 and the findings are awaited.
85 Dr Jake Hard, the clinical expert appointed by the inquiry
86 Brook House inquiry Witness Statement, Professor Cornelius Katona, February 2022.
87 Helen Bamber Foundation, The impact of immigration detention on mental health – research summary September 2022
88 A frontline NGO whose volunteer clinicians visit people held in immigration detention for the purposes of documenting scars of torture, assess deterioration in health, and challenge medical mistreatment.
89 International Organisation for Migration, The Causes and Consequences of Trafficking: Evidence from the IOM Human Trafficking Database, 2010

Impact of detention on mental health

From a sample of 25 medico-legal reports for confirmed victims of trafficking that the Helen Bamber Foundation completed in 2020,[90] 13 had been detained at least once under immigration powers and two had unknown detention status. Whilst these reports were not always specifically related to detention, 9 specifically highlighted the detrimental impact that detention had on those involved.[91] There are reports of self-harm and suicide attempts in detention, suicidal ideation following detention, re-traumatisation and in one instance detention being a contributing factor in aggravating a person's complex PTSD.

Some example comments taken from client assessments conducted by HBF's clinical team help to illustrate the ways in which detention negatively impacts mental health:

> *"His detention is likely to arouse potent recollections of his previous experiences when in detention in X"*

> *"Detention is likely to aggravate his fragile mental state and may cause a risk of self-harm"*

> *"She has vivid nightmares related both to her experiences in X and to when she was detained in the UK"*

> *"He reports that his experience in detention leaves him to afraid to seek asylum support accommodation due to his fear of being detained again"*

> *"Her detention has made her convinced that she will detained again and deported and has left her with suicidal thoughts"*

> *"X was tearful during the appointment with me. I could understand how being in detention for 2 weeks has impacted on her mental health.... The GP records indicated a panic disorder diagnosis related to her detention"*

Medical Justice works with clinicians who conduct medical assessments and write medico-legal reports (MLRs) for people with histories of trafficking whilst they are in immigration detention. These clinicians often diagnose or identify symptoms of mental health conditions, including depression, anxiety and post-traumatic stress disorder (PTSD). The MLRs recommend specific treatments, such as individual trauma-focused therapy, but such treatment is often not available in detention and therefore the person's needs can not be met. The MLRs further raise concerns that, even if such therapy was provided in a detention setting, it would not be effective as it requires the person to feel stable and safe to benefit from treatment (as per the NICE guidelines).[92]

90 It was not possible to analyse any more recent reports as the outcomes of the cases are not yet all known.
91 The remaining four were silent on this point but two of them made the point that future detention would be likely to have a detrimental impact on the person's mental health and the remaining two did not address this point.
92 NICE guideline – Post-traumatic stress disorder, December 2018

CASE STUDY: GABRIEL[93]

Gabriel is a Nigerian victim of trafficking who arrived in the UK on a false document. He had been exploited in various countries prior to his arrival in the UK. He claimed asylum on arrival and was given an asylum screening interview. He was then detained on third country grounds[94] (because he was considered to have claimed asylum in another 'safe' country) for around 5 days before being released with reporting conditions. Gabriel had been told by his traffickers that if he was caught he would be put in prison. Gabriel described how this first period of being detained reminded him of his exploitation.

Following his release his mental health deteriorated further and he tried to take his own life by jumping from a bridge but was stopped by a friend.

Gabriel was required to report frequently. Several months later, whilst reporting to the Home Office, Gabriel was detained again because his asylum claim had now been refused on third country grounds. He was held in an Immigration Removal Centre for two weeks. During this time Gabriel made several desperate suicide attempts using any item he could find in detention and described this period as *'the worst time of my life'.* He reported that *"ending my life would be the best option"* rather than being forcibly removed. Gabriel was unaware of the National Referral Mechanism (NRM) system and did not self-identify as a victim of trafficking because of his lack of knowledge around the issue. It was only when the Home Office did a review of his file and the information he had disclosed in his screening interview about his trafficking experience that he was referred into the NRM and was subsequently released.

