



## Trafficked people are being detained, not identified. The Nationality and Borders Bill will exacerbate this.

*Taskforce on Victims of Trafficking in Immigration Detention*<sup>1</sup>

*As the Nationality and Borders Bill enters the House of Lords it is vital to consider the evidence base and reasoning behind the inclusion of clauses relating to victims of slavery. Measures dealing with identification and support for victims of crime do not belong within a Bill on migration. Their inclusion risks muddling the two issues and undermining the Modern Slavery Act 2015. There is also a disconnect between the experiences of trafficked people and those supporting them, and the justification for measures in the Bill. The government claims it wants to end ‘abuse of the UK’s Modern Slavery System’ without any evidence of this ‘abuse’. It is our experience that the real issue is that individuals have been exploited but the current systems and structures prevent them challenging this treatment and seeking help. This briefing sets out these concerns and explains why the Nationality and Borders Bill will only worsen the situation, driving victims underground, increasing the numbers in immigration detention and playing into the hands of exploiters.*

### **I. Introduction**

The government has wide powers to detain people who are subject to immigration control,<sup>2</sup> either whilst they wait for permission to enter the UK, or before they are removed or deported<sup>3</sup> from the country. Detention under immigration powers has far fewer safeguards than detention in other contexts: the decision to detain is administrative, and detention is indefinite. The current system routinely imprisons people who should not be detained in the first place and who suffer significant harm as a result of their detention, including victims of slavery and trafficking.<sup>4</sup> **For survivors of trafficking, immigration detention not only increases risk of re-traumatisation and negative long-term physical and mental health outcomes, it can also prevent people from disclosing their exploitation and abuse, from being identified as a victim and receiving the support they need. It also undermines the ability of survivors to engage in legal processes, such as supporting criminal investigations.**

The government has claimed that people who are held in detention are falsely claiming to be survivors of trafficking “late in the process” in order to “frustrate immigration action” and to secure their release.<sup>5</sup> These claims are being used to justify concerning measures in the Nationality and Borders Bill which would make identification and protection as a potential victim harder. Yet, figures secured from a Freedom of Information request<sup>6</sup> show that the overwhelming majority of those who are referred as victims of trafficking from detention to the National Referral Mechanism are found at the first stage of the identification process to have been trafficked: **83.2% of referrals in 2020 received a positive first stage trafficking decision** (representing 1,053 of 1,265 referrals who received a first stage trafficking decision).<sup>7</sup>

The system is not ‘being abused’. Rather, we know from our work with survivors of trafficking that many end up detained either because they have been wrongly convicted for offences they were forced to commit by their traffickers and/or because they have not received adequate support, including access to legal advice, to disclose that they have been trafficked. It is well recognised, including in

statutory guidance,<sup>8</sup> that survivors can be highly traumatised, afraid of disclosing their situation of exploitation due to shame and fear and the control methods used by exploiters and be fearful of authorities. In addition, a public authority may fail to investigate or pick up on indicators of trafficking. Numerous government-commissioned or parliamentary reports and inquiries have already highlighted that the Home Office is failing to identify and release vulnerable people.<sup>9</sup>

Recent changes to Home Office policy have already increased the likelihood of survivors of trafficking being detained, as the government has itself admitted.<sup>10</sup> Members of the Detention Taskforce are extremely concerned that changes proposed in the Nationality and Borders Bill will worsen the situation further, and dramatically reduce the rights and protections afforded to survivors of trafficking:

- **Clause 62** of the Bill seeks to disqualify people from the protections afforded to survivors of trafficking. It states that where an individual is a ‘threat to public order’ or is perceived by the authorities to have made a claim ‘in bad faith’, there will be no prohibition on forcibly removing that person from the UK and no requirement to grant them leave to remain in the UK, even if they are recognised as a victim of trafficking.
- **Clauses 57 and 58** of the Bill push potential victims to present all evidence that they have suffered human trafficking crime at the earliest stage and states that late evidence will be seen to damage credibility.

