

Identifying victims of trafficking in immigration detention - National Referral Mechanism decision making between 2017-2022

Data received from a Freedom of Information request¹ made by FLEX on behalf of the Labour Exploitation Advisory Group (LEAG) to the Home Office shows that between 2017 and 2021 victims of modern slavery have been identified at increasing rates from within immigration detention.² Although victims of trafficking should never be detained in the first place, the increased identification of victims from within immigration detention by the Home Office's decision makers does at least show that the referral and identification system can work for trafficked victims, even if belatedly. Identification should enable the start of the process of accessing recovery entitlements³ and rebuilding lives. Immigration detention remains an unacceptable environment for victims of modern slavery, as detention can cause severe mental and physical suffering and victims of modern slavery are among those particularly vulnerable to harm in detention. Poor support, such as the denial of medication, being detained in a prison-like environment, and a culture of disbelief concerning detainees, is leading to long-lasting negative impacts on victims of modern slavery in immigration detention.⁴ Such conditions can also undermine disclosure of traumatic events including trafficking. It is important to consider the data on trafficking decisions in this context.

This briefing summarises the policy and wider context regarding decision making for victims of modern slavery who have been detained. It finds that the data is clear that government decision makers agree with the vast majority of trafficking referrals from immigration detention. This is in contrast with claims made in the New Plan for Immigration and the framing of the Nationality and Borders Bill of 'false trafficking claims' and abuse of the modern slavery system.⁵ It suggests instead that focus needs to be on ensuring that victims are not detained but should be supported to early identification and to access entitlements to rebuild their lives.

Increasing numbers of victims in immigration detention are identified as trafficked despite the poor context for disclosure

The received data shows that the vast majority of potentially trafficked people referred into the UK's modern slavery identification system, the National Referral Mechanism for identifying victims of modern slavery (NRM), from immigration detention, are meeting the

¹ Freedom of Information Request reference: 64607

² This trend may demonstrate an improvement in the UK's compliance with their obligation to State's obligations to identify [...] migrant victims of trafficking and contemporary forms of slavery under international law as per Chapeau to Guideline 2 of the *OHCHR Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add. 1).

³ Article 12, Council of Europe Convention for Action Against Trafficking in Human Beings

⁴ Labour Exploitation Advisory Group (2019). *Detaining Victims: human trafficking and the UK immigration detention system*, p. 45. Available at: <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

⁵ After Exploitation (2021). *The Nationality & Borders Bill: Impact on survivors of modern slavery*, p.4.

government's own reasonable grounds decision making threshold,⁶ set in compliance with the Council of Europe Convention on Action against Trafficking in Human Beings (2012). The improvement in the preliminary recognition of victims of modern slavery, as evidenced through the received data, is all the more significant given the difficulties of disclosing in detention,⁷ including where individuals do not self-identify as victims.⁸

CASE STUDY: VICTIM OF HUMAN TRAFFICKING SPENDS 18 MONTHS IN DETENTION WITHOUT BEING REFERRED TO THE NRM⁹

N was convicted of cannabis cultivation and was facing deportation. He speaks very little English. He had already had an asylum claim refused and had a Rule 35 report which the Home Office accepted as independent evidence of torture. Despite the presence of these key indicators, it was only once Bail for Immigration Detainees (BID) had taken N on as a client that steps were taken to ensure that he was referred to the NRM. By this point he had been in detention for over a year.

Once BID recognised that an NRM referral was needed, they contacted a first responder outside detention. BID was concerned that the Home Office would be unwilling to make a referral to the NRM because they had already missed numerous key indicators of human trafficking over a long period of time. After being referred to the NRM, N received a positive reasonable grounds decision soon after and was released as a result, having spent more than a year and a half in detention.

Changes in decision making bodies

The data provided in response to the FOI request shows that an increase in positive reasonable grounds decisions is evident since 2017, rising from 14% of cases, to 44% in 2018, before stabilising at 80.4% in 2019 and 83.2% in 2020. Though the statistics for 2021 are only available for the first quarter, they largely reflect the preceding two years, at 90.2%.¹⁰ Given the difficulties of disclosing their modern slavery victim status from detention and that the burden of proof is on the potential victim, these high numbers show that victims are disclosing

⁶ Reasonable grounds decisions are the first stage of determination of whether someone may be a victim of human trafficking. This decision is made on the basis of the information contained in the NRM referral – though other available evidence may also be used, and the decision is to be made within 5 days of the referral. Where the decision-maker 'suspects but cannot prove' the person is a victim of human trafficking, slavery, servitude, and forced or compulsory labour, and that a 'reasonable person having regard to the information in the mind of the decision maker, would think there are reasonable grounds to believe the individual had been a victim' then the potential victim will be entitled to further help and assistance.

⁷ Labour Exploitation Advisory Group (2019). *Detaining Victims: human trafficking and the UK immigration detention system*. Available at: <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

⁸ *ibid*, p. 29.

⁹ Case study provided by Bail for Immigration Detainees – see *Detaining Victims: human trafficking and the UK immigration detention system*, p.37.

¹⁰ 86 individuals - 2017; 372 individuals - 2018; 1,659 individuals - 2019; 1,053 individuals - 2020 and 120 individuals - first quarter of 2021.

trauma and being identified as trafficked against the odds. They show alarming failings in screenings for modern slavery indicators prior to detention and highlight the importance of ongoing access to information and specialist legal advice once in detention to ensure that victims of modern slavery who have been wrongly detained have opportunities to disclose.