Almost two years after the NRM referral, Gabriel received a positive conclusive grounds (final identification) decision and was granted a period of leave to remain in the UK. The outcome of his asylum appeal is still pending.

Following his detention Gabriel was diagnosed with Complex PTSD and depression and has been assessed on multiple occasions as not being fit to be detained.

93 Case study provided by the Helen Bamber Foundation

94 Previously under the Dublin III Regulations, if a person travelled through a 'safe' country (EU member state) then they may be liable to be removed to that country to have their asylum claim considered there. This regulation no longer applies in the UK.

DECISIONS TO DETAIN

By law, the Home Secretary is required to issue guidance specifying matters to be taken into account by immigration officers when determining whether a person would be particularly vulnerable to harm if detained.[95]

In 2016, the Home Office introduced the Adults at Risk (AAR) policy with the aim that this would lead to a reduction in the number of vulnerable people detained.[96] Whilst previous Home Office policy stated that victims of trafficking (amongst other vulnerable groups) were only suitable for detention in exceptional circumstances,[97] victims of trafficking now fall under the AAR policy.[98]

UK authorities will ordinarily conduct an initial screening before placing someone in immigration detention but it is well established that those seeking asylum face significant difficulties in disclosing traumatic experiences – such as trafficking – in their screening interviews. These interviews are usually conducted shortly after arrival,[99] or after someone has escaped their trafficking experience, and ask that only brief answers are given to the questions. The screening process is not sufficient to identify survivors of trafficking and is frequently not completed in a trauma informed manner, as illustrated by the number of survivors detained and issued with notices of intent for removal to Rwanda earlier in the year.[100]

A referral for detention is then provided to the Detention Gatekeeper (DGK) which assesses whether detention decisions are 'proportionate' and is supposed to identify instances where *'individuals may be at risk of harm in detention due to any vulnerabilities*'.[101] The DGK should consider issues such as legal barriers, Police National Computer (PNC) trace, special condition flags, medical conditions, removability, status of travel documents, and family ties.[102] The DGK can reject a referral or return it for further information if they are not satisfied that detention is lawful and proportionate. Any decision must include a risk assessment and must be *'properly evidenced and fully justified'*[103] and the paperwork setting out the reasoning must be served on the person to be detained. The AAR policy lists potential victims of trafficking or modern slavery[104] as those who will fall within the scope of the adults at risk policy. A decision to detain must then only be made if the immigration factors outweigh the risk factors and this is said to be done on a case specific basis.

95 Under Section 59 of the Immigration Act 2016
96 Written statements – Written questions, answers and statements – UK Parliament
97 Home Office guidance, [Withdrawn] Chapters 46 to 62: detention and removals
98 Home Office, Adults at risk in immigration detention Version 7.0, November 2021; Home Office, Adults at risk: Detention of potential or confirmed victims of modern slavery Version 2.0, November 2021
99 UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement, para.15
100 The Independent, Asylum seekers selected for Rwanda removal identified as possible trafficking victims, 20 July 2022. The Independent Chief Inspector of Borders and Immigration's first inspection into the Adults at Risk policy recommended that there should be enhanced screening for vulnerabilities. However by the time of the second inspection this had only been partially accepted and progress with a Enhanced Screening Tool being piloted in March 2020 but being suspended due to operational issues relating to Covid-19.
101 The DGK was introduced in June 2016 following the Shaw review. The DGK operates as a Home Office immigration system function, working independently of both referring operational teams and detained casework teams to ensure individuals only enter immigration detention where detention is for a lawful purpose – Home Office, Detention General instructions
102 As far as we are aware there are no additional issues considered for potential victims of trafficking.
103 Home Office, Detention General instructions, pg 25
104 An individual who has received a positive reasonable grounds decision under the National Referral Mechanism (NRM) and has not yet received their conclusive grounds decision. The decision to detain those who have not received a positive reasonable grounds decision will be made under the general Adults at risk in immigration detention guidance.