These clauses are all the more concerning in light of the government’s recent decision suddenly, without any consultation, to introduce a new trafficking decision-making body: the Immigration Enforcement Competent Authority (IECA). The IECA now has the responsibility for making the preliminary and conclusive identification decisions on trafficking referrals from nearly all non-British nationals.<sup>11</sup> Taken together, the clauses above (57, 58 and 62) and the introduction of the new IECA can be seen as part of a government push to ensure that fewer people are identified and recognised as victims of trafficking and more are removed from the UK.<sup>12</sup> This undermines the whole system of protection for victims of modern slavery in the UK, leaving many at risk of further harm and re-trafficking. Many other aspects of the Bill will also lead to more people being detained, for longer.<sup>13</sup>

**The Detention Taskforce believes that clauses in Part 5 of the Nationality and Borders Bill, as well as the creation of the IECA will reverse much of the significant progress which has been made in the UK’s identification and support of trafficked people and will increase the likelihood of survivors of trafficking ending up in immigration detention. It will create an unfair, inaccessible system leaving many survivors highly vulnerable and at risk of re-trafficking. Detention of victims supports impunity for traffickers who are operating in the UK and internationally. This is harmful to the UK’s claim to be a world leader in its response to victims of the crime of modern slavery.**

## **2. Identifying survivors of trafficking in detention**

The National Referral Mechanism (NRM) is the UK’s framework for recognising and supporting survivors of modern slavery and trafficking. No one can apply to enter the NRM. To be referred into the NRM, an individual must be identified as having trafficking indicators by a designated ‘First Responder’ such as the police, Home Office or a specified charity.<sup>14</sup> The Home Office is the *only* First Responder available in immigration detention centres – that is, the only body that can decide whether an individual is a potential victim of trafficking and refer them to the NRM. Once an individual 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 5 working days stating whether there are ‘reasonable grounds’ to believe they are a victim of trafficking.

If someone receives a positive reasonable grounds decision, the individual should be given a ‘recovery and reflection’ period for a minimum of 45 days – the Bill seeks to reduce this to 30 days.<sup>15</sup> During that period, the competent authority must decide whether there are conclusive grounds to accept that the individual is a victim of trafficking. At present, the individual cannot be removed from the UK until a conclusive grounds decision has been made.

The new IECA was created in November 2021 to make identification decisions for a “specific cohort” of adult NRM cases, including people in immigration removal centres and foreign national offenders who are subject to deportation. The Independent Anti-Slavery Commissioner and other experts have highlighted concerns that reverting to two decision making bodies, one with a clear immigration focus, will lead to differences in decision making, undermining trust in the system.<sup>16</sup> The increased focus on immigration enforcement will further increase many victims’ anxiety in disclosing their exploitation to the authorities, and could be used as a further coercive measure by traffickers.

The Independent Chief Inspectors of Borders and Immigration (ICIBI) has highlighted that the Home Office often fails to identify potential victims of trafficking as a result of “*focusing on the fact that someone was working illegally rather than that they may be a victim of abuse, exploitation and slavery*”.<sup>17</sup> Poor understanding of human trafficking indicators prior to, and at the point of consideration for immigration detention, means thousands of potential victims are being detained prior to identification.

In one recent case, a young Eritrean was described by his lawyer in the following way:

*“He was understandably too fearful to approach the Home Office to disclose the exploitation because he was worried, he would be detained and removed. I contacted [the Home Office] to ask if they would act as the First Responder and they declined and instead said he should go to the Police and request that they act as First Responder. However, this young man was even more frightened about going to the police than he was about speaking to the Home Office”*

### **3. Interpretation of ‘late’ evidence (clauses 57 and 58)**

Under clause 57 of the Bill, survivors may be served with Trafficking Information Notices requiring them to produce information relevant to their case within a specified period. Clause 58, providing information “late” and “without good reason”, would give the Home Office grounds to refuse their trafficking claim on the basis of damaged credibility. These provisions increase the likelihood of survivors not being recognised as victims of trafficking and not receiving the support and protection that comes with such recognition.

