

## Labour Exploitation Advisory Group (LEAG)

# Submission to the Independent Chief Inspector of Borders and Immigration

## Response to call for evidence: 'Adults at Risk' in immigration detention

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### About the Labour Exploitation Advisory Group (LEAG)

In 2015 Focus on Labour Exploitation (FLEX) established the Labour Exploitation Advisory Group (LEAG), a group of expert individuals working with people in or at risk of human trafficking for labour exploitation in the UK. LEAG collaborates to ensure that formal and informal responses to trafficking for labour exploitation in the UK are guided by the needs and experiences of vulnerable and exploited workers. LEAG members come from organisations<sup>1</sup> working on migrant rights, detention, women's rights, labour rights and victim support.

### Summary

LEAG welcomes the opportunity to contribute to the Independent Chief Inspector of Borders and Immigration's call for evidence on how effective and efficient the Home Office is in identifying vulnerability both at the point where an individual is being considered for detention and also during the time they are held in detention.

People who have experienced trafficking or modern slavery are considered 'vulnerable' under the Home Office's 'Adults at Risk' policy.<sup>2</sup> This submission describes the experiences of LEAG in supporting and advocating for victims of trafficking in detention and provides illustrative case studies<sup>3</sup> of the experiences of members' clients with the Home Office's 'Adults at Risk' policy.

### LEAG member organisations submitting evidence

- Focus on Labour Exploitation, Leticia Ishibashi, [leticiaishibashi@labourexploitation.org](mailto:leticiaishibashi@labourexploitation.org)
- Bail for Immigration Detainees, Rudy Schulkind, [rudy@biduk.org](mailto:rudy@biduk.org)
- Ashiana Sheffield, Rachel Mullan-Feroze, [rmf@ashianasheffield.org](mailto:rmf@ashianasheffield.org)

Other organisations' publicly available evidence may be used to provide additional evidence on LEAG-identified issues.

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<sup>1</sup> LEAG members are: Focus on Labour Exploitation (Secretariat), Latin American Women's Rights Service (Chair), Kalayaan, Unite the Union, Equality, East European Resource Centre, Ashiana Sheffield, British Red Cross, Bail for Immigration Detainees, Praxis Community Projects. For more information see <http://www.labourexploitation.org/about-us/labour-exploitation-advisory-group-leag>

<sup>2</sup> Home Office, Adults at Risk in Immigration Detention version 3.0, 02 July 2018, p.7. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721603/adults-at-risk-policy-guidance\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721603/adults-at-risk-policy-guidance_v3.pdf)

<sup>3</sup> All names have been changed to protect the identity of clients.

### **Recommendations**

Victims of trafficking should not be detained. The following recommendations would ensure that victims of trafficking are quickly identified and prevented from entering detention, or urgently released from detention if they are only identified later on.

1. Training on identifying potential victims of trafficking should be provided to all personnel making arrests under immigration powers to ensure victims are identified and are kept out of detention.
2. “Detention Gatekeepers” should receive specialised training on indicators of trafficking to ensure a more effective screening process that identifies people before entering detention. The detention gatekeeper pro-forma should contain a question relating to indicators of trafficking.
3. Training on identifying and supporting potential victims of trafficking should be provided to all Immigration Removal Centre healthcare staff to ensure victims are identified swiftly once in detention
4. An independent first responder to the NRM should be immediately notified when a Rule 35 report is made if there is a possibility that a detainee is a trafficking victim
5. Neither victims of trafficking nor anybody else should be held in a prison under immigration powers.
6. As soon as a victim of trafficking is referred to the NRM they should be immediately released from detention.
7. NRM referrals for people in detention should be made by an independent first responder rather than Home Office staff to avoid the current conflict of interests with the Home Office’s responsibility for immigration enforcement and decision to detain. The independent first responder should have a presence in immigration detention.
8. Potential victims of trafficking should receive free independent specialist legal advice in detention to understand their rights and decide whether they would like to enter the National Referral Mechanism (NRM).
9. Data on the number of potential victims of trafficking being identified by “Detention Gatekeepers” and in detention should be recorded and made public to ensure a fair assessment of the effectiveness and efficiency of the Home Office in identifying vulnerable people prior to and while in detention.

