

# Leave in Limbo

Survivors of trafficking with uncertain  
immigration status

August 2023



## CONTENTS

---

About the Helen Bamber Foundation	2
Executive summary	3
Introduction	4
Survivors of trafficking in the UK	5
Being granted leave to remain in the UK as a victim of trafficking	5
The importance of secure and long-term immigration status	8
Numbers of survivors of trafficking granted leave	9
New policy on 'temporary permission to stay' for survivors of trafficking	10
Length of leave granted via the National Referral Mechanism	12
Changes under the Illegal Migration Act	13
Conclusion	14
Recommendations	14

## ABOUT THE HELEN BAMBER FOUNDATION

---

The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. Our work alongside survivors shows us that, with early and appropriate care and support, they can build the strength to move on with their lives. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services.

HBF works to prevent the re-trafficking and further exploitation of survivors, with each department working collaboratively to identify and reduce potential risks for our clients. This includes using trauma-informed methods of working to establish and maintain a professional relationship of trust; conducting specialist trafficking assessments; and evaluating needs and risks on an on-going basis. We take steps to reduce pre-existing and arising risks through, for example, ensuring a person is receiving quality legal advice to give the best possible chance of a grant of leave to remain or ensuring they have access to appropriate housing and can move from accommodation with known risk factors. Our multi-disciplinary clinical team seeks to address the physical and mental health problems that our clients are experiencing via medical advice and specialist trauma-focused therapeutic care. We also offer community, education and integration activities and a social support network to aid individual recovery, well-being and independence.

*This report was written by Beth Mullan-Feroze, Danning He and Kamena Dorling.*

## EXECUTIVE SUMMARY

---

The Helen Bamber Foundation (HBF) works with people who have been trafficked to the UK from abroad and/or have experienced trafficking while on their journey to, or during their time in, the UK. Coming from countries such as Vietnam, Eritrea, China, Nigeria and Albania, these survivors have experienced sexual exploitation, labour exploitation and criminal exploitation in brothels, hotels, cannabis farms, nail salons and shops. Human traffickers will recruit people in positions of vulnerability and bring them to the UK through deception and coercion - often the way victims of trafficking reach the country is entirely outside of their control. Last year, over 12,000 non-UK nationals were referred to the National Referral Mechanism (NRM) - the framework designed to identify and protect victims of trafficking and modern slavery - as potential victims of trafficking.

For these people, immigration status is a key concern. Without having permission to be in the UK ('leave to remain'), survivors of trafficking experience ongoing fear and anxiety about the possibility of their removal from the country or being held in immigration detention. This deters many from coming forward to seek help. Even those who are formally identified as survivors of trafficking can face significant hurdles to obtaining the secure immigration status that they need to feel stable enough to begin to engage with support services and the police.

HBF's multidisciplinary work with survivors of trafficking has shown that it is only once granted leave to remain in the UK, with the sense of safety that this brings, that they are truly able to benefit from therapeutic care and begin to recover from the trauma that have experienced. A lack of a secure immigration status can also result in poverty, destitution and isolation as it prevents survivors from working and accessing services. This in turn can leave survivors vulnerable to abuse, exploitation and re-trafficking.

New figures show that shockingly few of the non-UK nationals recognised as survivors of trafficking by the NRM are granted leave to remain in this country. This is despite the high risk of re-trafficking that many of them would face if returned to their country of origin or if they are left with precarious status in the UK. In 2020 to 2022:

- 5,578 adults were confirmed as victims of trafficking but only 364 adults subject to immigration control were granted leave via the NRM.
- 5,266 children were confirmed as victims of trafficking, but fewer than 21 were granted leave via the NRM.

Those that are granted leave to remain often only receive this after lengthy delays and most grants are only for a short period of time, with the average grant period being for just 12 months. These very short grants of leave can cause more harm than good.

Due to the significant flaws in the leave to remain process under the NRM, many non-UK national survivors are reliant on the asylum system as a way of being granted a secure form of immigration status, with a route to settlement, something that is not available for those in the NRM. 93% of HBF clients who have been trafficked are in both the asylum and NRM systems.

This problem will only worsen following new guidance which implements the Nationality and Borders Act 2022 and narrows the already restrictive policy for whether a conclusively recognised victim of trafficking should be granted leave to remain. In addition, the Illegal Migration Act 2023 will cut off access to the UK asylum and NRM protection system for those arriving 'irregularly', removing the asylum 'safety net' for thousands of survivors and increasing the risk that people will be kept in their trafficking situation or face further exploitation or harm.

In order to actually break the business model of the traffickers, protection and support measures must be put in place that allow people to come forward about their exploitation without fear of repercussion and in the knowledge that they will receive meaningful protection and help to recover from their trafficking experience. If we are to enable survivors' long-term recovery, it is essential that they have stability and safety. For those without secure immigration status who are conclusively recognised as victims of trafficking under the NRM, a form of leave to remain with the right to work or access benefits and housing and a route to settlement is vital.