This is despite the fact that the Home Office recognises the barriers to disclosure in its Modern Slavery statutory guidance, which recognises that “*victims’ early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder.*”<sup>18</sup> Enforcement action relies on those who are trafficked to disclose their status quickly, or face detention. Those who are unable to report that they were trafficked at the point of arrest or detention can find they are not subsequently identified as trafficking victims, with late disclosure being taken as a credibility issue rather than an aspect of many victims’ trauma. Lack of self-identification is compounded because victims are often unaware there is a system to protect people who have experienced exploitation.

During the Committee Stage reading of the bill the government gave the unequivocal assurance that “*If there are reasonable grounds to believe that someone is a victim, they will get positive identification even if the information is provided late.*”<sup>19</sup> This begs the question as to why the government is committing to legislation that a person who provides information after the specified deadline will have their credibility damaged when later referred to the NRM.

#### 4. Public order exemption (clause 62)

Under clause 62, if the Home Office is satisfied that the potential victim is a “threat to public order” (the definition of which includes those who are sentenced to a period of imprisonment of 12 months or more) or has made a claim in “bad faith” then there will be no prohibition on forcibly removing that person from the UK and no requirement to grant them leave to remain in the UK. The term ‘bad faith’ is worryingly vague and the exclusion of those with a conviction of 12 months or more is far too wide. It is likely to further penalise many victims who have already been through the criminal justice system and wrongly convicted of offences they were compelled to commit as a result of their experience of exploitation.

We know from our work with survivors that one of the most effective ways to keep victims in fear is to force them to commit crimes, so they will be criminalised if they come forward to the authorities. If vulnerable adults and children are denied access to the NRM system on the basis of previous convictions they are unlikely to come forward in the first place and their exploitation will not be addressed, nor will traffickers be prosecuted. This will create a new level of vulnerability as traffickers will target those disqualified from support.

This clause will also make it harder for the state to prosecute traffickers and therefore prevent further cases of people being exploited. Those who are able to access adequate support can be empowered to support criminal investigations. As Richard Fuller MP stated in the Report Stage debate: “*The public interest is in enabling sufficient evidence to be collated to bring successful prosecutions against the co-ordinators of those crimes, which is where I fear this clause falls short*”.<sup>20</sup> Further criminalising victims and disqualifying those victims from accessing support will harm our efforts to bring traffickers to justice.

##### Case study: S

S is a 20-year-old male Vietnamese survivor of trafficking who has a conviction for cannabis production, having been exploited and beaten for two years in a locked warehouse under the control of his traffickers who brought him to the UK under the promise of a ‘better life’.

Having served his criminal sentence (trafficking indicators having not been identified so the statutory defence was not available to him), he was then transferred to immigration detention where his mental health suffered to the point that he was placed on suicide watch. Eventually he was referred into the National Referral Mechanism. He received a positive reasonable grounds decision and granted a period of reflection and recovery, before finally receiving a positive conclusive grounds decision and being granted refugee status.

*Under the late evidence changes in the Bill, S may not have been recognised as a victim of trafficking because of delayed disclosure. Under the public order exemption in the Bill, S may also have been excluded from support. S would have remained in detention and his mental health would have deteriorated. This is despite the fact that S’s crimes were committed whilst he was under the control of his trafficker, and that he is therefore entitled to care and support rather than further detention, where recovery is not possible.*

#### 5. Conclusion

The Nationality and Borders Bill focuses on narrowing the opportunities for trafficked people to be identified and access support to recover. This is a grave mistake which undermines years of progress. The Home Office must immediately strengthen and implement its own guidance to ensure that no survivor of trafficking is ever detained. Instead, trafficked people must be provided with the support that they are entitled to under international and domestic law in the community, including secure accommodation, psychological assistance as well as legal information and support. This is crucial to enable them to recover and rebuild their lives.

