

WHEN THE LAW CHANGES SIDES

The criminalisation of survivors of
human trafficking in the UK

JULY 2026



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Contents

Executive Summary	2
Introduction	5
What is human trafficking and modern slavery?	7
The non-punishment principle	15
Barriers to upholding the non-punishment principle	16
Increased criminalisation in the asylum and immigration system	19
The Public Order Disqualification	22
Conclusion and recommendations	29

About the Helen Bamber Foundation and Asylum Aid

The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of human trafficking, torture and other forms of extreme human cruelty. HBF's 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.

Asylum Aid (AA), part of the Helen Bamber Foundation group, provides high quality legal advice and representation on asylum and immigration matters. AA has a particular expertise of working with vulnerable people including survivors of trafficking, torture and sexual violence; stateless people; and children.

This report was written by Kamena Dorling, Rhona French and Molly Nicolson, with invaluable input from HBF and AA colleagues, and case studies from Leigh Day and ATLEU.

Executive Summary

Survivors of human trafficking are victims of serious crime and grave human rights abuses. Yet in the United Kingdom many survivors - particularly non-British nationals - are instead treated as offenders. Rather than receiving protection, they are frequently arrested, prosecuted, imprisoned, detained under immigration powers and excluded from support because of offences that are directly linked to their trafficking and exploitation.

This report examines how criminal justice, asylum and immigration systems are increasingly criminalising survivors of trafficking, often in ways that conflict with the UK's obligations under international law. Drawing on legal analysis, government data, case studies from clients of the Helen Bamber Foundation and Asylum Aid, and evidence from across the sector, it demonstrates the many ways in which survivors are punished for their exploitation rather than protected from it.

Human trafficking takes many forms, including sexual exploitation, forced labour, domestic servitude and forced criminality. In 2025, the National Referral Mechanism (NRM) - the mechanism for identifying and supporting survivors of trafficking and modern slavery - received more than 23,000 referrals of potential victims, with criminal exploitation forming a significant proportion of adult and child referrals, particularly among men and boys. Survivors frequently experience multiple, overlapping forms of exploitation and many have histories of poverty, violence, discrimination, conflict, displacement and insecure immigration status, all of which increase their vulnerability to trafficking.

International law recognises that trafficking survivors should not be punished for unlawful acts they were compelled to commit as a consequence of their exploitation. This 'non-punishment principle' is reflected in Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) and, in England and Wales, through the statutory defence contained in section 45 of the Modern Slavery Act 2015. The principle acknowledges that survivors often act under coercion, control or in circumstances in which they have no realistic alternative.

In practice, however, these protections are frequently unavailable or ineffective. Survivors are regularly prosecuted for offences including drug cultivation and trafficking, theft, fraud, immigration offences, possession of false documents and offences connected to sexual exploitation. Many are only identified as trafficking survivors after conviction or imprisonment, if they are identified at all. This report presents numerous examples of survivors whose convictions were later recognised as directly resulting from their trafficking, but only after lengthy legal challenges and with access to specialist legal representation that many others are unable to obtain.

Several systemic barriers undermine implementation of the non-punishment principle. Police, prosecutors, defence lawyers and judges often lack sufficient training to recognise

indicators of trafficking or appropriately consider the statutory defence. Survivors themselves may be unable to disclose their experiences because of trauma, fear of traffickers, distrust of authorities or complex psychological relationships with their exploiters. The section 45 defence also sets a high legal threshold, placing significant evidential burdens on survivors and excluding a wide range of offences. As a result, many survivors plead guilty before their trafficking is identified or are advised not to pursue the defence altogether.

The asylum and immigration systems compound these problems. Long delays in asylum and trafficking decision-making; restrictions on employment; poverty; insecure immigration status; and limited access to legal advice all increase survivors' vulnerability to both exploitation and criminalisation. Individuals may resort to illegal work or become further exploited simply to meet basic needs while awaiting decisions. Others accumulate criminal convictions for relatively minor offences, such as fare evasion, that arise from poverty, language barriers or unfamiliarity with UK systems.

Recent immigration legislation has further expanded criminalisation. The Nationality and Borders Act 2022 introduced new offences relating to irregular arrival and expanded criminal liability associated with English Channel crossings. The Border Security, Asylum and Immigration Act 2025 introduced additional immigration-related offences that may also capture trafficking survivors who have been coerced into irregular migration or other criminal conduct. These measures increase the likelihood that survivors will enter the criminal justice system before being recognised as victims.

A key concern is Public Order Disqualifications (PODs) introduced by section 63 of the Nationality and Borders Act 2022. These allow recognised or potential victims of trafficking to be denied support under the NRM where they are considered a "threat to public order", including where they have received custodial sentences of 12 months or more. In practice, convictions that are themselves linked to trafficking have been used to exclude survivors from accommodation, financial assistance, recovery support and leave to remain in the UK.

Between January 2023 and December 2025, 763 PODs were issued, with 97% based on public order grounds. These provisions have been applied far more broadly than intended under ECAT, often denying survivors access to protection despite clear evidence that their offending resulted from exploitation and no further "threat to public order" exists. There are also significant procedural shortcomings, including the absence of effective appeal mechanisms and reliance on judicial review as the primary means of challenge.

Section 29 of the Illegal Migration Act 2023, and proposals under the new Immigration and Asylum Bill, if brought into force, would significantly expand these powers by making disqualification effectively mandatory for a much wider group of survivors with criminal convictions, regardless of sentence length. This would substantially increase the number of

trafficking survivors excluded from support and heighten their risk of re-trafficking, destitution and further exploitation.

Throughout the report, detailed case studies demonstrate the human consequences of these policies. Survivors who were trafficked into sexual exploitation, forced labour and criminal activity were imprisoned, detained under immigration powers, threatened with deportation and prevented from rebuilding their lives despite later being formally recognised as victims of trafficking. In many cases, only sustained intervention by specialist lawyers enabled convictions to be overturned or support to be restored.

The report concludes that the UK's current approach fundamentally undermines both survivor recovery and efforts to combat trafficking itself. Criminalising survivors discourages disclosure; weakens prosecutions against traffickers; increases the risk of re-exploitation and shifts the focus away from those responsible for organised exploitation. Rather than fulfilling its international obligations to identify, protect and support trafficking survivors, the UK is increasingly creating systems that reinforce their vulnerability.

Ultimately, tackling trafficking requires shifting the focus from criminalising victims to protecting them. Ensuring early identification, effective implementation of the non-punishment principle and meaningful access to legal protection is essential not only to safeguarding survivors' rights but also to improving accountability for traffickers and strengthening the UK's response to modern slavery.

The government should:

- **Repeal section 63 of the Nationality and Borders Act 2022** and section 29 of the Illegal Migration Act 2023, and abandon public order disqualification measures in the Immigration and Asylum Bill.
- **Record and publish data on the use of the section 45 defence** and its outcomes.
- **Review the training and guidance available to criminal justice practitioners** on the section 45 defence and identifying indicators of trafficking
- **End the Home Office practice of referring potential victims of trafficking for prosecution without referring them into the National Referral Mechanism** and before a Reasonable Grounds decision has been made.
- **Introduce practical improvements to the support systems for all survivors** including:
 - improving vulnerability screening at all stages of the asylum and detention systems.
 - strengthening recruitment, training and resourcing to ensure NRM and asylum decisions are timely and of high quality
 - ensuring the availability of long-term support and safe accommodation in the community for all survivors of trafficking
 - automatically granting leave to remain for five years with a route to settlement and recourse to public funds to all confirmed survivors of trafficking

Introduction

Over ten years ago, Asylum Aid's client, Victoria,¹ a survivor² of human trafficking, was sentenced to 12 months in prison for a single offence – fraud. She had recently escaped a horrific situation of sexual exploitation, was homeless and was begging for food. She had been diagnosed with HIV and epilepsy; suffered brain injury from historic infections; and had a history of strokes. Out of desperation, she had accepted a friend's offer to get her a false identity document so she could work and get enough money to eat. After serving her sentence, she was released in 2014 and was assessed as posing a very low risk to the public by a probation officer.

Ten years' later, Victoria was formally recognised as a potential victim of trafficking by the National Referral Mechanism (the UK's system for identifying and supporting someone as a victim of trafficking) and started receiving vital assistance. Yet, not long after, she was notified that the Home Office was considering barring her from the support she most needed. Under section 63 of the Nationality and Borders Act 2022 (NABA), she could be disqualified because of her 2014 conviction of fraud and the deportation order that she had received as a consequence of her 12-month imprisonment.³ She was considered a "threat to public order".

On Victoria's behalf, Asylum Aid challenged the decision to disqualify her from support and the policy which led to her disqualification. A few days before the final hearing was due to take place, the Home Office withdrew its decision to disqualify her and agreed to make a new one within two months. It then decided that Victoria should not be disqualified.