### **Section 1: The UK National Referral Mechanism for Victims of Trafficking (NRM)**<sup>4</sup>

Victims of trafficking often spend long periods in immigration detention without being recognised and referred into the National Referral Mechanism (NRM). This group is particularly vulnerable to harm in detention as they may have experienced traumatic events, may speak limited English and may have little understanding of the UK’s immigration system.

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<sup>4</sup> For more information on the National Referral Mechanism see <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

The NRM is the UK's framework for identifying victims of human trafficking or modern slavery. To be referred to the NRM, potential victims must first be referred to one of the two UK Competent Authorities – the National Crime Agency's Modern Slavery Human Trafficking Unit (MSHTU); or the Home Office Visas and Immigration (UKVI). The UKVI is responsible for decision-making on trafficking cases of non-EEA or EEA nationals with live immigration issues<sup>5</sup> and, therefore, this agency is responsible for decision-making of referrals from people in detention.

The initial referral is usually handled by an authorised agency, known as 'first responder'. First responders complete a referral form containing details about the potential victim, alongside a description of their exploitation, and they collect the potential victim's consent and signature. The quality of this information is vital as it is based on this referral form that Competent Authorities make decisions about whether or not someone is identified as a potential victim of trafficking.

For victims in detention, the UKVI is responsible for both their referral into the NRM and the assessment of whether or not they are considered a victim of trafficking. **LEAG considers this a conflict of interest, since the same authority that is responsible for immigration enforcement is tasked with identifying potential victims, collecting evidence of detainees' exploitation, and deciding the outcome of their NRM referral.** Section 4 describes the impact of this on LEAG service users in detention.

The NRM operates a two-stage decision-making process to identify and support potential victims of trafficking or modern slavery:

#### Stage 1: Reasonable Grounds Decision (RGD)

The NRM team has 5 working days from the receipt of the referral to decide whether there are 'reasonable grounds' to believe that person is a potential victim of trafficking, even if there is no proof at that stage. If the person receives a positive reasonable grounds decision, they are entitled to:

- Government funded safe house accommodation;
- 45-days reflection and recovery period

Those who receive positive reasonable grounds decisions are generally released into supported accommodation. However, LEAG members have witnessed situations in which, despite having been allocated funded accommodation outside detention, the Home Office has refused to release potential victims (see section 3.ii for details).

#### Stage 2: Conclusive Grounds Decision (CGD)

During the 45-days reflection and recovery period, the Competent Authority will gather further information on a potential victim's case in order to make a conclusive decision on whether the person is 'more likely than not' a victim of trafficking or modern slavery. If the person receives a positive CGD, they may have various options going forward, including choosing to co-operate with the police in prosecution of their exploiters, returning to their country of origin, applying for asylum, etc.

### **Section 2: Lack of identification prior to detention**

LEAG is increasingly concerned that potential victims of trafficking are not being identified at

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<sup>5</sup> *Victims of modern slavery – Competent Authority guidance* Published for Home Office staff on 21 March 2016 [https://www.antislaverycommissioner.co.uk/media/1059/victims\\_of\\_modern\\_slavery\\_-\\_competent\\_authority\\_guidance\\_v3\\_0.pdf](https://www.antislaverycommissioner.co.uk/media/1059/victims_of_modern_slavery_-_competent_authority_guidance_v3_0.pdf)

first point of contact with a relevant authority, despite the UK government having established mandatory training to all UKVI staff to identify signs of trafficking and modern slavery<sup>6</sup>. FLEX has uncovered that all 85 construction workers later accepted into the NRM as potential victims of trafficking as part of Operation Magnify<sup>7</sup>, led by the Home Office, had been arrested for immigration offences prior to their identification.<sup>8</sup>