## INTRODUCTION

---

The survivors<sup>1</sup> supported by the Helen Bamber Foundation (HBF) have been trafficked to the UK from abroad and/or have experienced trafficking while on their journey to the UK or during their time in the UK. Their immigration status is a key concern. Without permission to be in the UK (leave to remain), survivors experience ongoing fear and anxiety about the possibility of their removal from the country or being held in immigration detention. This deters many from coming forward to seek help and even those who are formally identified as survivors of trafficking can face an ongoing struggle to obtain the secure immigration status that they need to feel stable enough to start rebuilding their lives. There is a wealth of research showing how vital long-term stability is to recovery<sup>2</sup> and a lack of a secure immigration status can also result in poverty, destitution and isolation as it prevents survivors from working and accessing services. This in turn increases their vulnerability to abuse, exploitation and re-trafficking.

New figures show that shockingly few of the non-UK nationals recognised as survivors of trafficking by the National Referral Mechanism (NRM) - the framework designed to identify and protect victims of trafficking and of modern slavery - are granted leave to remain in this country. This is despite the high risk of re-trafficking that many of them would face if returned to their country of origin or if they were left with precarious status in the UK. Many non-UK national survivors are reliant on the asylum system as a way of being granted a secure form of immigration status, which (despite its flaws such as poor decision making and delays) also has a route to settlement, something that is not available for those in the NRM.

This situation will only worsen following the Nationality and Borders Act 2022 and new policy from the UK government which narrows the already restrictive process for deciding whether a conclusively recognised victim of trafficking<sup>3</sup> should be granted leave to remain. In addition, the Illegal Migration Act 2023 will cut off any access at all to the UK asylum system and NRM protections for those arriving 'irregularly'.

This report examines why secure immigration status is so vital to adult survivors' recovery;<sup>4</sup> and the problems in the existing systems. It sets out what needs to change in the UK if we are to ensure that survivors are adequately supported to both reduce the risks of re-trafficking and increase the chances of their traffickers being convicted for their crimes.

1 The terms 'survivor' and 'victim' will both be used in this briefing, although HBF aims to use 'survivor' as much as possible.

2 See for example Hajak VL, Sardana S, Verdelli H and Grimm S (2021) [A Systematic Review of Factors Affecting Mental Health and Well-Being of Asylum Seekers and Refugees in Germany](#). Front. Psychiatry 12:643704. doi: 10.3389/fpsy.2021.643704; Jannesari S, Hatch S, Prina M, Oram S. [Post-migration Social-Environmental Factors Associated with Mental Health Problems Among Asylum Seekers: A Systematic Review](#). J Immigr Minor Health. 2020 Oct;22(5):1055-1064. doi: 10.1007/s10903-020-01025-2; British Red Cross, [Hope for the future: Support for survivors of trafficking after the National Referral Mechanism. UK integration pilot – evaluation and policy report](#), July 2019

3 Has received a final decision (known as a Conclusive Grounds decision) that they are a victim of modern slavery or human trafficking according to the balance of probabilities.

4 The report focusses on adults as HBF's clients are predominantly over 18, although we recognize there is a significant problem regarding child victims of trafficking not being granted long-term leave to remain and this has a detrimental impact on their mental health and ability to plan their futures.

## SURVIVORS OF TRAFFICKING IN THE UK

Human trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit.<sup>5</sup> In the UK, trafficking also falls under the wider term 'modern slavery'.<sup>6</sup> It is an ever-increasing and highly profitable crime that is committed both across international borders and/or domestically (within the borders of one country). Trafficking often (but not always) involves a process of movement of an adult or child to a site of exploitation, for example a bedroom, factory, brothel, hotel, cannabis farm, nail salon, or a shop. The victim is then trapped in modern slavery, most commonly in forms of sexual exploitation, labour exploitation, criminal exploitation or a combination of these.

The survivors with whom HBF works have been trafficked to the UK from abroad or have experienced trafficking while en route to the UK and/or following their arrival in the UK. The top five countries of origin of our clients who are survivors of trafficking are Albania, Nigeria, Vietnam, Eritrea and China, and 63% are female, 36% are male. They predominantly experience labour and sexual exploitation as well as often being held in domestic servitude.

**HBF's clients will generally be referred into the NRM. In addition to this, the trafficking-related traumatic experiences of survivors, and their risk of being re-trafficked should they be forcibly returned to their country of origin, often form part, or all, of the grounds for their asylum claim. It is only through a functioning and effective NRM and asylum system that the survivors we work with will be able to access support, assistance and long-term protection.**

### BEING GRANTED LEAVE TO REMAIN IN THE UK AS A VICTIM OF TRAFFICKING

The survivors of trafficking supported by HBF will either be granted leave to remain (leave) by:

- Being referred into the National Referral Mechanism (NRM)<sup>7</sup> and, once finally recognised as a confirmed victim of trafficking being granted leave to remain; and/or
- Claiming asylum with their experience of trafficking forming part or all of the grounds for their claim; and/or
- Another route that they may be eligible for under the Immigration Rules, for example, if they have a British child or spouse. However this would not be linked to their trafficking experience and is not covered by this briefing.

#### Leave granted via the NRM

If 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<sup>8</sup> days.<sup>9</sup> 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), although it is taking significantly longer than 30 days for this decision to be made in practice - in 2022, it took an average of over

5 See [UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children](#) (Palermo Protocol), November 2000, for full definition.