Victoria's case is a powerful example of survivors of trafficking being blocked from support as a result of criminal convictions resulting either from their exploitation and coercion, or problems created by significant failings in the immigration, asylum and trafficking systems. Whilst her case had a positive outcome, not all survivors like her have access to legal representation and are able to challenge these decisions.

¹ This name and the names in all case studies following have been amended to protect the clients' identities. Identifying details in case studies have also been amended.

² The terms 'victim' and 'survivor' are both used in relation to modern slavery and human trafficking. 'Survivor' is often preferred in certain contexts and by individuals themselves as it better reflects the dignity and agency and of each individual, rather than 'victim' which can perpetuate negative stereotypes and a sense of powerlessness. Within this report, the term 'survivor' is generally used to reflect this but where law or policy refers to 'victim' we use the same language for clarity.

³ A deportation order in the UK is a legal order issued by the Home Secretary requiring a non-British citizen to leave the country. It is different to "administrative removal" and is typically applied to foreign national offenders or individuals whose removal is deemed "conducive to the public good."

This report examines how adult survivors of trafficking and modern slavery in the UK, who are non-British nationals, can end up criminalised and deprived of the support they need as victims of crime themselves. This often occurs when they are prosecuted for crimes they were compelled to commit as a direct result of their trafficking experience - such as sex work, drug trafficking, theft, or immigration violations. Survivors often come to the attention of authorities primarily as offenders and are too often not recognised as victims of a serious crime themselves.

Survivors can also be criminalised for reasons relating to but not caused directly by their exploitation, such as illegal working or the use of false documents after they have escaped their traffickers but been left destitute. This is despite the widely recognised 'non-punishment' principle in international law which makes clear that survivors should not be punished for offences committed as a consequence, or in the course, of being trafficked.

It is well established that many survivors of trafficking have had experiences in life that leave them more at risk – including discrimination, socio-economic marginalisation, and a lack of support and protection from their networks and/or the state. Many have been forced to leave their homes to flee conflict or human rights abuses and experienced exploitation before leaving and during their journeys to the UK. The non-punishment principle recognises that while a survivor of trafficking may have committed an offence, they are acting without real autonomy because of the trauma they have suffered and the degree of control exercised over them. This applies also when they have escaped from their trafficker/s.

Criminalisation can result not only in imprisonment but can also result in a double punishment where a survivor of trafficking is held in immigration detention after being released from prison and put at risk of deportation from the country, or allowed to remain in the UK but blocked from the support and protection trafficking victims need to recover and rebuild their lives. This also significantly increases the risk of re-trafficking or re-exploitation, reinforcing the cycle of exploitation and criminalisation. Furthermore, this approach fails to confront the real offenders, by enabling trafficking to exert even more control of their victims and deterring survivors from coming forward and supporting efforts to prosecute the traffickers.

What is human trafficking and modern slavery?

Human trafficking (hereafter 'trafficking') is defined in the UN Convention Against Transnational Organised Crime Protocol on Trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means such as threat, force, coercion, abduction, fraud, or deception, for the purpose of exploitation.⁴ Exploitation is not defined but includes sexual exploitation, forced labour, slavery or practices similar to slavery, servitude, and organ removal. Exploitation or coercion may occur at any point and need not be present at all points. For example, an individual may travel voluntarily for employment, only to find themselves later subject to coercion or exploitation.

Trafficking consists of 3 basic components:

1. **Act** – What is done (e.g. the recruitment, transportation, transfer, harbouring, or receipt of persons).
2. **Means** – How it is done (e.g. by threat, use of force, coercion, abduction, fraud, deception, abuse of power).
3. **Purpose** – Why it is done (e.g. for exploitation for labour, sex, or organs).

All three components must be present in an adult trafficking case; for child trafficking the 'means' component is not required.

Modern slavery encompasses human trafficking and slavery, servitude and forced or compulsory labour. Some people may not be victims of human trafficking but will be victims of modern slavery if they have been subject to slavery, servitude and forced or compulsory labour. The term 'modern slavery' has been widely viewed as unclear, unhelpful, or misleading, particularly when compared to more specific, legally grounded terms such as human trafficking or defined forms of exploitation.⁵ In this briefing, the terms 'trafficking' and 'exploitation' are mainly used.

Trafficking in human beings is often confused with people smuggling. Smuggling occurs when an individual seeks the help of a facilitator to enter a country illegally, and the relationship between both parties usually ends once the person reaches their destination and the transaction finishes. Trafficking involves the intended exploitation of people. However, in some cases, trafficking victims may believe that they are being smuggled but then end up in a potentially exploitative situation, where, for example, they are forced to

⁴ United Nations [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children \(Palermo Protocol\)](#). See also Article 4(a) of the [Council of Europe Convention on Action against Trafficking in Human Beings](#) (ECAT) for its definition of 'human trafficking'.

⁵ ECPAT UK, [More than words: how definitions impact on the UK's response to child trafficking and exploitation](#), July 2025

work to pay off their 'debts', which in many cases are increased by their trafficker over time to retain control over them. Common forms of human trafficking⁶ include:

- **Sex trafficking**, where victims are forced or manipulated into sex work or other forms of sexual exploitation. For example - a teenage girl is lured online by a trafficker posing as a romantic interest, then forced to work in a brothel under threat of violence.
- **Forced labour**, where people are compelled to work under abusive or inhumane conditions, often for little or no pay. For example - a man from a rural village is promised a well-paying construction job in a foreign country, but his documents are taken, and he is forced to work long hours without pay.
- **Domestic servitude**, where victims are forced to work as housekeepers or nannies with no freedom, pay, or way to escape. For example - a woman brought to a new country as a domestic worker is confined to a home, denied communication with the outside world, and forced to work without pay.
- **Forced criminality**, where, for example, a child or an adult is forced to work in a cannabis factory or, as in county lines trafficking, is forced to stay in houses owned by drug users in small towns and deal drugs.

In 2025, the NRM received 23,411 referrals of potential victims of modern slavery, 39% (9,081) of which were for exploitation that occurred exclusively in the UK.⁷ The most common nationalities were British (22%), Eritrean (9%) and Vietnamese (13%).

Among adults (aged 18 years and over),⁸ 25% of all referrals of men involved criminal exploitation, compared with 7% of referrals of women - 2,903 men and 357 women had experienced criminal exploitation, including cases where criminal exploitation occurred alongside other forms of exploitation such as labour or sexual exploitation.⁹

For those whose exploitation had occurred as children - nearly two-thirds (65%) of boys referred experienced criminal exploitation compared with 30% of girls referred (3,685 males and 415 females).¹⁰ These patterns are consistent with known exploitation patterns, where criminal exploitation of children - including involvement in activities such as drug distribution - is more likely to affect boys, while female referrals are proportionately more concentrated in other exploitation categories.¹¹

⁶ The Global Slavery Index, provides a detailed and comprehensive overview of international trends in modern slavery (including trafficking). See Walk Free, [Global Slavery Index](#), 2023

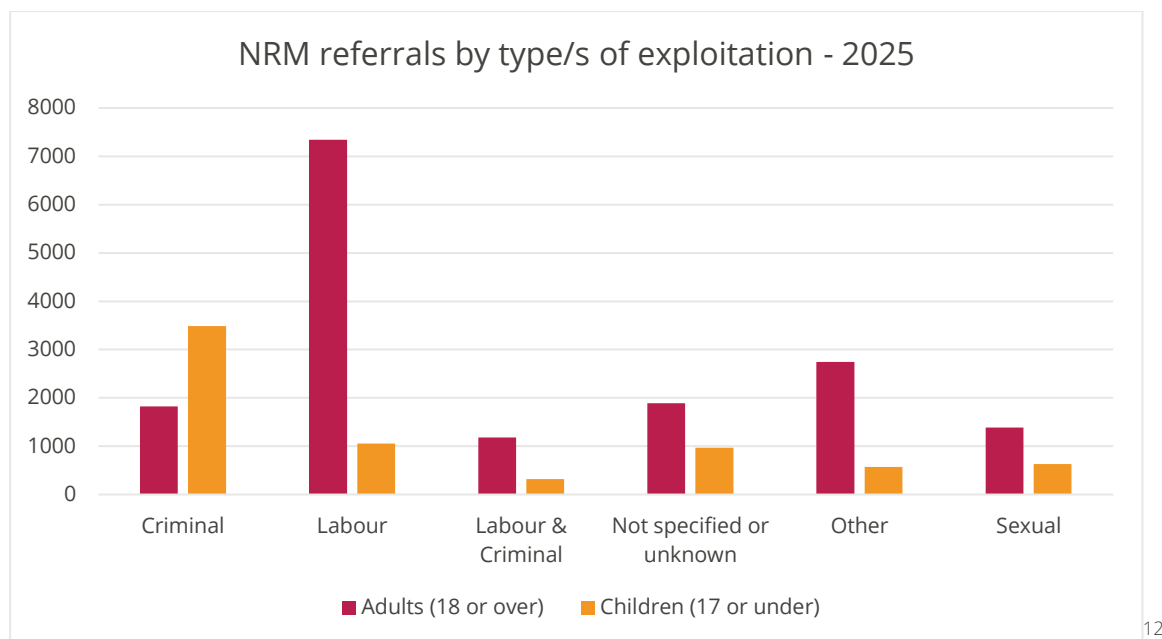
⁷ Home Office, [Modern Slavery: NRM and DtN statistics, end of year summary 2025](#)