Despite the introduction of Detention Gatekeepers in 2017 to 'scrutinise all proposed detentions independently of an arresting team' and to 'ensure that there is no evidence of vulnerability which would be exacerbated by detention'<sup>9</sup>, LEAG members continue to support potential victims of trafficking who have not been identified at the point at which they are being considered for detention. As a result, potential victims are spending long periods in detention without being identified. BID noted that, in some cases, the Detention Gatekeeper is not sensitive to key indicators and fails to make adequate investigations into human trafficking.

The "Detention Gatekeeper Intake Pro-forma" – the form that the gatekeeper completes prior to detention – is very short and makes no reference to trafficking indicators. As Toufique Hossain, a solicitor at Duncan Lewis, told the Joint Committee on Human Rights, "It is pretty concerning that the person or the authority responsible for green-lighting detention effectively has three pages of very simple questions for deciding whether someone should be detained."

Ashiana Sheffield has highlighted a case in which a potential victim of trafficking was removed without receiving a proper assessment of their vulnerability prior to entering or whilst in detention.

**Case study: Home Office failings lead to re-trafficking of removed victim**

Nadine was trafficked to the UK, where she was exploited. She was then arrested and detained for immigration offences, despite having a live asylum claim. While in detention, Nadine was not asked questions designed to uncover the abuses she experienced in the UK. This meant the Home Office did not pick up on her trafficking indicators and Nadine was removed. After being removed, Nadine was re-trafficked to different European countries, where she faced destitution and homelessness. She was then trafficked back to the UK, where another charity identified her as a potential victim of trafficking and signposted her to Ashiana Sheffield. Nadine has now entered the NRM.<sup>10</sup>

Studies have consistently demonstrated the negative impact of immigration detention on mental health<sup>11</sup>. It can re-traumatise those who have suffered previous trauma and are

<sup>6</sup> Home Office, Modern Slavery: how the UK is leading the fight, July 2014. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328096/Modern\\_slavery\\_booklet\\_v12\\_WEB\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328096/Modern_slavery_booklet_v12_WEB_2_.pdf)

<sup>7</sup> In October 2015 the Home Office launched Operation Magnify, which aimed at identifying businesses employing and exploiting undocumented migrant workers in the construction sector. UK Parliament, Construction: Undocumented Workers: Written Question - 135423, 26 November 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-04-13/135423/>

<sup>8</sup> Information acquired through a Freedom of Information request made by FLEX on 28 November 2017. Data covers the period 01 October 2015 to 30 June 2017.

<sup>9</sup> HC Deb 26 April 2017 71612. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/>

<sup>10</sup> Case study provided by Ashiana Sheffield

<sup>11</sup> See: Mary Bosworth, "Appendix 5: the Mental Health Literature Survey Sub-Review" in Stephen Shaw, Report to the Home Office, "Review into the welfare in detention of vulnerable persons" (January, 2016); Guy Coffey, Ida Kaplan, Robyn Sampson, Maria Montagna, "The meaning and mental health consequences of long-term immigration detention for people seeking asylum," Social Science & Medicine 70 (2010) 2070-2079; Pauline

particularly vulnerable to harm in detention, and can also cause mental illness in previously healthy people<sup>12</sup>. It is therefore extremely concerning that the Home Office is failing to identify key indicators of trafficking.

### **Recommendations**

1. Training on identifying potential victims of trafficking should be provided to all personnel making arrests under immigration powers to ensure victims are identified and are kept out of detention.
2. “Detention Gatekeepers” should receive specialised training on indicators of trafficking to ensure a more effective screening process that identifies people before entering detention. The detention gatekeeper pro-forma should contain a question relating to indicators of trafficking.