6 The term 'modern slavery' includes human trafficking, slavery, servitude and forced and compulsory labour.

7 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. Home Office, National referral mechanism guidance: adult (England and Wales), May 2022

8 Recently reduced from 45 days by the Nationality and Borders Act 2022.

9 Unless there are "public order grounds" to prevent it or alternatively because there is firm, objective evidence that an improper claim has been made. See paras 14.167-14.188, [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 3.3. Under s63 of the Nationality and Borders Act potential victims who have criminal sentences of over one year, amongst other categories are both excluded from support under Article 12 of the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) support and at risk of immediate removal from the UK. Also see Article 13(3) ECAT

18 months<sup>10</sup> for a Conclusive Grounds (CG) decision to be made. At the time of writing a person cannot be removed from the UK until a CG decision has been made,<sup>11</sup> although this will change for many survivors under the Illegal Migration Act 2023 (see below).

Once they are conclusively recognised as a victim of trafficking in the NRM, a person must automatically be considered for permission to stay in the UK. As there is no timeframe for when this decision should be made, survivors must wait for an undetermined amount of time for this further decision. The ‘test’ for whether a person will be granted permission to stay, described below at page 10, is very restrictive.

### Leave granted through the asylum system

In order to make a successful asylum claim, a person will need to show that they would have a “well-founded fear” of persecution if they were returned to their home country. This needs to be based on the following grounds: race; religion; nationality; political opinion; or membership of a particular social group.<sup>12</sup> An asylum claim that is entirely or partly made on the grounds that a person has been a victim of trafficking would usually be made on the basis that they would be at risk of being re-trafficked if returned to their country of origin or that they would be at risk of serious harm because they had been trafficked (for example because of the stigma around their sexual exploitation). It would then be determined whether being a victim of trafficking made them a member of a particular social group. It would also need to be proven that they are unable to receive sufficient protection in their country of origin, and there is no other part of their home country that they could safely relocate to.

If an individual’s asylum claim is successful, they will be granted refugee status with leave to remain in the UK for five years.<sup>13</sup> However, it is important to note that not all survivors claim asylum and not all that do are successful in their claims, leaving them reliant on being granted leave through the NRM.

### Leave for those with a pending asylum claim

The 2021 case of *KTT*<sup>14</sup> found that where a person has a positive CG decision and also has an outstanding asylum claim, which is partly<sup>15</sup> or entirely based on their fear of being re-trafficked if they are returned to their home country, they should be granted leave to remain in the UK until their asylum claim has been finally decided. This means that any person who received a positive CG decision before 30 January 2023 and had an asylum claim pending should normally be granted leave.<sup>16</sup> This is only an ‘interim’ grant and in our experience those who are eligible under this concession are being granted 12 months leave. This leave will either be curtailed or varied once the asylum or further submissions decision has been finally determined. The guidance makes clear that any future application for an extension of leave will be determined under narrower guidance (described below). It therefore remains unclear what would happen if a person has not received a decision on their asylum claim by the time that their grant of interim leave expires.<sup>17</sup>

10 [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)

11 Article 10, [Council of Europe Convention on Action against Trafficking in Human Beings: Treaty Series No. 37](#) (2012)

12 [1951 Convention and Protocol Relating to the Status of Refugees](#)

13 In June 2023, the government [paused its group 1/group 2 system](#) of giving refugees reduced length of leave depending on how they reached the UK so all refugees should be granted five year’s leave. See Home Office, [Assessing credibility and refugee status post 28 June 2022](#).

14 *R (KTT) v Secretary of State for the Home Department* [2021] EWHC 2722 (Admin)

15 This was confirmed in the case of *SSA (Ethiopia) v SSHD* 2021-LON-001894

16 New guidance confirmed that “Under this policy, those individuals who were eligible for consideration of leave to remain under the KTT judgement prior to 30 January 2023, will not have their applications for DL determined under Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery. Instead, where:

- a competent authority made a positive conclusive grounds decision prior to 30 January 2023; and
- the individual had prior to 30 January 2023 articulated an asylum claim or further submissions which were trafficking-related as set out above; and
- the individual’s asylum claim or further submissions have at the present date not yet been finally determined (this means that they are still awaiting a decision or still have in-country appeal rights to exercise)

You **must** consider granting DL. DL will **normally** be granted in these circumstances.”  
Home Office, [Discretionary Leave](#), Version 10.0, 16 March 2023, pg 11

17 On 28 May 2023, there were 137,583 asylum claims awaiting an initial decision. Refugee Council, [Briefing - The asylum backlog and asylum accommodation](#), June 2023

## HOW MANY SURVIVORS OF TRAFFICKING MIGHT NEED LEAVE TO REMAIN

In 2022, 12,735 non-UK nationals who are potential victims of trafficking were referred into the NRM.<sup>18</sup> The most common nationalities were Albanian, Vietnamese, Eritrean, and Sudanese. 16,821 first stage ('Reasonable Grounds') and 6,189 final ('Conclusive Grounds') decisions were made – 89% of Conclusive Grounds (CG) decisions were positive, confirming that the individuals were victims of trafficking.<sup>19</sup>