⁸ At age of referral

⁹ Home Office, [Modern Slavery: NRM and DtN statistics, end of year summary 2025](#), table 4

¹⁰ Home Office, [Modern Slavery: NRM and DtN statistics, end of year summary 2025](#), table 4

¹¹ This analysis is based on National Referral Mechanism (NRM) data on exploitation type, disaggregated by age at referral (adults aged 18 years and over, and children aged 17 years and under) and sex. Criminal exploitation includes all referrals where "Criminal" is recorded as the sole exploitation type or in combination with other exploitation types, such as labour or sexual exploitation. Percentages are calculated as the proportion of



The UK is obliged, under the Article 4 of the European Convention on Human Rights (the human right not to be held in slavery or servitude) to identify and protect victims of trafficking. This includes a duty to assist them in any physical, psychological and social recovery from their trafficking experiences. The duties are sometimes categorised as 'the systems duty', a general duty to implement measures to combat trafficking, 'the protection duty', to take steps to protect individual victims of trafficking, and 'the investigation duty', a duty to investigate situations of potential trafficking.¹³

The National Referral Mechanism (NRM) is the UK framework for identifying and referring potential victims of modern slavery and trafficking and ensuring they receive the appropriate support. Designated organisations, called 'first responders,' can refer individuals to a 'competent authority'¹⁴ in the Home Office, for a formal decision on their case. This is a two-stage process and if a positive 'reasonable grounds' decision is made (the first stage), the individual has a 30-day 'recovery and reflection period'. During this time, the competent authority should seek out further information before making a 'conclusive grounds' decision as to whether the person is a victim of trafficking. The individual may be able to access specialist tailored support while their case is considered, including accommodation, financial support, and individual emotional and practical help. If confirmed as a victim of trafficking, they then may be provided with further financial support and with

referrals within each age-and-sex group that include criminal exploitation – 5,642 boys and 1,376 girls. Counts reflect the number of referrals rather than unique individuals.

¹² [Modern Slavery: NRM and DtN statistics, end of year summary 2025](#), table 4

¹³ See [Rantsev v Cyprus and Russia](#) (Application no. 25965/04), European Court of Human Rights

¹⁴ This can be one of two authorities. The 'Single Competent' Authority or the 'Immigration Enforcement Competent Authority'. The latter deals with a specific group of adult cases which includes certain cases of 'Foreign National Offenders'. See Home Office, [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](#), April 2026

‘temporary permission to stay’ (known as ‘VTS leave’). However, very few victims get VTS leave¹⁵ and the ‘Recovery Needs Assessment’ that determines the provision of support has been criticised for being overly bureaucratic and often denying survivors the help they need.¹⁶

A significant proportion (85%) of Helen Bamber Foundation clients who are survivors of trafficking¹⁷ are or have been in the asylum system as well as within the NRM. Their experience of trafficking or future risk of re-trafficking can form part or all of the basis of their asylum claim. A ground for claiming asylum can be vulnerability to future persecution as a recognised victim of trafficking.¹⁸ Very often (though not always) asylum claims of survivors of trafficking concern a risk of re-trafficking, serious harm or increased vulnerability to exploitation.

Risk factors for trafficking

Many interrelated social, economic, personal, and structural factors can increase the likelihood that a person will be trafficked/exploited. These may include poverty and unemployment; limited access to education; lack of awareness of rights and risks; gender inequality and discrimination. The Global Slavery Index vulnerability model identifies the following key areas: governance issues; effects of conflict; lack of basic needs; disenfranchised groups; and inequality.¹⁹ Many of these factors are then exacerbated by the individual's migration experience. Language barriers, isolation and fear of removal/detention, alongside systemic issues such as poor accommodation, poverty and immigration insecurity, can exacerbate trauma, create barriers to support, and heighten the risk of exploitation.

Traffickers use many methods to control victims in exploitation, employing methods of psychological manipulation to keep them in constant fear, and in many cases physical confinement. Traffickers will often use a victim's lack of lawful immigration status as a way of exploiting them. Criminal convictions are also used to keep people in exploitation. There is evidence showing perpetrators recruiting those with criminal convictions, including minor offending behaviour, within or outside prisons (upon release), using the threat of further criminalisation and detention as a way to keep people under their control.²⁰

¹⁵ Helen Bamber Foundation, [‘Road to Nowhere: The impact of insecure immigration status of survivors of trafficking’](#) July 2025

¹⁶ Anti-Trafficking Monitoring Group, [A report on the Recovery Needs Assessment by those experiencing it on a daily basis](#), April 2022

¹⁷ This comprises “active” cases within the HBF Model of Integrated Care.

¹⁸ [SB \(PSG – Protection Regulations – Reg 6\) Moldova CG](#) [2008] UKAIT 00002

¹⁹ Which sets out in available data a global overview of modern slavery as it exists today. Walk Free, [Global Slavery Index](#), 2023. See Appendix 2 for details of the methodology behind the model.

²⁰ See, for example, Hope for Justice, [Operation Fort: Three more jailed – Hope for Justice supports survivors](#), September 2021. See also College of Policing, [Modern Slavery and Human Trafficking](#), February 2026

Survivors of trafficking can be identified at different junctures, including on arrival, at the site of exploitation, post escape or during (and post) imprisonment or immigration detention. It is also not unusual for a victim only to be identified many years after their initial exploitation and often after they have experienced further instances of exploitation or ill-treatment.²¹

An individual may also not see themselves as a victim of trafficking or exploitation and might have understood what happened to them in different terms. In Asylum Aid and HBF's experience, it can often be a long process for someone to come to terms with what has happened to them. Survivors might have a complicated relationship with a person that has trafficked them and it is not uncommon for them to have a trusting relationship with that person.²² They might regard that person as a friend or as a formal employer. Sometimes our clients have even been trafficked by members of their own family. With these relationships, it can be a long process to recognise the harm that has been exerted on a survivor. When understanding is gained, it can be a similarly lengthy journey for the person to begin trusting others again, including professionals who can support them through formal identification.²³

²¹ A person being trafficked or exploited again is often referred to as "re-trafficking" by professionals working with survivors in the UK. Despite this, it is not a clearly defined term nor is there an agreed approach on tackling/tracking it. In 2021, the Office of the Independent Anti-Slavery Commissioner (IASC) and the Rights Lab produced useful research on the current evidence base on re-trafficking, including research on its prevalence, enabling factors and protective factors. See IASC and Rights Lab, [Re-trafficking: The current state of play](#), November 2021.

²² Zaariyah H. Bashir, Dr Francesca Brady, Prof Cornelius Katona, Chris Barker, Miriam Fornells-Ambrojo, [Trust gained, trust lost: A qualitative analysis of Human Trafficking survivors' experiences](#), European Journal of Psychotraumatology, 11 February 2026

²³ Ibid.

Hava's story

Hava was in an abusive, violent relationship in Albania, and estranged from her parents due to this relationship. Her boyfriend verbally, physically and sexually abused her, causing a miscarriage, and forced her into sexual exploitation. Having escaped, she attempted to leave Albania altogether but her visa applications to come to the UK were refused.

In desperation and fear, Hava accepted an offer of help from a man outside the embassy, who said that he could help her to get to the UK. This man and his associates then transported her from Albania to Greece and took away her passport. She was repeatedly sexually assaulted on the journey and told that when she arrived in the UK that she would need to work as a sex worker in order to pay back the costs of her travel.

Hava flew to the UK from Greece using a fake Italian passport. She was questioned and arrested at the airport. Several months later, she pleaded guilty to one count of possession of a false identity document and was sentenced to twelve months' imprisonment. In sentencing, the judge told her: *'This offence strikes so obviously at the management of the United Kingdom and, because, whatever your position, the United Kingdom has to do things to protect itself, both from international terrorism and international organized crime'*.

While in prison, she became close to an English teacher and was finally able to disclose some of the things that had happened to her before she arrived in the UK. The teacher told her about claiming asylum, and she eventually did so. She was in custody for six months and detained under immigration powers for a further three months.