At the point of determining whether or not to detain a potential victim of trafficking the DGK is required to consider the following, in addition to the usual immigration and vulnerability factors:

- What, if any, support for recovery the person has already been receiving.
- If there is suitable provision available for those recovery needs to be met in immigration detention.
- Whether the person will have additional recovery needs that only arise in the detention context.
- Whether there is any indication, explicit or implied, that any public protection or negative immigration compliance issues may have arisen or been influenced by their modern slavery experiences.

If it is determined that detention is still appropriate, then this must be reflected in the detention reviews and be signed by the Detention Gatekeeper Head of Unit.[105] Following their detention a person much be referred for a Modern Slavery Needs Interview within five working days of their arrival in the detention centre.

Significant concerns have been raised that the DGK does not proactively screen for vulnerability, relying instead on information that the Home Office already has on file to assess if someone is vulnerable.[106] Many survivors of trafficking are likely to have been entrapped in the control of their traffickers in the UK and are therefore less likely to have had substantive contact with the Home Office prior to being detained. The Independent Chief Inspector of Borders and Immigration's second inspection into the Adults at Risk policy in 2021 highlighted that this policy is reliant upon victims of trafficking making relevant disclosures, which is known to be impossible without provision of a suitable environment and specialist professional support to do so.[107] The detention referral form[108] itself only asks broad questions about medical conditions and there are no specific questions about the history of trafficking.[109] The inspection found that *"stakeholders provided a range of case studies where, despite an individual being encountered in a likely site of exploitation they were not identified as a trafficking victim until after they had been placed in detention."* Data obtained by After Exploitation showed that between January 2019 and September 2020, in 2,805 cases the DGK failed to recognise positive trafficking indicators.[110]

105 This is a grade 7 role
106 Independent Chief Inspector of Borders and Immigration, Second annual inspection of 'Adults at risk in immigration detention'
107 Independent Chief Inspector of Borders and Immigration, Second annual inspection of 'Adults at risk in immigration detention'
108 Up to date as of a FOI dated 10 June 2022
109 The only related question is 'brief summary of immigration history and encounter'
110 After Exploitation, Survivors behind bars: Nearly 3,000 potential trafficking victims detained since 2019

SAFEGUARDING MECHANISMS

The AAR guidance is meant to operate in conjunction with the Detention Centre Rules 2001 to function as a safeguard against the detention of vulnerable people.[111] Rule 34 stipulates that every detained person must have a mental and physical examination within 24 hours of admission to an Immigration Removal Centre (IRC). Rule 35 requires the IRC medical practitioner to prepare a report on any detained person whose health is likely to be injuriously affected by detention; who is suspected of having suicidal intentions; or who the practitioner is concerned may have been a victim of torture. However, the completion of a Rule 35 report does not result in the automatic release of a detainee. The completed form must be passed to a caseworker who must review the decision to detain within two working days and may (and often does) decide to continue the individual s detention despite the evidence presented in the Rule 35 report.

The operation of the Rule 35 process has been criticised[112] on several grounds. There are long delays; too high an evidential burden; reports are routinely rejected for minor errors; and internal review panel recommendations are overturned by senior home office officials. Rule 35(1) and Rule 35(2) reports are rarely completed. It is mainly Rule 35(3) reports which are completed, which is for people who may be a victim of torture.[113] The onus is often on the person to request a Rule 35 report if vulnerabilities have not been picked up during the initial examination. As the Rule 35 process is a key safeguarding mechanism to alert the Home Office to an individual's vulnerability, and trigger a detention review there are concerns that victims of trafficking are at significant risk of not being identified and flagged to the Home Office for referral into the National Referral Mechanism (NRM).

Recent research from Medical Justice[114] analysed the clinical assessments of 45 vulnerable detained clients carried out between July and December 2021, following the inclusion of victims of human trafficking in the adults at risk policy.[115] 100% were assessed as at clinical risk of harm caused by detention, 87% had suicidal and/or self-harm thoughts recorded and 82% had already experienced deterioration in their mental state by the time they were seen. However, safeguarding systems led to only one person being released from detention due to being recognised as at risk.

