

# Abuse by the system:

Survivors of trafficking in  
immigration detention

## Executive Summary



# EXECUTIVE SUMMARY

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The Home Office routinely detains people who are subject to immigration control only to release them again back into the community,<sup>1,2</sup> causing them significant harm in the process.<sup>3</sup> This includes survivors of trafficking and slavery.<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup>

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,<sup>7</sup> despite the government recognising that this would result in more survivors of trafficking being detained.<sup>8</sup> 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.<sup>9</sup> 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<sup>10</sup> to 1,611 in 2021,**<sup>11</sup> the year that victims of trafficking were included in the AAR policy. In 2021, **92% (1,420) of referrals received a positive reasonable grounds (first stage) decision.**<sup>12</sup> At the end of 2021 a new decision-making body, the Immigration Enforcement Competent Authority, was introduced to make decisions on NRM referrals from detention<sup>13</sup> 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.<sup>14</sup> **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.<sup>15</sup>

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.<sup>16</sup>
- 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*’.<sup>17</sup> 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.<sup>18</sup>
- The Detention Centre Rules 2001 are meant to function as a safeguard against the detention of vulnerable people.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup>
- 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.<sup>23</sup>

It is also feared that the Nationality and Borders Act 2022<sup>24</sup> 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<sup>25</sup> 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’,<sup>26</sup> 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.<sup>27</sup> 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](#)

## CASE STUDY: SAM<sup>28</sup>



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.



## RECOMMENDATIONS

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The Home Office must once again commit to reducing the number of those detained and the duration of detention or 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.