

## **'Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime'**

**Detention Taskforce,<sup>1</sup> November 2021**

### **Overview**

On the 8<sup>th</sup> of November the Home Office created a new decision-making body (Competent Authority) for the stated purpose of identifying victims of modern slavery. However, the priorities of this decision-making body are clear from its title: The Immigration Enforcement Competent Authority (**IECA**).<sup>2</sup> The IECA will make National Referral Mechanism (NRM) identification decisions for many adults who are subject to forms of immigration control, including any adults in respect of whom deportation is being pursued and those who are held in administrative immigration detention. All other potential victims of modern slavery will continue to have identification decisions made by the existing Single Competent Authority.

The Detention Taskforce, together with the wider modern slavery and human rights sector, is deeply concerned about the serious impact this will have on victims of modern slavery. This measure was introduced without consultation, and we believe it is a retrograde step returning us to a discriminatory two-tier system, in which many victims of modern slavery in the UK who lack secure immigration status will not be appropriately identified, protected, or supported, and will therefore fear coming forward to the authorities to seek help. As we know from our collective decades of working in this field, the establishment of the IECA will erode vital trust and drive victims underground and back into the hands of human traffickers.

### **A failure to consult or notify stakeholders in civil society**

In the week prior to the IECA suddenly being announced parliamentarians were debating the identification of victims of trafficking with reference to clauses in the Nationality and Borders Bill. It is entirely inappropriate and misleading that such a significant planned change to the NRM decision making system was not mentioned to parliamentarians at this time. This change came in with immediate effect and there was no consultation with, or warning given to, the many NGO and statutory authority stakeholders who consult regularly with the Home Office and who provide frontline support to potential victims. We note from her published letter (dated 11 November 2021)<sup>3</sup> that even the UK's own Independent Anti-Slavery Commissioner was not consulted. The Home Office makes much of its consultation with experts including front-line and policy professionals on matters of Modern Slavery strategy and policy change, including through statements

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<sup>1</sup> The Taskforce on Victims of Trafficking in Immigration Detention' was established in 2019. It is a network of experts working with, and/or for, victims of trafficking in immigration detention in the UK. The Taskforce members are Helen Bamber Foundation (Chair) Focus on Labour Exploitation (FLEX) (coordinating organisation), Bail for Immigration Detainees, Anti-Slavery International, Latin American Women's Rights Service, Duncan Lewis Solicitors - Public Law, Medical Justice, Ashiana Sheffield, Association of Visitors to Immigration Detainees (AVID), Jesuit Refugee Service UK, ECPAT UK, After Exploitation, Unseen UK

<sup>2</sup> This change was introduced via an update to the Modern Slavery Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. Version 2.5

<sup>3</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)

to this effect in its own statutory guidance<sup>4</sup> and by establishing the Modern Slavery Strategy and Implementation Groups (MSSIG). It has also made strong commitments to consult with experts with lived experience. We are not aware of any such consultation regarding this significant change.

For the Home Office to make such a sweeping change, at such pace, with no consultation or notification shows a disturbing lack of transparency and care for victims of the serious crime of human trafficking. It also runs counter to the Home Office's own guidance<sup>5</sup> and against the recommendations of Wendy Williams' Windrush Lessons Learnt Review<sup>6</sup> and the Home Office Ethical Decision Making Model.<sup>7</sup> The change completely undermines the stated ambition of the UK Government to provide a 'world leading' response for the prevention of human trafficking and the clear signal to human traffickers that victims will be left vulnerable to further crime and harm.

### **'We have been here before': A look back at the history of the NRM Competent Authority**

The creation of the IECA is a backwards step which reverses, without justification, progress which had been made progressively since the signing and ratification of the Council of Europe Convention and the introduction of the Modern Slavery Act, to build trust in NRM decision making and pro-actively support victims to trust in the system designed to recognise them, and feel able to engage with it.