### **Section 3: Adults at Risk: balancing victim protection and immigration priorities**

The Home Office Enforcement Instructions and Guidance<sup>13</sup> states that there exists a presumption in favour of liberty and that alternatives to detention should be used whenever possible. The 1983 case of *Hardial Singh*<sup>14</sup>, which established basic limits on the power to detain, makes it clear that the Secretary of State for the Home Department can only use detention for the purpose of removal, or for assessing somebody’s claim to be in the UK<sup>15</sup>. In BID’s experience detention is often used as a first rather than a last resort<sup>16</sup> and the Home Office rarely demonstrates that detention is necessary and that all alternatives have been exhausted.

The Home Office’s ‘Adults at Risk Statutory Guidance’ established a two-step system in which ‘immigration control factors’ are weighed against a detainee’s vulnerability to harm in detention in order to determine whether or not they should be released. In reality, this system enables the Home Office to maintain detention in the vast majority of cases where a detainee is accepted as vulnerable, as vulnerability factors are easily outweighed by “immigration control” factors. This is leading potential victims of trafficking to be held in detention for long periods of time even after being identified as an adult at risk.

During the first step, a person’s likely risk of harm is assessed according to three levels of evidence:

- Level 1: if someone self-declares as an adult at risk this evidence should receive limited weight, even if the issues raised cannot be readily confirmed.
- Level 2: professional or official documentary evidence indicating a person is at risk

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McLoughlin, Megan Warin, “Corrosive places, inhuman spaces: Mental health in Australian immigration detention,” *Health & Place* 14 (2008) 254–264; Katy Robjant, Rita Hassan; Cornelius Katona, “Mental health implications of detaining asylum seekers: systematic review, *The British Journal of Psychiatry*” (2009)194, 306–312; Medical Justice, “Mental Health in Immigration Detention Action Group: Initial Report 2013” (2013).

<sup>12</sup> Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the ‘Adults at Risk’ policy in practice*, July 2018, p.8. Available at: [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/667/Adults\\_at\\_risk\\_2018.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf)

<sup>13</sup> Chapter 55, Enforcement Instructions and Guidance which forms part of the Offender Management Guidance (published 27 April 2016)

<sup>14</sup> *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB)

<sup>15</sup> Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the ‘Adults at Risk’ policy in practice*, July 2018, p.6. Available at: [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/667/Adults\\_at\\_risk\\_2018.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf)

<sup>16</sup> Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the ‘Adults at Risk’ policy in practice*, July 2018, p.6. Available at: [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/667/Adults\\_at\\_risk\\_2018.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf)

should be given great weight.

- Level 3: professional evidence stating that a person is at risk and that a period of detention would be likely to cause harm should receive significant weight.

This is then followed up by an assessment of immigration control criteria, such as:

- people with higher levels of risk should be kept in detention for shorter periods of time. The length of likely detention acts as a key factor in determining whether someone should be detained.
- someone's compliance history is taken into account. This includes: having failed to comply with attempts to effect voluntary return; having made a protection or human rights claim following a negative immigration decision, unless they are able to provide a good justification for this delay; having previously absconded; having failed to comply with re-documentation processes, among other scenarios.
- people who may raise public protection concerns such as criminal history, serious offences, risk of harm to the public.

Section 3.i: The effectiveness of Rule 34 and 35 in identifying potential victims of trafficking in detention

In Immigration Removal Centres, in addition to the 'Adults at Risk' policy, detainees' risk assessment is set out in the Detention Centre Rules which are implemented through detention service orders. Rules 34 and 35 are especially relevant to the identification of potential victims of trafficking in detention.

Rule 34 states that every detained person should receive a physical and mental examination by a medical practitioner within 24 hours of their admission to the detention centre, provided they consent to it.