In the same year, 74,751 people claimed asylum in the UK, with the eight most common countries of origin being Albania, Afghanistan, Iran, Iraq, Syria, Afghanistan, Bangladesh, Sudan and Eritrea. Of the 18,699 initial decisions on asylum applications made, 76% were grants of asylum, humanitarian protection or alternative forms of leave. 51% of appeals against a refusal of asylum were allowed (meaning the Home Office was directed to reconsider their decision).<sup>20</sup>

**There is no published data on how many people seeking asylum are survivors of trafficking nor how many are in both the asylum system and NRM, but 93% of HBF clients who are survivors of trafficking are in both systems.**<sup>21</sup> Of the 3,252 potential victims of trafficking who arrived by small boat in 2022, 93% had both an asylum claim and NRM referral.<sup>22</sup> A Freedom of Information request response from the Home Office shows that 44% of Albanian adults who made a claim for asylum in 2021 were also referred into the NRM. This was also the case for 39% for Vietnamese asylum seekers and for 20% for Eritrean asylum seekers.<sup>23</sup>

Some survivors do not want to be referred to the NRM due to lack of understanding/awareness (which may be, but is not necessarily, related to mental health problems associated with the trafficking experience); lack of access to specialist legal advice; and/or having heard negative things about the process and the support available. Last year, 4,186 suspected adult victims of non-UK nationalities who did not consent to enter the NRM were reported to the Home Office via the Duty to Notify process.<sup>24</sup>

It is important to note that these figures do not fully reflect the scale of the problem because many survivors are not able to escape their exploitation or are too scared to bring themselves to the attention of authorities.<sup>25</sup> This is especially the case for those who have been trafficked to the UK from abroad – victims with insecure immigration status frequently believe that they cannot report their abuse and exploitation to authorities, for fear of serious personal consequences where their information is shared with immigration enforcement, including arrest, detention and removal from the UK.<sup>26</sup> This is something that traffickers will often threaten and reinforce.

18 [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)

19 [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)

20 Published statistics on NRM decisions do not disaggregate between UK and non-UK nationals. Home Office, [How many people do we grant protection to?](#)

21 Of the 83,236 people that arrived in the UK on small boats between 1 January 2018 and 31 December 2022, 7% (6,210 people) were referred to the NRM. Most of these individuals (5,897 or 95%) also had an asylum claim lodged. Home Office, [Irregular migration to the UK, year ending December 2022](#)

22 Home Office, [Irregular Migration Statistics year ending March 2023 - Summary Tables](#)

23 Freedom of Information request 73436, answered by the Home Office on 3rd April 2023

24 [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)

25 The Global Slavery Index estimates that there are currently over 122,000 people living in modern slavery in the UK, or 1.8 people in slavery per 1,000 people. Walk Free, [Global Slavery Index – United Kingdom](#)

26 Taskforce on Victims of Trafficking in Immigration Detention, [Justice Committee - Pre-legislative scrutiny of the draft Victims Bill - Inquiry Response](#), 10 June 2022

## THE IMPORTANCE OF SECURE AND LONG-TERM IMMIGRATION STATUS

For non-UK national survivors of trafficking, the lack of secure and long-term immigration status is an ongoing concern. **Without leave to remain in the UK, survivors continue to experience ongoing instability, stress and worry about the possibility of being removed from the country or held in immigration detention.** This has a detrimental impact on their mental health. The uncertainty of not knowing what will happen, living for extended periods with the possibility that the decision could arrive 'any day now' is extremely harmful for survivors' mental health, slowing recovery and causing additional anxiety. It can also result in survivors losing trust in the authorities including even support providers.

**Without leave, survivors are also prevented from working and accessing mainstream services and often face poverty, destitution and isolation as a result.** This, and the ongoing uncertainty they face, prolongs and increases a survivor's risk of being re-trafficked or suffering further harm. They do not have control of many areas of their lives, nor do they have any clarity as to when their situation will improve or change. This places them at a heightened risk of being targeted for re-exploitation. Not having leave can be particularly detrimental for clients with young children, who often do not have any childcare and are unable to engage in therapy or other activities that may aid their recovery.

**Our long term multi-disciplinary work with survivors of trafficking has shown that it is only once granted leave to remain in the UK, with the sense of safety and security that this brings, that they are truly able to benefit from an evidence-based program of therapeutic care<sup>27</sup> and begin to recover from the trauma they have experienced.** Many survivors of trafficking struggle to engage in trauma-focused therapy if they remain preoccupied with their lack of immigration status. Individuals may feel too unsafe to disclose the full details of the events they have experienced, which can, in turn, lead to them not receiving the optimal benefit from therapy. Moreover, trauma-focused therapy can be temporarily de-stabilising: symptoms may get worse before they get better. It is therefore recommended that therapy be offered when the person is in a position of relative stability and perceived safety.<sup>28</sup> While this is not always possible due to the significant delays in the NRM and asylum system, it remains HBF's position that a person should ideally be on the trajectory towards secure long-term protection.