111 The Detention Centre Rules 2001

112 The ICIBI second annual inspection highlighted that the restriction on who can undertake the Rule 35 assessment and the failure to ensure the assessor was of the same sex were causing problems with the process, particularly for victims of trafficking.

113 This should include victims of trafficking

114 Medical Justice, Harmed Not Heard: Failures in safeguarding for the most vulnerable people in immigration detention, April 2022

115 There is no breakdown of how many of these were victims of human trafficking however we are aware that some of the cases had indicators of trafficking. In any event this is still a strong indicator of how vulnerable people in detention are treated generally.

CASE STUDY: MATEO

Mateo was a victim of trafficking who suffered significant harm at the hands of his traffickers, including being attacked and beaten on many occasions. He was convicted and sentenced to 18 months imprisonment despite the National Referral Mechanism (NRM) process being ongoing and his offence being related to his trafficking experience. Following the completion of his sentence he was detained under immigration powers. F was assessed by a trafficking expert in detention and they raised concerns that he was still under the control of his traffickers and susceptible to further exploitation.

Under Rule 35 of the Detention Centre Rules 2001 a medical practitioner is required to report on the case of any detained person who they are concerned may have been a victim of torture. A report under Rule 35[116] was produced which identified Mateo as a victim of torture and clearly stated that continued detention would likely lead to his mental health suffering further. The Home Office did not respond until approximately three weeks later and, despite accepting that Mateo was an 'adult at risk', concluded that the Rule 35 report only amounted to 'level 2' evidence and the risk to Mateo was outweighed by the immigration control factors so he would not be released. The Home Office noted that Mateo's removal was not imminent at this point.

Due to his deteriorating mental health Mateo was referred to the psychological service within the detention centre. Over the following year, Mateo saw the detention centre healthcare clinicians on multiple occasions about his worsening mental health symptoms, including insomnia, not eating, nightmares and hearing voices that told him they were going to kill him. He was prescribed anti-depressants and anti-psychotic medication but despite this Mateo reported no improvement in his symptoms. A senior clinical psychologist at the detention centre wrote to the Home Office expressing concerns that Mateo's mental health had not improved despite treatment and about the impact that over a year of detention had had on Mateo's psychological and mental health. They felt prolonged detention could result in further deterioration. Shortly after this Mateo was placed on suicide watch.

A year after the first Rule 35 report, an independent psychiatric report was submitted to the Home Office concluding that Mateo met the diagnostic criteria for Major Depressive Disorder and Complex Post Traumatic Stress Disorder (PTSD). The report concluded that Mateo's mental health had deteriorated since he had been in prison and detention.

Three months later, a further 'Rule 35 report' was produced, signed off by three members of the clinical team at the detention centre. It made clear that F's mental health had deteriorated since being detained and was likely to continue to deteriorate. Despite receiving multidisciplinary, mental health input and being prescribed medication, his post-traumatic symptoms could not be satisfactorily treated in detention. The report recommended that he be released with a care plan in place. It stated that he needed access to crisis mental health in the community and psychological treatments for post-trauma work in a non-detained setting. Mateo's legal representatives wrote to the Home Office multiple times requesting that he be urgently be released in line with the recommendations of the most recent Rule 35 report. Mateo was eventually released almost a week after the report but despite the clear recommendations from the healthcare team he was released without a care plan in place; without his medication; without a copy of his medical records; and without an onward referral to a GP or the community mental health services

It took two Rule 35 reports before Mateo was finally released from immigration detention and even when he was released inadequate safeguards were put in place.

116 See rule 35(3)

DECISIONS TO CONTINUE TO DETAIN OR RELEASE

Prior to 2021, an individual who received a positive reasonable grounds decision whilst they were in detention would be released unless they were considered to pose a threat to public order, which has never been defined in domestic law, and understood to have only been very rarely, if ever, used. This meant that people would generally not be detained during the recovery and reflection period, during which removal cannot take place. However, this changed after 25th May 2021, when victims of trafficking were brought within the Adults at Risk (AAR) Policy.