## We urge Peers to raise these concerns at Second Reading of the Bill.

### 6. Questions for the Minister

- **The Home Office has been repeatedly criticised for failing to identify victims of trafficking before placing them in immigration detention, including by the Independent Chief Inspector of Borders and Immigration. In light of this, does the government recognise that high numbers of victims being referred to the NRM from detention is not reflective of ‘abuse of the system’ but rather the Home Office’s own failings in identification?**
- **How will the implementation of the Immigration Enforcement Competent Authority be monitored to assess differences in decision making between the two bodies as well as its impact on trafficked individuals consenting to an NRM referral?**
- **Given the established evidence of the time taken to disclose trauma and abuse how can government justify clauses 57 and 58 on late evidence?**

### 7. Endnotes

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<sup>1</sup> The Taskforce on Victims of Human Trafficking in Immigration Detention is comprised of 13 expert organisations working ensure that no victim of trafficking is detained under immigration powers.

<sup>2</sup> Schedule 2, paragraph 16 (2), Immigration Act 1971 (as amended); section 62, Nationality, Immigration and Asylum Act 2002; schedule 3, para 2, Immigration Act 1971; and section 36 of the UK Borders Act 2007.

<sup>3</sup> Often confused with ‘removal’, deportation can be ordered when an individual commits a criminal offence, is sentenced for more than 12 months, and their deportation is “conducive to the public good and in the public interest”.

<sup>4</sup> In March 2021, the government published a report on the [issues raised by individuals in detention](#). It shows that 16% of people detained within the UK following immigration offences in 2019 were referred as potential victims of modern slavery (up from 3% in 2017), and that 99% of these detentions ended in release.

<sup>5</sup> See [NEW PLAN FOR IMMIGRATION - Consultation on the New Plan for Immigration: Government Response](#).

<sup>6</sup> FOI reference 64607 submitted by FLEX

<sup>7</sup> The same FOI shows data for a total of only 43 Conclusive Grounds decisions during 2020. Despite the low overall number of decisions the indication is that these are overwhelmingly positive with just over 81% (or 35 of the 43 decisions shown as granted) being positive.

<sup>8</sup> The Modern Slavery Act 2015 section 49 Statutory Guidance on Identification and Care recognises the impact of trauma lists the reasons why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.

<sup>9</sup> These include the [2016 Shaw Report](#), the [2018 progress report also undertaken by Stephen Shaw](#), and the 2019 reports by the [Joint Committee on Human Rights](#) and by the [Home Affairs Select Committee](#).

<sup>10</sup> [Home Office admits new immigration plans may see more trafficking victims locked up | The Independent](#)

<sup>11</sup> See [Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime | Focus on Labour Exploitation \(FLEX\)](#)

<sup>12</sup> Bulman, M., ‘[New Home Office policy risks ‘driving human trafficking victims underground’, experts warn.](#)’ *The Independent*, 12 November 2021.

<sup>13</sup> [BID's response to the Nationality and Borders Bill | Bail for Immigration Detainees \(biduk.org\)](#)

<sup>14</sup> <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

<sup>15</sup> Clause 60: Identified potential victims of slavery or human trafficking: recovery period

<sup>16</sup> [https://www.antislaverycommissioner.co.uk/media/1695/letter\\_to\\_home\\_secretary\\_on\\_ieca\\_11\\_november\\_2021.pdf](https://www.antislaverycommissioner.co.uk/media/1695/letter_to_home_secretary_on_ieca_11_november_2021.pdf); <https://www.labourexploitation.org/publications/bad-decisions-creation-immigration-enforcement-competent-authority-will-undermine>

<sup>17</sup> Independent Chief Inspector of Borders and Immigration, An inspection of the Home Office’s approach to Illegal Working (August – December 2018), May 2019, p.47.

<sup>18</sup> [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](#)

<sup>19</sup> [Clause 47: 28 Oct 2021: Public Bill Committees - TheyWorkForYou](#)

<sup>20</sup> [Nationality and Borders Bill - Hansard - UK Parliament](#)