Hava was also referred to the National Referral Mechanism (NRM). She was issued a positive conclusion grounds (CG) decision confirming that she was a victim of trafficking but refused asylum on the basis that her deportation was "conducive to the public good" and that she could relocate within Albania. She appealed both the asylum refusal and her conviction on the basis of the positive CG decision. Both appeals were successful.

Shortly after being granted refugee status, she applied to the Miscarriage of Justice application service and was awarded compensation for the nearly nine months she was imprisoned, as her detention had been *"unlawful from the outset in view of her now accepted status as a victim of trafficking and the nexus with her offending"*. With her conviction having been quashed, she is now able to continue with her dream of working as a teacher again.

Despite having a compelling case, Hava would not be where she is today without the excellent legal representation she received in her case. Unfortunately, such representation is by no means guaranteed. The availability of legal aid lawyers across the UK remains extremely poor²⁴ and it can be extremely difficult to successfully refer out cases like Hava's, where not only do the clients have a complex trauma history, but there are complicated, overlapping issues like the risk of deportation and an asylum claim as well as NRM referral.

²⁴ Justice Together, [No Access to Justice 2](#), 2025

Prosecution for forced criminality

Survivors of trafficking are often arrested, charged, and convicted for the following offences that are a result of their exploitation:

- **Sex work or related offences**, particularly affecting women and girls trafficked for sexual exploitation.
- **Drug trafficking or possession**, often involving individuals coerced into smuggling or cultivating drugs under threat or deception.
- **Forced labour in cannabis farms** and illegal use of electricity.
- **Immigration offences**, such as undocumented entry, visa overstay, or use of false documents, especially when traffickers use forged papers or smuggle victims across borders.
- **Theft or fraud**, which may result from forced criminal activity or survival strategies during or after exploitation.²⁵

There are no published statistics on the number of victims of trafficking in prison but data acquired by through Freedom of Information requests showed that in 2024, 269 'alerts' were raised for non-British national victims of trafficking and modern slavery in prison. Of those, the highest proportion of crimes were cannabis production (69 – 25%), the sale of cocaine (13 – 5%) and robbery (10 – 4%).²⁶ The data of 2025 similarly showed that, the highest proportion of crimes were cannabis production²⁷ and possession (with intent to supply) of cocaine.²⁸

A further breakdown was requested of the types of offence for which Vietnamese and Albanians (the two most common non-British nationalities referred into the NRM in those years) were imprisoned in 2024 and 2025. For Vietnamese the two most common offences were 'dishonest use of electricity' (this relates to the illegal abstraction of electricity to run cannabis farms - 14% in 2024 and in 9% in 2025) and 'trafficking in controlled drugs' (61% and 76%). For Albanians, they were 'trafficking in controlled drugs' (64% and 63%) and profiting from or concealing knowledge of the proceeds of crime (8% and 9%).²⁹

²⁵ In 2020, IOM compiled detailed information on a research project with University of Bedfordshire looking at vulnerabilities to human trafficking from Albania, Vietnam and Nigeria and noted issues of criminalization of Vietnamese nationals in the UK where the victims were "compelled to do so or lacked realistic alternatives." See IOM, [Submission to the Independent Anti-Slavery Commissioner's call for evidence on the use of the Modern Slavery Act's Section 45 statutory defence](#), March 2020

²⁶ Ministry of Justice response to Freedom of Information Act (FOIA) Request – 250604011, 2nd July 2025

²⁷ Recorded separately as two different offence codes, both related to cannabis production: "Produce controlled drug of Class B – cannabis" and "Concerned in production of a controlled drug of Class B - cannabis". Ministry of Justice response to Freedom of Information Act (FOIA) Request – 260309096, 7th May 2026

²⁸ Ministry of Justice response to Freedom of Information Act (FOIA) Request – 260309096, 7th May 2026

²⁹ Ministry of Justice response to Freedom of Information Act (FOIA) Request – 250604011, 2nd July 2025 and Ministry of Justice response to Freedom of Information Act (FOIA) Request – 260309096, 7th May 2026

Mai's story

Mai grew up in Vietnam where she was looked after by her grandfather, following the death of her parents. When her grandfather fell ill and had to borrow money for his treatment which he then could not repay, Mai was forced into sexual exploitation while still a teenager to pay off his debts. Mai was regularly beaten and forced to have sex with multiple men.

After Mai's grandfather passed away, she was trafficked by the loan sharks from Vietnam, through several European countries, and then into the UK via boat crossing. On arrival, Mai was detained by the border force where she explained that she was frightened to return to Vietnam. She claimed asylum. However, Mai was too scared to disclose what had happened to her in Vietnam and on the journey to the UK.

When Mai was released from the detention into asylum accommodation, she met a Vietnamese woman in the park who offered her the place to stay. Feeling scared and lonely in the asylum hotel, Mai accepted only to realise that this woman owned a brothel. Mai was again forced into sexual exploitation where her movements were completely controlled. During this time, she missed her asylum interview and her claim was treated as withdrawn.

While in sexual exploitation, Mai would often travel to her 'clients' in other locations, including sites of cannabis production/processing. One day, Mai was asked to move into a house with a man who initially treated her well but then started sexually abusing her and asking her to look after his plants (these were, in fact, cannabis plants). A few months after she began living here, the house was raided by the police, and she was arrested.

Six months after the arrest, Mai was convicted of three counts of being involved in the production of class B controlled drugs (cannabis) and one count of dishonestly using electricity. She was sentenced to three years' imprisonment and served with a decision to deport. She served one year in prison and was transferred back to immigration detention.

It was during this time in detention that Mai first met the immigration solicitor who would turn her case around by helping her to re-apply for asylum and referring her into the NRM. Once released from prison, Mai's long process of disclosure began and she was eventually able to begin therapy to treat her post-traumatic stress disorder (PTSD). Following a positive conclusive grounds (CG) decision from the NRM, Mai was granted one year's leave to remain as a victim of trafficking. The positive CG decision states, among other types of exploitation, '*forced criminality in the UK*' during the period for which she was arrested. Eventually, five years after her arrival in the UK, Mai was recognised as a refugee.

Survivors often feel fear or low trust of professionals; exacerbated by experiences of the UK immigration system. Whilst these issues can be addressed through consistent, predictable and compassionate support (as they were eventually with Mai) such support is not a given in the immigration system. Despite Mai's eventual recognition as a refugee, she continues to have a criminal record resulting from her exploitation, one which might impact her for years to come.

The non-punishment principle

Key international instruments recognise that survivors of trafficking should not be punished for crimes committed as a consequence of being trafficked. Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)³⁰ states that:

“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

This articulation of the non-punishment principle is echoed in other international instruments and guidance.³¹ As set out above, governments also have a responsibility to identify and support survivors, including those in contact with the criminal justice system.³² The European Court on Human Rights has stated that it is “*axiomatic*” that promotion of recovery takes place *before* any adverse decision, such as criminal prosecution, because making an adverse decision (such as prosecution) at the expense of protective measures “*would be injurious to their physical, psychological and social recovery*” and “*could potentially leave them vulnerable to being re-trafficked in future.*”³³ Despite this, prosecution often leads to victims being punished, rather than being recognised as trafficked victims, preventing them from receiving the necessary support and protection.

In England and Wales, section 45 of the Modern Slavery Act 2015 (MSA) creates a statutory defence to protect survivors from being convicted for crimes they were compelled to commit as a consequence of their modern slavery or human trafficking experience.³⁴ This provision is intended to strengthen discretion as to whether it is in the public interest to prosecute an individual in these circumstances and prevent victims of trafficking and slavery from being punished for crimes they were forced to commit, such as being forced, threatened or deceived into producing or selling illegal drugs. However, the legal threshold for applying the defence is high.

If a person is aged 18 or over, then the section 45 defence can only apply if they were compelled to commit the criminal act; if the compulsion is attributable to their exploitative

³⁰ [Council of Europe Convention on Action against Trafficking in Human Beings](#), May 2005

³¹ For a comprehensive overview of the non-punishment principle in international law, see Organisation for Security and Co-operation in Europe (OSCE), Office of the Special Representative and Co-ordinator for Combatting Trafficking in Human Beings, [Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking](#), 2013, pp 9-12; and The Inter-Agency Coordination Group against Trafficking in Persons, [Issue Brief: Non-punishment of victims of trafficking](#), 2020

³² Crown Prosecution Service, [Modern Slavery and Human Trafficking: Offences and Defences, including the Section 45 Defence](#). See European Court of Human Rights judgment [V.C.L. and A.N. v. the United Kingdom](#) (applications nos. 77587/12 and 74603/12)

³³ *Ibid*, para 159. The principles were reiterated in [G.S. v The United Kingdom](#) App no. 7064/19, European Court of Human Rights, 23 November 2021 at para 22.