Under the AAR policy being a potential and confirmed victims of trafficking is only an indicator that someone is an adult at risk who is more vulnerable to suffering harm in detention. The Home Office then 'weighs' the person's perceived risk of suffering harm, based on the risk indicator(s) and level of evidence, against other immigration/ criminal offending factors. The guidance sets out the reasons why a potential or identified victim of modern slavery should be released and the level of evidence required. There are three levels of evidence:

1. Self-declaration by the individual or their legal representative of being an adult at risk (this will be afforded limited weight)
2. Professional evidence (for example from a social worker, medical practitioner or non-government organisation (NGO)), or official documentary evidence, which indicates that the individual is (or may be) an adult at risk (such evidence should normally be accepted and consideration given as to how this may be impacted by detention).
3. Professional evidence (for example from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm, for example, increase the severity of the symptoms or condition that have led to the individual being regarded as an adult at risk, should be afforded significant weight (such evidence should normally be accepted and any detention reviewed in light of the accepted evidence).

The policy states that 'decision makers are entitled not to place decisive weight on assertions that are unsupported by medical evidence'. Even where harm is being caused, it is still possible for the Home Office to continue to detain, if it considers that a range of 'immigration factors' outweigh the risk of harm to the individual.

This policy has been widely criticised because it requires detainees to produce '*scientific levels of evidence*'[117] that they are likely to suffer harm in detention. Such evidence is difficult for victims of trafficking to obtain, particularly for the many who lack access to good quality legal representation. In practice, the policy encourages a 'wait and see' approach whereby vulnerable detainees are left to deteriorate in detention until avoidable harm has occurred and can then be documented.[118]

117 Joint Committee on Human Rights, Immigration detention Sixteenth Report of Session 2017–19, February 2019
118 ibid

Under this three-level system, a positive (first stage) reasonable grounds decision will automatically be regarded as amounting to 'level 2' evidence. However, for unknown reasons, a positive conclusive grounds identification decision does not amount to 'level 3' evidence. As a result, a victim of trafficking who has had a positive preliminary identification (RG) decision can remain detained throughout their 'recovery and reflection' period and indeed for their entire experience within the National Referral Mechanism (NRM). This is something that frontline workers are seeing happening in practice. It is only if a victim of trafficking has a positive (stage 2) conclusive grounds decision *and also receives a grant of discretionary leave to remain*, that they can obtain automatic release. It is of note that discretionary leave is rarely granted – – 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.[119] In the instances where leave is granted, this is frequently following the submission of extensive evidence several months after the positive conclusive grounds decision is made.

Reasons from the Home Office that have been seen for maintaining the detention of survivors of trafficking even once they have received positive reasonable grounds decisions, are that they are at *'a risk of absconding'*[120] or *'risk of harm to the public based on a previous criminal conviction'*, which in many cases is a result of or part of their trafficking.

Medical Justice has worked with people who have been negatively impacted by the inclusion of victims of trafficking in the AAR policy. Medical Justice have noted that clients who have received a positive reasonable grounds decision, who would previously have been released, are having their detention maintained and as a result they are spending their recovery and reflection period in detention. This has notably affected people who have recently arrived in the UK and have been issued with a notification that they may be removed to Rwanda. Of the 17 assessments of people at risk of being sent to Rwanda conducted by Medical Justice clinicians, 13 found that detention was already/likely to have already caused harm to the client or that the client was likely to have already deteriorated in detention.[121] What is notable about this group is that as they have arrived in the UK very recently and were detained upon arrival, so they will have had no opportunity to live in the community – their 'risk of absconding' will have been decided without any evidence.