The inability to access therapeutic support can in turn hinder a person's ability to recover from their experiences. Without treatment, there is a low recovery rate for Post-Traumatic Stress Disorder (PTSD); where PTSD is first assessed five months after the trauma approximately 36.9% of people recover without treatment.<sup>29</sup> Where PTSD persists beyond six months post-trauma it is unlikely that a person will recover from PTSD without intervention.<sup>30</sup>

**Even where granted leave, if it is only for a short period then many of the issues above cannot be resolved.** Short grants of leave can also cause a great deal of practical problems. Once a survivor is granted leave, they are usually required to move out of the accommodation provided through the asylum system or under the Modern Slavery Victim Care Contract swiftly and find alternative housing, as well as apply for welfare benefits or seek appropriate employment. These practical steps can be arduous, especially if survivors are not receiving practical support from appropriate and specialist organisations, and there is a risk that they will only just have been resolved before a person has to once more think about applying for further leave. If a survivor is not able to get support and are unable to take these actions themselves there is a real risk of them falling into serious difficulties including destitution, which in turn leads to them being at increased risk of re-trafficking or further harm.

27 This is recognised by the National Institute for Health and Care Excellence (NICE) in its [Guidelines on Post-Traumatic Stress Disorder](#), 2018. In these guidelines NICE states that 'For people with additional needs. . . the clinician should 'take into account the safety and stability of the person's personal circumstances (for example their housing situation) and how this might affect engagement with and success of treatment'. The 3-phase model of therapeutic care for survivors of trafficking is also recommended within the NRM handbook - OSCE Office for Democratic Institutions and Human Rights (ODIHR), [National Referral Mechanisms: Joining efforts to protect the rights of trafficked persons. A practical Handbook - 2nd edition](#) see pg 254-257

28 National Institute for Health and Care Excellence (NICE), [Guidelines on Post-Traumatic Stress Disorder](#), 2018

29 Morina N, Wicherts JM, Lobrecht J, Priebe S. [Remission from post-traumatic stress disorder in adults: a systematic review and meta-analysis of long-term outcome studies](#). Clin Psychol Rev. 2014 Apr;34(3):249-55. doi: 10.1016/j.cpr.2014.03.002.

30 Hiller RM, Meiser-Stedman R, Fearon P, Lobo S, McKinnon A, Fraser A, Halligan SL. [Research Review: Changes in the prevalence and symptom severity of child post-traumatic stress disorder in the year following trauma - a meta-analytic study](#). J Child Psychol Psychiatry. 2016 Aug;57(8):884-98. doi: 10.1111/jcpp.12566.



**These short periods of leave do not allow sufficient time for a person to concentrate on their recovery, as may be intended by the grant of leave.** For example, it can take away a person's attention from any therapeutic support they are receiving.

## NUMBERS OF SURVIVORS OF TRAFFICKING GRANTED LEAVE

Leave to remain (previously known as 'discretionary leave', now called 'temporary permission to stay') is rarely granted to survivors of trafficking who have been through the NRM. In 2020 to 2022:

- **5,578 adults were confirmed as victims of trafficking.<sup>31</sup> However, only 364 adults subject to immigration control<sup>32</sup> were granted discretionary leave as a result.<sup>33</sup>**
- **Despite 5,266 children being recognised as victims of trafficking, fewer than 21 were granted discretionary leave in the same period.<sup>34</sup>**

Where leave *is* granted, in HBF's experience the decision is regularly not made until several months after the positive Conclusive Grounds (CG) decision is made.

**Of a sample of 33 survivors of trafficking, who were accepted and supported by HBF after 1 January 2020 and who received a positive CG decision, only eleven (33%) were granted discretionary leave.** Of the 24 confirmed victims who were not granted discretionary leave, twelve were granted refugee status and one received another type of leave. As of the end of June 2023, nine confirmed victims from this sample group are still waiting for a decision on their stay in the UK.

**That around a third of our clients received discretionary leave reflects the significant amount of support and evidence provided by HBF. In the majority of cases the reason given for granting leave was to allow survivors to finish a treatment course based on supporting evidence submitted by HBF and other clinical institutions.** In HBF's experience, in order for a person to stand any chance of receiving leave they will have to provide objective evidence outlining exactly why it is needed, which is often impossible for many survivors to obtain. The reasons for this include complex and traumatic histories; adverse current circumstances; difficulties obtaining legal advice and representation; as well as multiple vulnerabilities that survivors experience.

For almost every client who has received a grant of leave, HBF has been asked to provide at least one, and in several cases multiple, letters to give an overview of the support they are receiving and why leave is required. In cases where a person may not be 'actively' receiving therapy much more detailed evidence is required to outline the reasons why this may be case. Ironically, as noted above, the reason that people are often unable to engage with trauma-focussed therapy is because of their uncertain immigration status and the distress this is causing them. A person's inability to engage with therapy is only one of many reasons that a person may not be in therapy; in all services that provide therapeutic care, including HBF but particularly statutory services, there are long waiting lists for referrals and for treatment to begin. It can be several months, and sometimes longer, before a person can commence HBF's three-stage model of therapeutic care, for a myriad of reasons including capacity, resources and a person's readiness.

At the time the guidance was updated to reflect the KTT decision, 11 of the 21 current HBF clients impacted by the judgment were yet to receive a decision on leave. Since then two clients have received leave to remain in line with the guidance and the remaining nine are still awaiting a decision.

31 Table 19 of [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022: data tables](#)

32 Unfortunately, nationality is only broken down for referrals but not RG/CG decisions. For referrals, 69% were foreign nationals in 2021, and 66% in 2020.