³⁴ Scotland does not have a section 45 defence, but a Lord's Advocate non-prosecutorial instrument under the Human Trafficking and Exploitation (Scotland) Act 2015. Northern Ireland has a section 45 defence under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

situation; *and* if a 'reasonable person' in the same situation with relevant characteristics would have no realistic alternative to committing the act. Children can use the defence if the criminal act was a direct consequence of their exploitation and if a reasonable person in the same situation with relevant characteristics would have also committed the act.

A positive reasonable grounds or conclusive grounds decision from the NRM may support the argument that the survivor has been forced, threatened or deceived into committing the crime(s) for which they are accused but it does not automatically establish the statutory defence is applicable. The other criteria provided by the MSA must still be met and, given the different standards of proof required in criminal proceedings, courts are not bound to accept NRM decisions.³⁵

Barriers to upholding the non-punishment principle

While section 45 offers important legal protection in principle, no data is collected on how often it is used in practice. Its practical application is inconsistent and often misunderstood by legal practitioners, police, and frontline services.³⁶ One of the key barriers to upholding the non-punishment principle to survivors of trafficking is the identification process. Relevant authorities lack clear guidance and training to recognise trafficking indicators and survivors themselves may be reluctant or unable to disclose their trafficking experiences due to fear of retaliation, shame, or distrust of authorities.

Reports have repeatedly raised the fact that training and awareness-raising about trafficking, modern slavery and the section 45 defence remains poor amongst those in the criminal justice system, including the police, solicitors, judges and magistrates.³⁷ As a result, police are not consistently considering from the outset of an investigation whether a suspect could be a victim of trafficking and whether the statutory defence may apply. Survivors are often encouraged to plead guilty as their experiences of trafficking and modern slavery are not recognised or the practitioner's understanding of the section 45 defence is too poor to trigger engaging with the mechanism.³⁸ In its 2023 inquiry into human trafficking, the Home Affairs Committee heard that "owing to depleted resources", police may seek an easy conviction "such as convicting "the drug runner found holding the small amount of drugs held for supply than to identify and pursue those further or indeed at the top of the chain"". The statutory defence is also often raised late in the criminal justice process.³⁹

³⁵ See [CPS guidance on human trafficking and smuggling](#) and [COPFS guidance on human trafficking](#)

³⁶ University of Hull and Modern Slavery and Human Rights Policy Evidence Centre, [Evidence Review of Section 45 of the Modern Slavery Act: Background and Context](#) April 2022

³⁷ Hope for Justice, Submission to the Independent Sentencing Review 2024-25, 2024; University of Hull and Modern Slavery and Human Rights Policy Evidence Centre, [Evidence Review of Section 45 of the Modern Slavery Act: Background and Context](#) April 2022

³⁸ After Exploitation and Hibiscus, [Fact sheet: Criminalisation of modern slavery survivors](#), April 2025

³⁹ Home Affairs Committee, [Human trafficking First Report of Session 2023-24](#), November 2023

Access to quality legal advice from criminal solicitors is a key barrier, as many have limited understanding of the section 45 defence. In one case, an Asylum Aid client (a severely disabled man) had clearly told his criminal solicitor that he was forced to work in the cannabis farm where he was arrested. He had refused to speak through an Albanian interpreter as he was so scared of it getting back to his exploiters (he had already been tracked down by them twice within the UK before being arrested). His criminal solicitor paid no attention to this and entered a guilty plea on his behalf, later telling the man's immigration lawyer that he did so as it was "irrelevant". Whilst the man was in prison Asylum Aid made an NRM referral that resulted in a positive conclusive grounds (CG) decision and also found him a new criminal solicitor. Based on that positive CG decision his criminal solicitor was able to apply to withdraw his guilty plea, and all charges were dropped. However, he had spent over ten months in prison before he was released.

While the burden of proof is on the prosecution to prove that an individual is *not* a victim of trafficking and modern slavery, once the defence is raised the burden of proof in respect of the other elements of the statutory defence falls on the survivor.⁴⁰ For survivors who have experienced years of complex trauma and stress, it can be challenging to establish what "a reasonable person" with the same "relevant characteristics" would consider as having "no realistic alternative" (as per the section 45 defence). Court decisions have typically looked at whether "*there is an immediate connection between being trafficked and committing an offense*" rather than showing "*a willingness to grapple with the impossible choices made by destitute people who have endured a lifetime of trauma*".⁴¹

The defence also does not apply to the most serious crimes, such as those involving serious violence and there is a full list of more than 100 excluded offences is provided in Schedule 4 of the Act. The Group of Experts on Action against Trafficking in Human Beings (GRETA) has raised concerns that this is a narrower interpretation of the non-punishment principle outlined in ECAT and can result in the criminalisation of possible victims.⁴²

In GRETA's latest evaluation of the UK it noted the ongoing reports of individuals convicted for drug related offences while presenting indicators of human trafficking and that "*in many instances prosecutors do not wait for the final NRM decision before deciding to prosecute possible victims of trafficking.*" While acknowledging the steps taken to comply with the non-punishment principle, through the provision of guidance and training, GRETA remained concerned that "*victims of trafficking are prosecuted and convicted for offences that they were compelled to commit as part of their exploitation, either because they are not properly identified as victims of trafficking or because they are denied the application of the statutory defence provisions despite being identified as victims of trafficking.*"⁴³

⁴⁰ [R v MK: R v Persida Gega \(aka Anna Maione\) \[2018\] EWCA Crim 667](#)

⁴¹ David Gadd and Rose Broad, [When Victims of Modern Slavery Became Offenders: The Unravelling of the UK's Modern Slavery Agenda](#), 27 February 2024, Journal of Human Trafficking Volume 10:2

⁴² Group of Experts on Action against Trafficking in Human Beings (GRETA), [Third Evaluation report- United Kingdom](#), October 2021

⁴³ GRETA, [Fourth Evaluation report- United Kingdom](#), May 2026

Aiming's story

Aiming grew up in poverty in China. She was subjected to domestic violence and was then forced into sexual exploitation. She gave birth to two children, contrary to the one-child policy, and was apprehended by the authorities while eight months pregnant and forced to have an abortion. In significant distress, suicidal and trying to escape her husband, she met someone who trafficked her out of China, via Russia and other European countries, and then to the UK.

Aiming was told that if she mentioned anything to UK authorities about the traffickers, she would be killed. She escaped and became street homeless. She was later found, while homeless, by a member of the gang involved in her original trafficking, and was told that she would have to work to pay off the debts she owed for travelling to the UK. After some time cleaning houses, she was forced into sex work. The place she was held at was then burgled, and she used this opportunity to run away, sofa-surfing for several years.

Aiming was later found again by the gang who forced her to resume working for them to repay her debt; she was given a choice between selling counterfeit DVDs and sexual exploitation, and she chose the former. She was encountered by the police while selling DVDs multiple times over the next few years.

Eventually, Aiming was charged and arrested. She was convicted on three counts of possessing and selling counterfeit DVDs and sentenced to ten months in total. A deportation order was issued. After six months in prison, she was then detained in an Immigration Removal Centre for over two years. Within this time, she attempted suicide several times, sustained a permanent injury to her back after a fall from a great height, and now, having not received timely healthcare intervention, requires a catheter on a permanent basis.

After her release from detention, she was placed in a safehouse and then asylum support accommodation and eventually received a positive conclusive grounds (CG) decision from the NRM as a confirmed victim of trafficking. Her CG decision stated, among other types of exploitation, *'forced criminality in the UK'* during the period for which she was arrested.

Increased criminalisation in the asylum and immigration system

The same vulnerabilities which lead to exploitation can also put people at risk of coming into contact with the criminal justice system, as can the systems in which people have to operate. For example, non-British national victims of trafficking without a form of leave to remain (permission to stay) in the UK cannot normally legally work for the duration of their asylum claim or referral into the NRM,⁴⁴ both of which can take months or years.⁴⁵ During this time, they must rely on small amounts of financial support from the Home Office. Some are under pressure to provide for their families living in poverty abroad, or need money for medical issues or to (re)pay smugglers. As a result, some people take on 'black market' or cash-in-hand work or become involved in the drugs trade. In our experience, clients are often initially unaware that the job they are doing is illegal.