After the establishment of the NRM in 2009 there were two designated Competent Authorities: the Home Office division responsible for Visas and Immigration (which made decisions for all non British and EEA national people) and the UK Human Trafficking Centre (UKHTC) within the National Crime Agency, which made identification decisions for all other persons. It was argued over years that this system was discriminatory and unjust, due to an emphasis on immigration control that undermined and diminished the rights of victims of modern slavery to be identified, and therefore protected and supported. In February 2014, the Anti-Trafficking Monitoring Group (ATMG) published a five-year review of the NRM<sup>8</sup> which identified a serious disparity: the percentage of positive Conclusive Grounds decisions made for British and EU/EEA nationals by the UKHTC was 80% whereas for the Home Office division it was less than 20%. In addition to these stark differences in decision making, it identified a discriminatory 'culture of disbelief' in Home Office decision-making processes for victims of modern slavery that has long been criticised. It did not work effectively to identify and support victims due to its focus on immigration control.

The government's own review of the NRM in November 2014 also found '*concerns over the conflation of human trafficking decisions with asylum decisions, elongated timeframes for decisions, lack of shared responsibility and provision of relevant information for decision-making, [and] the complexity of the system and thresholds for decision-making*'. In response, the government listened: it announced<sup>9</sup> that a single, expert unit completely separate from the immigration system would be formed to undertake the

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<sup>4</sup> See para 1.6 Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.5

<sup>5</sup> Modern Slavery Statutory Guidance Version 2.5 para 1.6

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1031731/modern-slavery-statutory-guidance-\\_ew\\_-non-statutory-guidance-\\_sni\\_v2.5-final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031731/modern-slavery-statutory-guidance-_ew_-non-statutory-guidance-_sni_v2.5-final.pdf)

<sup>6</sup> The Response to the Windrush Lessons Learned Review: [01\\_CCS0820050750-001\\_Resp\\_to\\_Windrush\\_Lessons\\_CP\\_293\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922973/CCS001_Resp_to_Windrush_Lessons_CP_293_Accessible.pdf)[\[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/922973/CCS0\]](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922973/CCS0)

<sup>7</sup> [The Ethical Decision-Making Model \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922973/CCS001_Resp_to_Windrush_Lessons_CP_293_Accessible.pdf)

<sup>8</sup> ATMG, The National Referral Mechanism: A Five Year Review (February 2014).

<sup>9</sup> <https://www.gov.uk/government/news/modern-slavery-taskforce-agrees-new-measures-to-support-victims>

NRM decision-making function. The Single Competent Authority for all NRM decisions was established in 2019. It had only two years in operation before the IECA was suddenly introduced.

### **Why the Immigration Enforcement Competent Authority is dangerous**

Although there are concerns about the Single Competent Authority's lack of independence from the Home Office, the creation of the additional Immigration Enforcement Competent Authority is of urgent concern. This retrograde step takes us backwards and reinstates a system of two decision making bodies, which has been shown not to work for the safety of victims, and to muddle and undermine the identification process. In her letter on this change, the Independent Anti-Slavery Commissioner stated that she is: *"extremely concerned that by introducing the IECA and returning to a dual system approach, we are taking a step backwards in our response to modern slavery with considerable implications for victims"*.<sup>10</sup>

The Detention Taskforce, and wider modern slavery sector, is deeply concerned about the impact this will have on victims and the UK's efforts to identify and prosecute slavery offenses. Traffickers routinely threaten their victims that, if they speak to the police or immigration authorities, help will be refused, they will be detained and forcibly removed from the UK and back into the control of their traffickers.

To make it safe for victims to seek help, and to build trust with victims, it is vital that the NRM is completely separate from Immigration Enforcement. The creation of the IECA instead conflates the two, raising a serious conflict of interest and playing into the hands of traffickers. It will leave many too fearful to come forward and disclose their abuse; it will lead to greater exploitation of migrants by traffickers who will know that they can use their immigration status as a tool for coercion; and it will hinder police efforts to bring traffickers to justice. Detention is an extremely poor context for disclosure and having a competent authority making NRM decisions from the perspective of Immigration Enforcement will only exacerbate that problem. Over the last year, the Home Office has frequently been found to fail to successfully screen for trafficking victims, including in contexts in which immigration control was a priority.<sup>11</sup>

Convictions for modern slavery remain very low in the UK, and we know that identification and support are key to increasing this; 73% of victims of modern slavery supported by the charity Hope for Justice engaged with the criminal justice process.<sup>12</sup> Making sure all victims can access identification and support is essential to ending slavery.