119 ECPAT UK, Government failing child victims of trafficking, exclusive data reveals, October 2020

120 According to the January 2020 Migrants Organise report, Evaluation of Home Office Reporting Conditions, absconding levels are very low, at roughly 3% of the entire migrant population

121 Medical Justice, Who's paying the price? The medical cost of the Rwanda scheme, September 2022, page 6

SUPPORT WITHIN IMMIGRATION DETENTION

The second version of the 'Adults at Risk: Detention potential or confirmed victims of modern slavery policy'[122] sets out how a person's recovery needs should be assessed whilst in a detention setting. This assessment involves an interview by Detention Engagement Teams to identify specific recovery needs and a referral to a healthcare provider to assess any physical and mental recovery needs. Information is then shared with the relevant casework team to decide whether support for recovery can be provided within detention.

However, for all of the reasons outlined in this report, there are significant concerns that a person's recovery needs can simply not be met in a detention setting. Being held in detention is not conducive to the purpose of the 'recovery and reflection period' as set out in international law under Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).[123] This period is intended to be a time when a person can *'recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities'*.[124] During this time a person is entitled to various assistance measures as set out in Article 12 of ECAT with an aim to *'assist victims in their physical, psychological and social recovery'*.[125] It is difficult to envisage how a person can do this whilst detained. This was argued before the Court of Appeal which found that the level of assistance and support that was being provided in detention met the state's domestic and international legal obligations. However, it is important to note that this judgment related to an individual case and the existing guidance at the time stated that *'it will normally be necessary to release a detained individual identified as a [potential victim of trafficking] PVOT after a positive reasonable grounds decision....[except where] can be justified on grounds of public order'* It was acknowledged by the judge that *'it is relatively unusual for a PVoT to be in detention'*.[126] The position is arguably very different now, as explained above.

The guidance is vague around how the Recovery Needs Assessment (RNA)[127] is carried out and how it is determined whether a person's needs can be met in detention.[128] The Modern Slavery Needs interview template primarily focuses on support with interpreters and legal proceedings, with just one question regarding emotional support which asks whether a person *'would like to be referred to a counselling service for emotional support, to help with your recovery from modern slavery'*. There is no information about what this 'counselling' will entail, who would provide it and how long it would be provided for. The template suggests the needs assessment will be done as a one off rather than there being regular engagement with the survivor. It is well established that long-term engagement is needed to help a person to develop a relationship of trust in order to enable disclosure and begin their recovery.[129] The recently published National Referral Mechanism (NRM) handbook[130] outlines how a phased approach to treatment is needed to allow survivors to engage in their recovery in a gradual and paced way and

122 This was published in November 2021 and was intended to supplement the Adults at Risk in immigration detention guidance. It makes clear in its introduction that decision makers should be referred to that policy, rather than the significantly more comprehensive Modern Slavery Act: Statutory Guidance.

123 CETS 197 – Council of Europe Convention on Action against Trafficking in Human Beings (coe.int)

124 Article 13 (1)

125 See paragraphs 146 – 170 of the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings for further commentary on this.

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

127 The RNA is the process for assessing and making recommendations for ongoing support for confirmed victims of human trafficking and modern slavery, whether through the Modern Slavery Victim Care Contract or other services. A victim is entitled to this support and assistance under Article 12 of ECAT and is written into the Modern Slavery Statutory Guidance. See government guidance on the Recovery Needs Assessment (RNA)

128 Alongside the 'Adults at Risk: Detention potential or confirmed victims of modern slavery' policy guidance, the Home Office have recently published a new Detention Services Order (DSO) which *provides operational guidance to Home Office staff working in detention on how to identify possible indicators of modern slavery; refer the identified possible victim into the NRM; and take the steps needed to ensure the individual receives the necessary support whilst detained or on release.* However, much of the guidance is vague and problematic. HBF and Medical Justice were invited to comment on the draft version and made significant suggestions on how it could be amended to make it more user friendly and ensure trauma informed working however none of our suggestions were acted upon.

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

130 OSCE Office for Democratic Institutions and Human Rights (ODIHR), National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, 2022

details the recommended 3-phase model of therapy to aid sustained recovery. The first of the three phases is 'safety and stabilisation'. This is echoed in the NICE guidelines[131] which state that a person is likely to need a level of stability to engage with therapeutic support and it is recommended that trauma-focused therapy is only offered when a person is in a positive of relative stability and perceived safety. It is inconceivable that a person would be able to engage adequately in such therapy while they are detained.