People in the immigration and asylum systems may also be criminalised for minor offences - riding e-scooters, not paying train fares, failing to pay a fine on time - which they do not fully understand or are unable to respond to properly due to factors like language barriers or poverty. The failure to pay a fine or deal with minor bureaucracy can result in a court summons.⁴⁶ Over 10% of all letters written last year by HBF's legal protection department were to provide evidence in relation to fines⁴⁷ issued to our clients for extremely minor offences (such as a water bottle not being put into a bin or a Disabled Persons Railcard not being properly displayed during a train journey). More often than not, HBF clients had been unaware of or not understood the fine itself until they had brought the letter in for advice - often to their therapist. It is extremely common for them not to understand the charge itself nor the process of appealing it. All of them have not have legal representatives able or willing to help them with appealing the fines (nor the means to pay them) and could not have done so themselves. All of their fines were cancelled after HBF involvement.

People with ongoing immigration and asylum cases are more likely to come into contact with the police than their peers, due to living in staffed accommodation and due to being mostly from Black, Asian, and minority ethnic backgrounds. Both result in higher contact with the police and thus a higher risk of criminalisation.⁴⁸

⁴⁴ If they are not granted temporary permission to stay at the conclusion of the NRM process.

⁴⁵ There remains a significant backlog in asylum cases in the UK, both at the initial decision and at the appeals stage. The backlog within the NRM has dramatically reduced in recent statistics but in 2025, the average time taken between a reasonable grounds and conclusive grounds decision was 372 days – still over one year. Home Office, [Modern slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2025](#), 19 February 2026. There is a significant backlog in asylum appeals. As of March 2026, the mean time taken for the First-tier Tribunal (Immigration and Asylum Chamber) to decide an asylum/protection case was 67 weeks. [Ministry of Justice, Tribunal Statistics Quarterly: January to March 2026](#), 11 June 2026.

⁴⁶ Migrants Law Project, Asylum Aid and Commons Law CIC, [Understanding Criminalisation of Young People Seeking Asylum: An Executive Summary](#), November 2024

⁴⁷ Specifically, fixed penalty notices "Fixed Penalty Notices" Sentencing Council, ["Penalty Notices – fixed penalty notices and penalty notices for disorder"](#)

⁴⁸ Migrants Law Project, Asylum Aid and Commons Law CIC, [Understanding Criminalisation of Young People Seeking Asylum: An Executive Summary](#), November 2024

Funmi's story

Funmi was recruited in her home country by a woman (henceforth referred to as the 'trafficker') who 'offered' to find her work in the UK so that she could repay her family's debts. Before leaving for the UK, an oath was undertaken with the trafficker in which Funmi swore not to betray her.

Funmi travelled to the UK on a passport given to her at the airport and upon arrival at her trafficker's address, her passport was seized and never returned to her. In this new address, another ceremony was undertaken and Funmi was told that if she disclosed what was happening to her, her and her family's lives would be at risk. She was forced into domestic servitude by her traffickers, which included physical violence and assaults.

Desperate to flee the situation, she was coerced into sex by another family member of the trafficker, in exchange for them obtaining for her a false passport and plane ticket back to her home country. She was arrested while attempting to use this passport. Funmi was charged with one count of using a false document, pleaded guilty, and was sentenced to nine months' imprisonment.

She has said subsequently she did not tell the duty criminal solicitor anything about her experience of ill treatment because she had taken an oath not to disclose anything.

After her release, she was exploited again within the UK; she was told she would have a job in a care home but then forced into sexual exploitation. Several years later, she was encountered in the UK without permission and served with 'illegal entry paperwork'. She was referred to the NRM a month later and claimed asylum. She was eventually issued a positive CG decision and granted one year's leave to remain as a victim of trafficking. Shortly after that, she was recognised as a refugee.

She has since applied to the Criminal Cases Review Commission (CCRC). The CCRC document notes that:

"There is a clear nexus between the offence and [her] trafficked status. [...] [Her] only means of escape was to buy a false passport and submit to sexual intercourse with the cousin of [the trafficker]. The offence was one that took place in the context of sustained sexual exploitation and trafficking. Her actions in leaving on a false passport were integral and consequent to the trafficking and exploitation such that it would have extinguished culpability and would have been taken into account when the CPS considered the general tests on public interest"

Funmi now hopes for the conviction to be overturned, in order for her to more easily qualify to become a social worker and work with children in this role, having recently completed her degree. To disclose this conviction, again and again, is deeply upsetting for Funmi.

Survivors of trafficking who are not British nationals are often doubly criminalised due to hostile immigration policies. They can be criminalised for their exploitation and then experience not only imprisonment for that offence, but then also immigration detention and deportation. It can be extremely challenging to access the necessary legal advice in prison and/or in immigration detention, which can prevent survivors from being able to challenge their criminalisation or be formally identified as a victim of trafficking. Despite the extensive evidence of the harm caused by immigration detention,⁴⁹ the number of trafficking victims in Immigration Removal Centres has dramatically increased in recent years. Even when identified as possible victims of trafficking,⁵⁰ most are not being released and are detained while waiting for a final decision in their case which can take months, if not years.⁵¹

In addition, the Nationality and Borders Act 2022 (NABA) expanded the scope of criminal offences which could be used against people crossing the English Channel to seek safety, including creating a new offence of 'illegal arrival', which made it a criminal act to arrive irregularly to the UK regardless of whether the person makes an asylum claim. The creation of this new offence, in turn, expanded the crime of 'facilitating' irregular migration. NABA also increased the maximum sentences for both offences to four years, and life imprisonment respectively. Between the introduction of the NABA offences on 28th June 2022 and the end of 2024, 556 people were charged with 'illegal arrival' having arrived on 'small boats', and 455 convicted.⁵²

Potential victims of trafficking are regularly being convicted for 'illegal arrival' and imprisoned without ever being referred into the NRM, or having the circumstances of their potential trafficking and the link between this and their alleged offence considered. While those prosecuted for 'facilitation' are unable to raise the defence under Section 45 of the Modern Slavery Act 2015, CPS guidance still sets out a four-stage approach which must be followed when making a decision to prosecute, including a mandatory requirement to consider whether it is in the public interest to prosecute on the basis of specific considerations including "*whether the force of compulsion from the trafficking/slavery or past trafficking/slavery acting on the suspect is enough to remove their culpability/criminality or*

⁴⁹ Helen Bamber Foundation, [The impact of immigration detention on mental health - research summary](#), October 2022

⁵⁰ There are numerous issues to identifying survivors within the setting of Immigration Removal Centres. A summary of the ongoing problems has been given by Detention Taskforce, "[Barriers to Disclosure: A survivor of trafficking's journey through the immigration process](#)" March 2026.

⁵¹ Helen Bamber Foundation, FLEX, Medical Justice and ATLEU, [Abuse by the system: Survivors of trafficking in immigration detention](#), October 2022

⁵² V. Taylor and C. Götz. (2025) "[Security at the heart": Criminalisation and Labour's Border Security, Asylum and Immigration Bill 2025](#)", February 2025

*reduce their culpability/criminality to a point where it is not in the public interest to prosecute them".*⁵³

The Border Security, Asylum and Immigration Act 2025 expanded the criminalisation of those arriving irregularly yet further, creating new immigration offences for those people: supplying and handling articles for use in immigration crime; collecting information for use in immigration crime; and endangering another during a sea crossing to the UK.⁵⁴ These clauses could be used to unfairly punish refugees and victims of modern slavery. For example, the offence of endangering another at sea directly penalises people coming to the UK without leave who enter by water via France, Belgium or the Netherlands i.e. people in 'small boats'. There is no stipulation in the Act that to be guilty of this crime, the person must be a trafficker or smuggler, so refugees or victims of trafficking and modern slavery could be unfairly prosecuted for behaviour committed due to coercion or exploitation. This poses a further risk to survivors who may be forced, coerced or compelled to cross borders as a result of their trafficking.⁵⁵

The Public Order Disqualification

Even when victims are eventually recognised, criminal records can persist, affecting their ability to access housing, employment, education, and legal residency. Few countries offer systematic processes for vacating convictions or expunging records related to trafficking. This legal residue of victimisation compounds the trauma experienced and limits long-term recovery and reintegration.