The year-on-year increase in positive reasonable grounds decisions from Immigration Detention may be attributable to a number of factors. In April 2019, the Single Competent Authority (SCA), which brought all modern slavery identification decisions under one decision-making body, came into operation following the government finding, in 2014, that having two separate decision makers, with remits dependent on immigration status, meant that there were *'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'*.¹¹ The creation of the SCA sought to centre the individual facts of each person's possible trafficking within decision-making in a manner that was completely separate from the immigration system. The Detention Taskforce and many others have already set out significant concerns around the recent sudden and unexplained change to the Modern Slavery Act Statutory Guidance¹² which created an Immigration Enforcement Competent Authority (IECA) in addition to the existing Single Competent Authority (SCA), reverting to a modern slavery identification system which will inevitably be influenced and likely undermined by immigration considerations.

Concerns are set out in the joint statement ['Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime'](#) which explains how the recent introduction of the IECA threatens to undo the UK's improvements in its ability to identify victims of modern slavery, against their own evidence. Reverting to a two-tier identification system linked to immigration status will inevitably lead to a systematic failure to appropriately identify, protect and support victims of modern slavery who lack secure immigration status. Undermining the integrity of identification processes ultimately jeopardises victims' willingness to come forward to seek help.

There are likely to be other contributing factors, to the increasing number of positive identification decisions made for people referred from immigration decision. These may include as greater awareness of trafficking and modern slavery and increasing familiarity with the NRM process over time. Concerningly, it also remains possible that the increase in positive reasonable grounds decisions stems from an increase in victims of modern slavery being detained or a decrease in screening and/or opportunities to disclose prior to detention. Groups such as After Exploitation¹³ and the Anti-Trafficking Monitoring Group¹⁴ have identified that potential victims of modern slavery face a *'referral lottery,'* with many identified

¹¹ Home Office (2014). *Review of the National Referral Mechanism for victims of human trafficking*. para. 2.2.4.

¹² Section 49, Modern Slavery Act 2015

¹³ After Exploitation (2020). *The Referral 'Lottery'*. Available at <https://afterexploitation.com/national-referral-mechanism/>

¹⁴ The Anti-Trafficking Monitoring Group (2021). *A Review of the National Referral Mechanism Multi-Agency Assurance Panels*. Available at: https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf

by first responders not being referred to the NRM. As such, the data reflects a need to improve screening for modern slavery indicators as well as disclosure opportunities. The Home Office has continually failed in this respect. This was demonstrated by the use of a truncated screening process in 2020 for people arriving into the UK, where the use of a narrower set of questions (departing from the Home Office's own guidance) resulted in a failure to ask questions that would elicit information about trafficking. This resulted in the detention of victims who were only later identified as victims of modern slavery offences.¹⁵

Data gaps

The Home Office's serious failings in NRM data collection¹⁶ impedes our ability to conclusively determine the causal factors for the increase in positive reasonable grounds decision-making for potential victims of modern slavery in immigration detention. Indeed, the National Audit Office have previously held that the errors in NRM data make it *'difficult to use to understand modern slavery crime'* and that as a result the Home Office itself has an *'incomplete picture of the crime.'*¹⁷ Improvements in data collection and data transparency are therefore necessary to move beyond hypothesising towards a meaningful assessment grounded in empirical evidence.

Despite the gaps in data, in part due to significant delays in NRM decision-making meaning low granting of conclusive grounds, or final stage, NRM decisions, it is apparent that positive reasonable grounds decisions are being upheld over time, indicating the decisions made at the reasonable grounds stage are of sound quality. This undermines the Government's position that the NRM is being *'abused'* as a *'means of disrupting immigration proceedings,'*¹⁸ to justify the inclusion of counterproductive clauses within the Nationality & Borders Bill. The total number of negative conclusive grounds decisions has not increased over this time, but instead has declined despite the increase in overall NRM referrals (with the exception of the decrease in NRM referrals in 2020, likely as a result of the pandemic).¹⁹ This data, together with the fact that even NRM rejections are likely to be overturned (with 78% of reconsiderations being positive) in 2020²⁰ demonstrates that Home Office policy is failing victims of modern slavery.

¹⁵ Taylor, D., (2020). *Priti Patel not following her own anti-trafficking policy, judge rules*. Accessible:

<https://www.theguardian.com/uk-news/2020/nov/13/priti-patel-departing-from-her-own-anti-trafficking-policy>

¹⁶ The Anti-Trafficking Monitoring Group (2018). *Before the Harm is Done Examining the UK's response to the prevention of trafficking*. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

¹⁷ National Audit Office (2017). *Reducing Modern Slavery*. Available at: <https://www.nao.org.uk/report/reducing-modern-slavery/>

¹⁸ The Sun (2021). *Child rapists and terrorists will be stopped from using modern slavery loophole to stay in UK*.

Accessible:

<https://www.thesun.co.uk/news/14397127/uk-clampdown-deportation-law-firms-criminals/>

¹⁹ Home Office (2021). *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2020*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf

²⁰ Siddique, H., (2021). *Four out of five trafficking claims were overturned in UK last year*. The Guardian. Accessible:

<https://www.theguardian.com/uk-news/2021/jul/02/four-out-of-five-rejected-trafficking-claims-overturned-uk-last-year>