33 Freedom of Information Request reference: 71848, answered by the Home Office on 5th December 2022; and Freedom of Information Request reference: 73773, answered by the Home Office on 12th May 2023.

34 The above figure is even lower than that of the previous two-year period (2019 to 2020), when just 102 adults (and 17 children) were granted discretionary leave to remain in the UK. ECPAT UK, [Nationality and Borders Bill: immigration outcomes for child victims of trafficking](#)

## CASE STUDY



KM is a survivor of trafficking who arrived in the UK on a small boat after escaping his home in Iran. Over his journey to the UK, he was transported through Turkey and various countries in Europe. During this time, KM was sexually abused, exploited in forced domestic work (trafficked for labour exploitation), and suffered other forms of inhuman treatment. Upon arrival in the UK, KM was detained immediately and claimed asylum on the same day.

KM was held in immigration detention for several months, where his mental health deteriorated significantly. At his lawyer's request, KM was assessed by a psychiatrist and diagnosed with PTSD, depression, and anxiety. His lawyer made multiple sets of representations and eventually Home Office Immigration Enforcement referred him into the National Referral Mechanism (NRM). Within four days, the Home Office found that there were reasonable grounds to believe KM to be a victim of trafficking and he was subsequently released from detention.

Months after his release from detention, KM was referred to the Helen Bamber Foundation (HBF) and he started to receive multidisciplinary care for his recovery. HBF provided a clinical letter to request that KM be conclusively recognised as a victim of human trafficking and his immigration status regularised as a matter of urgency.

21 months after his NRM referral, KM received a positive Conclusion Grounds decision. Another 12 months passed before he was finally granted discretionary leave to remain in the UK but he only received six months' leave. HBF had to provide further evidence setting out why six months leave was insufficient for him to be able to access and complete the therapeutic support that he required to aid his recovery. In the interim KM was granted refugee status (and five years' leave to remain) on the basis that he was at risk of being re-trafficked and he has now finally been able to start rebuilding his life.

## NEW POLICY ON 'TEMPORARY PERMISSION TO STAY' FOR SURVIVORS OF TRAFFICKING

On 30<sup>th</sup> January 2023, Home Office policy was changed in order to reflect section 65 of the Nationality and Borders Act 2022<sup>35</sup> which significantly worsens the problem of survivors of trafficking being left with insecure status. Now 'Temporary Permission to Stay' will be only granted to confirmed victims of trafficking in order to:

- Assist the person in their recovery from any physical or psychological harm arising from their exploitation. However, if the person can get assistance in their home country, then permission to stay may not be granted.
- Enable the person to seek compensation if they are unable to pursue this remotely.
- Enable the person to co-operate with authorities in connection with an investigation or criminal proceedings.<sup>36</sup> Again it must be confirmed that it is necessary for the person to be physically present in the UK to cooperate with the investigation or prosecution.

The first of these three reasons to grant leave is now much narrower than in the pre-2023 guidance, which stated that leave could be granted where "necessary owing to personal circumstances".<sup>37</sup>

**Despite the government's stated commitment to the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT),<sup>38</sup> this approach is not in line with the Convention.** In the explanatory report to ECAT it is made clear that an assessment of a survivors 'personal situation' for the purposes of granting

35 [Nationality and Borders Act 2022](#).

36 [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](#).

37 Home Office, [Temporary permission to stay for victims of human trafficking and slavery: caseworker guidance](#)

38 [Council of Europe Convention on Action against Trafficking in Human Beings: Treaty Series No. 37](#) (2012)

leave should take in “a range of situations, depending on whether it is the victim’s safety, state of health, family situation or some other factor which has to be taken into account”.<sup>39</sup>

**The government’s approach fails to address the comprehensive needs of survivors when assessing whether to grant leave, including looking at risks of re-trafficking if returned to their country of origin, safety and protection and all the needs of the survivor.**<sup>40</sup> In current law and policy, leave for survivors of trafficking is seen only as a way to assist their recovery and/or engagement with the criminal justice system. Then the assumption is that they will return to their country of origin, so risk on return is not a consideration and the new guidance states that no risk of re-trafficking assessment will be carried out. This, combined with the fact that there is no route to settlement through the NRM system, means that **survivors who would be at increased risk of re-exploitation or further harm if returned to their country of origin frequently have to rely on the asylum system as a ‘safety net’ if they are to have any prospect of receiving long-term support to assist their recovery.** This forces them to go through two arduous and flawed systems, frequently delaying their recovery. It is not uncommon for people to fail to understand the differences between the two systems and opt for only one.