Section 63 of the Nationality and Borders Act 2022 introduced the disqualification of survivors of trafficking from modern slavery protections on 'bad faith' or 'public order' grounds, including convictions of a year or more that could have been the result of their exploitation. If a public order disqualification (POD) is applied, a survivor of trafficking would not be able to benefit from the recovery and reflection period, nor from any accommodation, financial and practical support under the NRM. Furthermore, a POD prevents a survivor from being granted permission through the NRM to be in the UK (known as 'leave to remain') or cancelling that leave to remain if it has already been granted.⁵⁶ If a POD is applied and a conclusive grounds decision has not been made, survivors will even be excluded from this final step of the identification process.⁵⁷ If

⁵³ Crown Prosecution Service, [Modern Slavery and human trafficking: offences and defences, including the section 45 defence](#)

⁵⁴ Sections 13, 14, 16 and 21, [Border Security, Asylum and Immigration Act 2025](#)

⁵⁵ Humans for Rights Network, Captain Support U, Refugee Legal Support and University of Oxford, ["I told them the truth": An update on the criminalisation of people arriving to the UK on 'small boats'](#), February 2024 to April 2025

⁵⁶ Section 63 [Nationality and Borders Act 2022](#)

⁵⁷ Home Office, ["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"](#) 11 May 2026, paras 14.253 and 14.298

survivors have a POD applied to their cases, there is no option to apply for the Home Office to reconsider this.⁵⁸ Their only option to challenge the decision would be through the judicial review (a complex process for which they would require legal representation).⁵⁹

Article 13 (3) of the Council of European Convention on Action Against Trafficking in Human Beings (ECAT) allows parties not to observe the ‘recovery and reflection period’ if grounds of public order prevent it or if it is found that victim status is being claimed improperly. However, the Group of Experts on Action Against Trafficking in Human Beings (GRETA) makes clear that disqualification on the grounds of public order should always be considered on a case-by-case basis and are intended to apply ‘*in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period*’.⁶⁰ Yet the public order disqualification in the UK is already affecting a large number of survivors who are denied access to *all* support and protection not just the recovery and reflection period.

From January 2023 to December 2025⁶¹ there were 763 confirmed disqualifications. Of these, 97% (744) were on grounds of public order and 3% (19) were on grounds of bad faith.⁶² 30% of the public order disqualifications were exclusively referred for criminal exploitation. 28% were referred for “labour and criminal exploitation” - so those with an element of criminal exploitation made up 58% of all PODs.

The Joint Committee on Human Rights has previously warned that “the *wide definition of “public order” contained within the Bill risks catching levels of behaviour that fall below what we consider to be the appropriate threshold to deprive a person of protection as a victim of slavery or human trafficking.*”⁶³

⁵⁸ Home Office, “[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](#)” 17 March 2026 see para 14.300

⁵⁹ [Judicial review - Courts and Tribunals Judiciary](#)

⁶⁰ GRETA, [Guidance note on the recovery and reflection period](#), 2024

⁶¹ Decision-making was paused from 23 December 2025 as a result of litigation.

⁶² [Modern Slavery: NRM and DtN statistics, end of year summary 2025 - GOV.UK](#), Data table 32. Public order disqualification decisions were paused from 31 July 2023 to 8 January 2024 while this policy was updated. Note that as of 23 December 2025, the HO has again paused decision making on public order disqualifications within the NRM until further notice.

⁶³ Joint Committee on Human Rights, [Legislative Scrutiny: Nationality and Borders Bill \(Part 5\)—Modern slavery Eleventh Report of Session 2021–22](#), December 2021, para 69

Marlon's story⁶⁴

Marlon is an adult man from the Caribbean. He was targeted by gangs in his country of origin and severely beaten. He suffered a suspected brain injury and trauma as a result of his experiences. He was diagnosed with post-traumatic stress disorder (PTSD) and has suspected learning difficulties.

Marlon fled for his life and joined his father in the UK. He started to be targeted by a local drugs gang. He was forced to sell drugs at their behest and threatened with violence if he did not comply. He suffered further trauma as a result.

Marlon was eventually arrested and convicted of intent to supply a controlled drug. He was sentenced to 20 months imprisonment. He did not raise a section 45 modern slavery defence to the conviction on the advice of his solicitor due to his time served on remand, but the judge accepted in sentencing that duress had played a role in Marlon's drug dealing. This was his only conviction in the UK.

At the point he was due for release, the Home Office detained Marlon under immigration powers. Whilst serving time in detention, he raised his exploitation and was referred into the National Referral Mechanism. He received a positive decision that there were reasonable grounds to suspect he was the victim of trafficking.

However, Marlon was then subject to a public order disqualification (POD) decision by the Home Office on the basis that he had committed an offence for which he had received a custodial sentence of over 12 months. It was accepted that he had high recovery needs, but his perceived threat to the community was said to mandate a POD, notwithstanding the role duress had played in his offence. He also continued to be detained under immigration powers despite the Home Office's policies accepting that, as a victim of trafficking, detention was likely to cause him harm.⁶⁵ This limited his ability to obtain evidence and find solicitors.

Eventually, Marlon found solicitors who challenged the POD and his ongoing detention. Prior to a hearing, the Home Office agreed to release him and withdraw the POD. If he had not found legal representation, his POD decision would have facilitated his deportation to the Caribbean.

Over six months later, the Home Office made a second POD. As a result, he was facing imminent removal from his NRM safehouse and the loss of his dedicated caseworker. Fortunately, with little time left to challenge the decision by way of judicial review, his solicitors challenged the second POD and it was withdrawn again.

⁶⁴ Provided by [Leigh Day solicitors](#)

⁶⁵ Home Office, [Adults at risk: detention of potential or confirmed victims of modern slavery](#), 22 January 2026

At the end of 2025, *another* POD was made, and Marlon was due to be exited from the NRM on 25 December (Christmas day) a time where lawyers, caseworkers and the court would not be able to help him and he would become street homeless. He made an extension request for the move-on period whilst his solicitors tried to challenge the POD, but this was refused. Therefore urgent proceedings were issued on 17 December 2025. The Home Office agreed to provide him support whilst his case was ongoing, but did not pay him the full support rate and did not recommence his mental health support (which had stopped after the POD).

In December 2025, the High Court⁶⁶ found that the Home Office's approach to making disqualification decisions had to date been unlawful.⁶⁷ The Home Office has been granted permission to appeal this judgment but at the time of writing the Modern Slavery Statutory Guidance had been updated to stipulate that support will be recommenced for those who received a POD prior to 23rd December 2025 and backdated "where eligible".

Section 29 of the Illegal Migration Act 2023, if enacted, would make the disqualification of victims a '*duty*', rather than a '*discretion*', so that disqualification would happen unless there were compelling circumstances. It also extends the scope of the disqualification to *any* non-British survivor convicted of an offence of *any length* of sentence. Given the examples of individuals already wrongly blocked from protection under section 63 of NABA, this potential expansion is extremely concerning.

The government has defended the retention of section 29 on the basis that individual circumstances will be taken into account, and that safeguards are provided in the section 45 Modern Slavery Act statutory defence and Crown Prosecution Service (CPS) ability to exercise discretion in decisions to prosecute. The safeguards that currently exist have so far failed to prevent survivors of trafficking being disqualified for crimes committed under duress, despite disqualification currently being fully discretionary.

Therefore, there is a real risk that the expanded scope and mandatory nature of disqualifications under section 29 would leave many more victims of trafficking and modern slavery unable to access financial support, housing and leave to remain as a victim of trafficking in the UK, leaving them at greater risk of re-trafficking or re-exploitation in the UK or in their home countries if forcibly returned. Implementing section 29 will signal to decision makers that they should disqualify those with convictions more often, despite

⁶⁶ In the case of [ABW v SSHD](#), [2025] EWHC 3280 (Admin)

⁶⁷ Among other things, the Court held that government is under an obligation to make conclusive grounds decisions to victims of trafficking who have reasonable grounds decisions and who have been subject to a POD, whilst they remain in the UK, and that section 63 of NABA 2022 / public order derogations to the government's duties towards victims of trafficking (including providing support to aid a victim's recovery) are to be interpreted narrowly in line with Article 13(3) ECAT.

evidence that the power is already frequently used in cases of exploitation through forced criminality.

In 2025, the Joint Committee on Human Rights stated that section 29 “is not compatible with the UK’s obligations under ECAT and Article 4 of the ECHR” and recommended that the government repeal this provision.⁶⁸

At time of writing, the government is proposing, via their new Immigration and Asylum Bill,⁶⁹ to “strengthen” the public order disqualification process and ensure swifter removals for people affected by it.⁷⁰ The new Bill would implement the “duty” to disqualify under section 29 of the Illegal Migration Act 2023 and make it even harder for individuals to be exempt from disqualification. Rather than showing there are “compelling circumstances” in a case, a person must show they are “at immediate and significant risk of becoming a victim of modern slavery or human trafficking, or further slavery or trafficking, in the United Kingdom.”⁷¹

The bill would allow for children to be made exempt from public order disqualifications but only if they have the “right of abode”⁷² or a form of “leave to remain” in the UK other than leave granted via the NRM. Whilst the government claims that this will create a statutory safeguard for children,⁷³ in reality it will create a double standard for foreign national children with irregular immigration status, despite this being a key risk factor for them.⁷⁴

This new bill would double-down on the Home Office approach to public order disqualifications which has already been found to be unlawful⁷⁵ as it makes explicitly clear that those disqualified will be excluded from even having a Conclusive Grounds decision made in their case⁷⁶ let alone being protected from removal whilst they are waiting for a Conclusive Grounds decision⁷⁷ or receiving a grant of VTS leave through the NRM.