Whilst the Home Office has stated that it is not intended that the IECA will have any responsibility for determining trafficking claims for children, the unfortunate reality is that those who were trafficked as children may end up having their trafficking claims determined by the IECA nonetheless. Child victims are often too traumatised and afraid to provide details about trafficking issues and it can take several years before children make these disclosures. Should they turn 18 in the interim period, they would have their trafficking cases determined by the IECA, in the same circumstances as any other adult victim would, given that it is the age at the point of referral to the NRM, not the age

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<sup>10</sup> Independent Anti-Slavery Commissioner [letter to home secretary on ieca 11 november 2021.pdf](#) ([antislaverycommissioner.co.uk](https://antislaverycommissioner.co.uk))

<sup>11</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2020/3080.html>  
<https://www.bailii.org/ew/cases/EWHC/Admin/2021/1489.html>

<sup>12</sup> <https://www.antislaverycommissioner.co.uk/media/1268/the-fight-against-modern-slavery-and-human-trafficking.pdf>

at which the exploitation took place, which dictates which Competent Authority makes the decision. There are also concerns that children are currently being incorrectly identified as adults and that this may increase with the changes to the age assessment process outlined in the Nationality and Borders Bill.

### **Missing evidence and potential alternative reforms to decision making in National Referral Mechanism**

It is frustrating and disappointing that this damaging and retrograde change has been rushed through when much needed reforms to the NRM have been promised but have been delayed for years. These include having a process for appointing NGO First Responders, training First Responders, expanding the use of Multi Agency Assurance Panels<sup>13</sup> and introducing places of safety for victims of trafficking who need to have immediate shelter prior to entering the NRM.<sup>14</sup>

We appreciate and support the need to improve the NRM and to tackle the substantial delays and backlog in decision making which leave victims in limbo with their lives on hold while they wait to learn if they will be believed. However, this measure aims to do so by prioritising 'immigration enforcement' over identification and protection. An enforcement approach is discriminatory and punitive for victims who have suffered serious crime by traffickers who are using the UK as a site for their operations and can rely upon their victims never feeling safe or supported enough by the authorities to speak out and pursue criminal justice.

Furthermore, there is no reason to believe this measure will make any difference to the delays in the system, and certainly the Home Office has shared no evidence indicating so. Similarly, the government has repeatedly failed, when questioned, to provide any evidence for its repeated claims that non-British nationals are *frustrating* immigration action through late disclosure, an assumption that appears to underpin this change and many of the clauses on slavery in the Nationality and Borders Bill.

**We urge the Home Office to urgently reverse the decision to introduce the IECA and return to a Single Competent Authority for all NRM decision making immediately, before irreparable damage is caused.**

Signed:

Helen Bamber Foundation

Focus on Labour Exploitation (FLEX)

Anti-Slavery International

Bail for Immigration Detainees

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<sup>13</sup> ATMG: National Referral Mechanism Multi-Agency Assurance Panels [https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs\\_report\\_final.pdf](https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf)

<sup>14</sup> ATMG : Places of Safety <https://www.antislavery.org/wp-content/uploads/2019/01/Places-of-safety-principles.pdf>

Latin American Women's Rights Service (LAWRS)

Duncan Lewis Solicitors - Public Law

Medical Justice

Ashiana Sheffield

Association of Visitors to Immigration Detainees (AVID)

Jesuit Refugee Service UK

ECPAT UK

After Exploitation

Unseen UK

East European Resource Centre

Anti Trafficking and Labour Exploitation Unit

Caritas

Tara Service

Survivor Alliance UK

JustRight Scotland

Freedom United

Work Rights Centre

The Joint Council for the Welfare of Immigrants

Kalayaan

Migrants' Rights Network (MRN)

Hestia Housing & Support

Children's Law Centre

Women for Refugee Women

VITA Training/Network

Unite the Union

Anti-Trafficking Monitoring Group (ATMG)

Ella's

Modern Slavery Survivors' Collective