The new requirement to consider whether a person can pursue treatment, compensation or engage with an investigation whilst not living in the UK is creating yet another hurdle for survivors of trafficking, who will now have to provide further evidence in support of their remaining in the UK. In addition to contributing to fear of return, this has the effect of making the process even more burdensome and potentially creating further delays. **For example, an HBF client recently received a decision refusing leave to remain, despite receiving therapeutic and other support from HBF, because it was determined that they could receive this treatment in their home country. This was despite the client having an outstanding asylum claim and their country of origin having one of the highest asylum grant rates.** As well as disregarding a well-founded fear of persecution and ill-treatment on return, this decision failed entirely to take into account the obstacles and difficulties the survivors may face in trying to engage with therapeutic services in their home country. These include but are not limited to fear of authorities/any association medical professionals may have with authorities; deterioration in mental health following removal; lack of availability of mental health services and associated stigma in approaching them, and lack of specialised professional trauma support in engagement and treatment. Whilst it is possible to undergo therapy in situations of ongoing threat,<sup>41</sup> this is only advisable when there is no current possibility of escape from such situations. **It is ethically unconscionable to deliberately put traumatized individuals in situations of ongoing threat that would at worst create renewed risk of persecution and/or re-trafficking and at best either maintain their traumatized state or cause it to deteriorate.**

**In HBF’s experience, and that of other organisations working in this area, it is rare for clients to receive leave to remain on the basis that they are seeking compensation or co-operating with authorities in connection with criminal proceedings.** As our clients they are frequently receiving therapeutic care and so will receive leave on that basis, but that is not the only reason. Very few HBF clients engage with the compensation process because the only viable way to obtain compensation is through an application to the Criminal Injuries Compensation Authority, which is frequently complex, lengthy and arduous, and must be made within two years of the crime being committed. The Independent Anti-Slavery Commissioner documented that over the course of eight years, just 283 applications were made to the scheme by victims of trafficking, with only 54 of these cases awarded compensation.<sup>42</sup> It is increasingly difficult to find a specialist legal representative to assist with these applications, in part due to capacity issues and because legal aid is only available if an application for Exceptional Case Funding is made, which is frequently refused thus making them undesirable cases to take on.<sup>43</sup>

39 Para 184. [Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings](#), 2005

40 [Legislative Scrutiny: Nationality and Borders Bill \(Part 5\)—Modern slavery - Joint Committee on Human Rights - House of Commons](#).

41 Yim, S. H., Lorenz, H., & Salkovskis, P. (2023). The Effectiveness and Feasibility of Psychological Interventions for Populations Under Ongoing Threat: A Systematic Review. *Trauma, Violence, & Abuse*, 15248380231156198.

42 Data collected for 1 January 2012 and 28 February 2020. See Independent Anti-Slavery Commissioner policy paper: [Access to compensation and reparation for survivors of trafficking](#)

43 A survey of solicitors and support workers working with victims of trafficking carried out by the Anti Trafficking and Labour Exploitation Unit (ATLEU) in 2019 found that ECF was refused in 93% of applications made by victims of trafficking. See ATLEU, [Survivors of trafficking and the Criminal Injuries Compensation Scheme](#), 2020

In addition to these hurdles, survivors can be put off making the application because the crime has to be reported to the police first, something they can be wary of doing for a variety of reasons.

Many of the same barriers apply to survivors co-operating with criminal investigations. Even when a survivor feels able to engage with authorities it is incredibly rare for the case to proceed to a prosecution,<sup>44</sup> and the investigation and court process can be highly distressing, frustrating and lengthy. 'Victim navigators'<sup>45</sup> can provide invaluable support for those who do want to engage with the process, which they find to be beneficial, however in HBF's experience the investigations are frequently closed due to a lack of evidence, something that can at best be disheartening and at worst have a significant detrimental impact on their mental health.

Given these significant difficulties survivors face accessing compensation or engaging with the authorities when they are in the UK, it is inconceivable that they would be able to continue to do so if they were required to leave the UK.

**Narrowing the criteria for granting leave to remain further will mean that even fewer victims will be able to access it, and as the figures above show, we were already seeing extremely low grant rates. Without a comprehensive analysis of a survivor's needs, a process which frequently requires expert assessment, time and competent specialist engagement, there is a significant risk of survivors being left without status and at risk of removal and/or re-trafficking.**

## **LENGTH OF LEAVE GRANTED VIA THE NRM**

---

HBF clients have received grants of leave to remain lasting between six and 30 months. The average is 12 months. **Across the whole NRM system, Home Office data shows that 63% of adult victims who were granted leave in 2022 were given leave of 6-12 months, while 25% were granted leave for less than six months.<sup>46</sup> It is possible to request that the decision maker exercises discretion and grant indefinite leave to remain but this is very rarely, if ever, granted.**

Prior to the expiry of a person's permission to stay, if they have not received any other preferential form of leave, they will be required to apply for an extension. This is done using the application form FLO(HRO) and there is a fee attached to this (at the time of writing this was £1,033 per applicant).<sup>47</sup> If a person is unable to afford the fee they will have to make an application for a fee remission, which is an arduous process and requires that they provide extensive evidence to prove that they cannot afford the fee. A fee remission request also delays the decision-making process as the application will not be considered until a decision has been made on the fee remission. There is no timeframe for when a decision should be made, which can lead to the person again being placed in limbo. During this time a person's leave will continue<sup>48</sup> with the same rights attached to it, however they have the issue of having to explain to employers/landlords etc why their ID says that their leave has expired. This can cause difficulties and in our experience employers and landlords have threatened to and, in some instances, actually terminated contracts due to a lack of understanding and fear that they will receive considerable fines and/or be convicted of a criminal offence. This understandably causes a great deal of distress and can lead to a significant deterioration in a person's mental health and in turn the progress they have made in their recovery.