⁶⁸ Joint Committee on Human Rights, [Legislative Scrutiny: Border Security, Asylum and Immigration Bill](#), Fourth Report of Session 2024–25

⁶⁹ Which will amend both the Nationality and Borders Act 2022 and the Illegal Migration Act 2023. See clause 38, UK Parliament, [Immigration and Asylum Bill](#)

⁷⁰ UK Parliament, [“Immigration and Asylum Bill: Explanatory Notes”](#) 30 June 2026.

⁷¹ Para 300 UK Parliament, [“Immigration and Asylum Bill: Explanatory Notes”](#) 30 June 2026.

⁷² The right of abode is a right to be exempt from immigration control. It mainly applies to British citizens and since 1983, the only way to acquire it was by becoming British. There are certain limited other Commonwealth citizens. See UK Visas and Immigration, [“Right of Abode”](#), 24 February 2026.

⁷³ See para 298, UK Parliament, [“Immigration and Asylum Bill: Explanatory Notes”](#) 30 June 2026.

⁷⁴ The Group of Experts on Action against Trafficking in Human Beings (GRETA) in their most recent evaluation report on the UK noted concerns at the position of unaccompanied or separated children in the UK and their high vulnerability to trafficking. It was outlined that *“immigration legislation adopted over the last years further increases the vulnerabilities of unaccompanied children to trafficking, making them less likely to seek support for fear of criminalisation and deportation”*. See paras 53 in particular GRETA, [“Evaluation Report: United Kingdom”](#) 05 May 2026

⁷⁵ [ABW v SSHD](#)

⁷⁶ Clause 38(2)(c), UK Parliament, [“Immigration and Asylum Bill”](#)

⁷⁷ This is also known as a “recovery period”.

Nam's story⁷⁸

Nam is a young male Vietnamese national. He was orphaned at a very young age and had a limited education in Vietnam. He began working in the construction industry but became involved with loan sharks and he was unable to repay them. He tried to run away but they found him and he was physically assaulted, causing lasting injuries.

Nam fled Vietnam with the assistance of an agent. He was not given a choice of where he would be travelling to. On the journey he was told he would have to work in the UK to pay for the cost of his travel. Nam arrived in the UK by small boat. On arrival he informed the authorities about what had happened to him in Vietnam and claimed asylum. He was then accommodated in various different forms of asylum housing around the UK.

Nam was contacted on social media by someone offering him work and he said yes because he needed the money. He went to the place he was due to have a meeting about the work and was grabbed and forced into a car. Nam was threatened and the men had weapons. He understands that these men were connected with the agents that had arranged his travel to the UK who had told him that he had to work to repay the cost of his travel.

Nam was then forced to work in various cannabis houses. He was told how to do the work of cultivating cannabis. He did not want to do this but he felt he had no choice because of the threats he had received. He was forbidden from leaving the houses and he was never paid for any of the work. Nam was told that he must not tell anyone anything about the work or who was involved – the men said they had people everywhere and that if he said anything they would kill him. Generally, he was alone in the houses, but there were cameras. Nam made one attempt to escape but he was caught and beaten severely and he was too afraid to make any further attempts.

The cannabis house that Nam was in was raided by the police and he was arrested but he was too afraid to tell the police officers that he had been forced to work there. Despite this, the police made a referral to the National Referral Mechanism (NRM) as there were clear indicators that Nam had been a victim of trafficking. At the time, Nam was unaware of the NRM referral or what it meant.

While he was awaiting trial, Nam was contacted by the gang and he was warned that he should plead guilty or he would be killed. Additionally, his criminal solicitor told him that he did not have a defence and should plead guilty because he was the only one in the property when the police raided it. Nam was convicted and sentenced to nine months

⁷⁸ Provided by the [Anti Trafficking and Labour Exploitation Unit](#)

imprisonment. At the end of his sentence, he was transferred to an Immigration Removal Centre for several months before eventually being released.

Nam was unaware that an NRM referral had been made nor what the NRM process meant. He did not receive any advice about it until over two years later when he sought support from a local NGO who discovered that a negative reasonable grounds decision had been made because there was insufficient information for a positive decision.

Following pre-action correspondence sent by ATLEU, this decision was withdrawn and Nam received a positive reasonable grounds decision and is now waiting for a conclusive grounds decision. He is receiving much needed support under the Modern Slavery Victim Care Contract to assist with his recovery needs. Nam has significant mental health needs as a result of his experiences both in Vietnam and the UK and would like to start receiving therapy. Nam has no other convictions.

Under section 29 of Illegal Migration Act, if enacted, Nam would be automatically subject to public order disqualification action because of his criminal conviction, despite it being connected entirely to his trafficking experience. He would have all support removed.

Conclusion

Survivors of trafficking are victims of serious crimes and human rights violations. But survivors in the UK, particularly those who are not British nationals, are being systematically failed by criminal justice, asylum and immigration systems that prioritise punishment and exclusion over protection and recovery. Despite the UK's binding obligations under international human rights law and the clear articulation of the non-punishment principle, survivors continue to be arrested, prosecuted and imprisoned for offences that are linked to their exploitation and coercion. Failures in identification, inadequate training and the inconsistent application of legal safeguards mean that trafficking is too often recognised only after irreparable harm has already been done.

Rather than remedying these failures, recent and proposed legislative developments have entrenched and expanded the criminalisation of survivors. The introduction of the public order disqualification under section 63 of the Nationality and Borders Act 2022, and the possible mandatory expansion under section 29 of the Illegal Migration Act 2023, and the new Immigration and Asylum Bill represent a fundamental departure from the UK's commitments under ECAT and the European Convention on Human Rights. These provisions have already resulted in survivors being denied access to support, detained under immigration powers, and placed at heightened risk of further exploitation and re-trafficking. The case studies throughout this briefing make clear that criminal convictions are frequently the product of exploitation itself, yet are subsequently used to justify further punishment, exclusion and deportation/removal.

Furthermore, baked into these systems are issues that increase survivors' vulnerability to further exploitation, including poverty, immigration insecurity, and unsafe housing. The government has increased the likelihood of survivors coming into contact with the criminal justice system by further criminalising illegal entry into the UK.

If the UK is serious about tackling trafficking and preventing re-exploitation, it must end policies that criminalise victims and instead centre protection, recovery and accountability for perpetrators. This requires the repeal of provisions that disqualify survivors from support; robust and early application of the non-punishment principle; and meaningful investment in training across the criminal justice and immigration systems to ensure trafficking is identified at the earliest possible stage. Survivors of trafficking are victims of serious crime and human rights abuses; treating them as offenders not only increases the harm they suffer, but fundamentally undermines the UK's stated commitment to combat trafficking and modern slavery.

Recommendations

The government should:

- **Repeal section 63 of the Nationality and Borders Act 2022 and section 29 of the Illegal Migration Act 2023**, and abandon public order disqualification measures in the Immigration and Asylum Bill.
- **Record and publish data on the use of the section 45 defence** and its outcomes.
- **Review the training and guidance available to criminal justice practitioners** to ensure it includes clear and consistent information on the section 45 statutory defence, and enables law enforcement to identify indicators of trafficking and make early assessments of section 45 cases in areas that are known to be connected to human trafficking (for example, cannabis cultivation). This training should be provided across all bodies in the criminal justice system, including police officers, lawyers and judges.
- **End the Home Office practice of referring potential victims of trafficking for prosecution without referring them into the National Referral Mechanism** and before a Reasonable Grounds decision has been made. The Crown Prosecution Service (CPS) should be alive to indicators of trafficking in individuals who have crossed the channel, to ensure they consider applying the statutory defence and CPS policy on the non-prosecution of suspects who may be victims of trafficking.
- **Introduce practical improvements to the support systems for all survivors** including:
 - improving vulnerability screening at all stages of the asylum and detention systems.
 - strengthening recruitment, training and resourcing to ensure NRM and asylum decisions are timely and of high quality and that the process from start to finish is appropriately trauma informed.
 - ensuring the availability of long-term support and safe accommodation in the community for all survivors of trafficking, and allocating appropriate resources to coordinate and facilitate safe release from prisons (to avoid people being re-trafficked upon release).
 - automatically granting leave to remain for five years with a route to settlement and recourse to public funds to all survivors of trafficking with a positive final ('conclusive grounds') decision
 - make the fundamental and necessary changes⁷⁹ to the funding and administration of legal aid for immigration and asylum cases, to address the current legal aid crisis and allow survivors to access quality, free legal advice.

⁷⁹ See HBF previous civil legal aid consultation responses ([2024](#) and [2025](#)) for detailed recommendation.

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