There is also no information or question on the need for individual support worker contact; this greatly undermines the importance and value that support workers offer.[132] It is notable that detention staff are required to provide support and information to detainees, whereas survivors of trafficking who reside in a community setting have an allocated independent support worker under the Modern Slavery Victim Care Contract. It is entirely inappropriate and unrealistic for detention staff to be providing this support, particularly given that it is recognised that victims often distrust persons perceived to be in positions of authority, and the potential conflict of interests in the role of Home Office casework or detention staff.

The Home Office's approach to recovery and reflection periods may lead to more victims of trafficking being detained and their recovery needs being left unmet, which in turn leads to a higher risk of long-term difficulties and an increased risk of being re-trafficked or exploited further.

131 NICE guideline – Post-traumatic stress disorder, December 2018

132 See Anti-trafficking Monitoring Group, One day at a time: A report on the Recovery Needs Assessment by those experiencing it on a daily basis, April 2022 for details of the importance of the role of a support worker in a person's recovery journey.

CONCLUSION

This report highlights that survivors of trafficking are being failed and further harmed by a system that prioritises immigration control over the welfare of victims of crime. Rather than taking steps to address ongoing failings in the process for identifying and releasing survivors of trafficking, the government has introduced changes that have only worsened them. This has led to more being detained and experiencing significant harm while in detention.

The Nationality and Borders Act 2022 (NABA)[133] will have a further negative impact on the identification and protection of survivors of trafficking by making the 'test' for deciding when someone might be a victim more stringent[134] and by determining that if a person provides 'late' evidence, 'without good reason' the Home Office can refuse their trafficking claim on the basis of their 'damaged credibility',[135] despite the recognised barriers to disclosure many victims face. Those considered to be a 'threat to public order' or is deemed to have made a claim in 'bad faith' can be forcibly removed from the UK/denied permission to remain in the UK.[136] While we are waiting for the formal guidance setting out how these provisions will be enforced in practice, it is likely that they will lead to an increase in the number of victims of trafficking who are detained, both those who have been identified and remain in detention, and the many who will remain unidentified. The Slavery and Human Trafficking (Definition of Victim) Regulations 2022,[137] intended to define victims of slavery and human trafficking for the purpose of the NABA, have already been widely criticised for being highly complex and narrowing the definition of a victim,[138] going against international law[139] and in turn reducing the scope of victims that will be identified.[140]

Further to this, in April 2022 the then Prime Minister Boris Johnson announced that the government is *"expanding our immigration detention facilities, to assist with the removal of those with no right to remain in the UK"* and that they are *"are investing over half a billion pounds in these efforts"*.[141] Boris Johnson and the then Home Secretary Priti Patel also both confirmed that proposed accommodation centres in the UK will emulate the Greek model, which contain a secure detention facility. The planned expansion of the detention estate presents a reversal of the government's previous work and commitments, made since 2016,[142] to reduce numbers in detention.[143]

Recent government statements[144] make clear that there remains a culture of disbelief when it comes to survivors of trafficking in detention, despite there being no available evidence that the system is being abused. Viewing the system of safeguards for vulnerable people who need help through a lens which casts doubt upon their motives in seeking it, results in a system that denies victims of trafficking crucial identification protection, support and access to services. It also plays into the hands of traffickers, who are able to threaten victims that any attempt to report their exploitation to, or to seek assistance from, the authorities will result in their immigration detention and removal.

No survivor of trafficking should ever be detained. Instead, survivors must be provided with the support to which they are entitled under international and domestic law in the community, including secure accommodation, psychological assistance and legal information and support. This is crucial to enable them to recover and rebuild their lives.