44 While the number of prosecutions is steadily increasing it is still frighteningly low with only 332 traffickers being convicted in 2021. [See United States Department of State 2022 Trafficking in Persons Report: United Kingdom](#)

45 See Justice and Care, [Victim Navigator Programme Overview](#)

46 Freedom of Information Request reference: 73773, answered by the Home Office on 12th May 2023.

47 [Application to extend stay in the UK: FLR\(HRO\)](#)

48 Under [section 3C of the Immigration Act 1971](#)

## CHANGES UNDER THE ILLEGAL MIGRATION ACT 2023

---

At present anyone currently within the NRM system is at the very least protected from immediate removal from the UK, except in narrow circumstances. However, the Illegal Migration Act 2023<sup>49</sup> denies refugees and survivors of trafficking the legal right to seek protection and rebuild their lives in safety. Clause 2 of the Act places a new duty on the Home Secretary to take steps to remove anyone who entered the UK by means the Home Office deems irregular; did not travel directly from a country in which their life and liberty was threatened for a Refugee Convention reason; and requires leave to remain in the UK but does not have it. Their asylum claims will be deemed 'inadmissible' - effectively introducing an 'asylum ban'.<sup>50</sup> The above criteria will capture a large proportion of survivors of human slavery and trafficking, who frequently arrive 'irregularly'. The modus operandi of human traffickers is to recruit people from a position of vulnerability and/or by deception and coercion, and as such, the decision on the mode of entry is often entirely outside of their control - not just for those arriving by boat. Victims of trafficking will continue to come to the UK by irregular routes - including but not limited to people who have arrived crossing the English Channel.

The Act also removes almost all protections and support for survivors of trafficking who have received a positive Reasonable Grounds decision and are subject to the duty to remove under Clause 2. It makes clear that there is no obligation to grant such potential victims leave to remain and that they can be removed from the UK before they receive a Conclusive Grounds decision. There is a narrow exception outlined in Clause 22 for some individuals whose stay in the UK is deemed necessary by the Home Secretary for investigations or criminal proceedings relating to their exploitation.

The Act will mean that people who entered the UK irregularly will not have any way of regularising their status in the UK whatever their circumstances. Yet, a Freedom of Information Request showed that in 2021 only 21 victims of trafficking with positive Conclusive Grounds decisions were actually removed from the UK through the 'Enforced Returns' process.<sup>51</sup> With these low removal rates it is clear that the Act will create permanent limbo for many people who will be left in the UK not knowing what will happen and without adequate support. This will only compound their risk of being re-trafficked or exploited further and will lead to a deterioration in their mental health. By restricting access to the UK's NRM and the asylum system, the Act is simply placing more power in the hands of the traffickers.

49 [Illegal Migration Act 2023](#)

50 UNHCR, [UK Asylum and Policy and the Illegal Migration Bill](#)

51 Freedom of Information Request 70719

## CONCLUSION

---

National Referral Mechanisms are a vital part of any country's efforts to address the problem of trafficking and modern slavery. But the lack of a clear entitlement to secure immigration status as a result of a positive final decision via the UK NRM is problematic – too often, survivors of trafficking are reliant on the asylum process to ensure they have a chance of the longer-term stability that is essential to their being able to recover and rebuild their lives. There are a number of simple changes that would ensure that the UK's NRM system meets people's needs rather than prolonging the harmful impact of trafficking.

Repeated calls have been made for ongoing financial and practical support and for a period of leave to remain to be made automatically available to all victims after they have been confirmed as a victim of trafficking – most recently during debates on the Nationality and Borders Bill in 2022 where the government gave assurances that survivors of trafficking would be provided with 12 months ongoing support and that this would be provided for in policy.<sup>52</sup> However at the time of writing there has been no published guidance on this. The evidence in this report demonstrates the need is as great as ever, and will only be worsened by new changes to law and policy.

Victims of trafficking are victims of serious crimes. Providing the right support and protection is integral to ensuring that they can recover and rebuild their lives, reducing the risks of their being re-trafficked, and helping to facilitate the provision of evidence needed by the police to dismantle criminal slavery networks. In order to break the business model of the traffickers, protection and support measures must be put in place that allow people to come forward about their exploitation without fear and in the knowledge that they will receive meaningful protection and help to recover from their trafficking experience. If we are to enable survivors' long-term recovery, it is essential that they have stability and safety. For those without secure immigration status, a form of leave to remain with the right to work or access benefits and housing and a route to settlement is vital.



## RECOMMENDATIONS

---

- **All survivors of trafficking with a positive final ('Conclusive Grounds') decision from the National Referral Mechanism (NRM) should be automatically granted support, including leave to remain and recourse to public funds, for at least 30 months with a route to settlement.**
- **Measures in the Illegal Migration Act that would introduce a de facto ban on the asylum system and the protections offered by the NRM should be abandoned.**
- **The government should recruit, resource and train decision makers adequately to ensure that NRM and asylum decisions are made in a timely manner.**
- **For those already granted leave under the NRM, there should be no application fee attached to any application to extend leave to remain.**
- **The Home Office should produce clearer guidance on when an application for Indefinite Leave to Remain can be made by a survivor of trafficking.**