133 Nationality and Borders Act 2022 – Parliamentary Bills – UK Parliament
134 Section 60, Nationality and Borders Act 2022
135 Section 60, Nationality and Borders Act 2022
136 Section 65, Nationality and Borders Act 2022. For further explanation of the impact of these measures, see the Detention Taskforce briefing for the House of Lords Report Stage of the Bill, March 2022
137 These regulations came into force on 28 July 2022, albeit with a motion to regret from the House of Lords – see Slavery and Human Trafficking (Definition of Victim) Regulations 2022 – Lords' votes in Parliament – UK Parliament
138 By making the definitions of exploitation prescriptive rather than leaving room to adapt and amend
139 Joint Briefing for the Sixth Delegated Legislative Committee debate: The draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022 Wednesday 29 June 2022 – Joint Briefing: draft Slavery and Human Trafficking (Definition of Victim) Regulations | ECPAT UK
140 Requiring someone to have personal circumstances that significantly impair their ability to protect themselves from slavery, servitude and forced labour.
141 Prime Minister's speech on action to tackle illegal migration: 14 April 2022
142 Home Office, Government response to the review on welfare in detention of vulnerable persons, January 2016
143 Government Response to the Home Affairs Select Committee's Fourteenth Report of Session 2017-19, July 2019
144 See for example, The Telegraph, Modern slavery law 'is biggest loophole' for migrants (telegraph.co.uk), 16 August 2022 and references to 'rising abuse of the NRM' in the government's 'New Plan for Immigration', updated March 2022

RECOMMENDATIONS

The Home Office must once again commit to reducing the number of those detained and the duration of detention of removal, as it did in response to the Shaw Review.[145] In addition, the Home Office must carry out an urgent, comprehensive review of the process for detaining and continuing to detain confirmed or possible victims of trafficking, with meaningful input from relevant stakeholders and those with lived experience. As part of that review, the following changes should be made:

DECISIONS TO DETAIN

- A more effective screening process prior to the decision to detain must be introduced to ensure that potential victims of trafficking are identified at the earliest opportunity.
- All government agencies with the power to make arrests under immigration powers should receive compulsory training on human trafficking identification and the need to approach assessment and decision making in a trauma informed way. The training should include real cases which fail to fit simplistic understandings of indicators of these abuses to ensure a 'one size fits all' approach is not perpetuated.
- Everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain including provision to challenge decisions that there are exceptional circumstances to detain victims of trafficking.
- Detention gatekeepers should have access to all documents and files including past immigration and medical records and previous NRM referrals, of anyone being considered for detention, and people identified as vulnerable by the detention gatekeeper should not be detained. The detention gatekeeper intake pro-forma should include a question on indicators of human trafficking.

ADULTS AT RISK POLICY

- The government should abolish the three AAR levels of risk. It should revert to its previous policy focusing on risk of harm, so that an individual who belongs to a Referrals into the National Referral Mechanism (NRM) from det ategory at increased risk of harm in detention is considered to be suitable for detention only "in very exceptional circumstances". The Home Office should consult with a wide range of stakeholders, including people with lived experience, to develop an agreed grouping of categories and the threshold for the test.
- A self-declaration of vulnerability should trigger a duty of inquiry into the asserted vulnerability.

REFERRALS INTO THE NATIONAL REFERRAL MECHANISM (NRM) FROM DETENTION

- There should be independent first responders in detention, instead of Home Office staff, to identify people and make referrals into the NRM to avoid the current conflict of interest with the Home Office's responsibility for immigration enforcement. The independent first responder should have unrestricted access to immigration detention and prisons.

DECISIONS TO MAINTAIN DETENTION

- Criminal convictions arising directly from victims' exploitation must not be used as reasons to detain or to continue detention.
- Anyone who receives a positive reasonable rrounds decision from within detention should be immediately released into appropriate and secure accommodation so that they can progress with the reflection and recovery to which they are entitled.
- Those with positive reasonable grounds decisions who nonetheless continue to be detained due to 'exceptional circumstances' must receive the full range of support that is also afforded to those in the community, including a support worker.

145 Government response to Stephen Shaw's review into the welfare in detention of vulnerable persons

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