Rule 35 states that medical practitioners shall share a report with the Immigration Removal Centre's manager and the Secretary of State for the Home Department 'without delay' disclosing any detained person:

- (1) whose health is likely to be injuriously affected by continued detention or any conditions of detention
- (2) who is suspected of having suicidal intentions
- (3) who may have been a victim of torture

Victims of trafficking for labour exploitation may fit the definition of 'torture' set out by rule 35(6), which defines torture as 'any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation which:

- (a) the perpetrator has control (whether mental or physical) over the victim, and
- (b) as a result of that control, the victim is powerless to resist.<sup>17</sup>

This narrow definition of torture is currently subject to legal challenge.<sup>18</sup>

Despite these policies, the Home Office is failing to protect vulnerable adults, including victims of trafficking, from entering detention and from experiencing further harm related to that detention.

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<sup>17</sup> Home Office, Detention services order 09/2016 Detention centre rule 35 and Short-term holding facility rule 32 (version 5.0), 02 July 2018. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721637/dso-09-2016-detention-centre-rule-35-v5.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721637/dso-09-2016-detention-centre-rule-35-v5.0.pdf)

<sup>18</sup> See <https://bhattmurphy.co.uk/files/documents/Briefing%20Note%20Medical%20Justice.pdf>

**Case study: Home Office fails to identify victim of trafficking with severe health condition**

Ruby worked as a toilet attendant in a nightclub, selling sweets, perfumes and toiletries. She was paid well below the minimum wage. Ruby was arrested during an immigration raid and taken to a detention centre, where she stayed until indicators of trafficking were picked up and referred her into the NRM. The raid and arrest had a severe impact on Ruby's emotional and physical health, including a severe physical condition that was neglected, despite rule 34 and 35.

Ruby's case demonstrates the Home Office's failings to properly identify and support victims of trafficking and those with severe physical health issues. Unfortunately, Ruby's case is not particularly unusual. In 2018, the charity Women for Refugee Women was reported in the media to have identified over 20 Chinese women who had been exploited to work in different labour sectors and were being held in detention without legal representation or access to interpreters and were not having their medical needs met.<sup>19</sup> The charity Detention Action has reported supporting 16 Vietnamese detainees who had experienced severe abuse and exploitation. Only nine had been referred into the NRM and only two received positive reasonable grounds decisions (see Section 4 for more details on the impact of detention on NRM decision-making).<sup>20</sup> Finally, the charity Jesuit Refugee Services UK (JRS) shares this experience: between March 2017 and September 2018 they supported 13 victims of trafficking being held in immigration detention, many of whom had extensive contact with police officers and Home Office staff who failed to identify and refer them to the NRM. This shows how first responders' focus on immigration and criminal offences affect their ability to support victims of trafficking. Some of the JRS's service users have only been referred to the NRM after being identified by a duty solicitor<sup>21</sup>. This shows how Home Office staff are failing to identify and refer people in detention despite the 'Adults at Risk' policy.<sup>22</sup>

**Case study: delayed NRM referral despite rule 35 report**

Li was a highly vulnerable person who was receiving medication and psychiatric support for depression and had a history of self-harm with suicidal intention. There were numerous indicators that she was a victim of trafficking, including records of experiences of torture in relation to unpaid debts recorded on a rule 35 report. Li was detained for six months before a referral was made to the NRM, a process that had to be initiated by BID caseworkers. Li was released upon receipt of a positive reasonable grounds decision.<sup>23</sup>

Despite the shortcomings of the Rule 34 and 35 process, it is highly problematic that immigration detainees being held in prison are not protected by those processes nor any other equivalent mechanisms that could help identify potential victims of trafficking and lead to their

<sup>19</sup> The Guardian, Chinese women trafficked to UK 'being failed by Home Office', 12 December 2018.

<https://www.theguardian.com/uk-news/2018/dec/12/chinese-women-trafficked-uk-failed-home-office-medical>

<sup>20</sup> Detention Action, Trafficked into detention: How victims of trafficking are missed in detention, November 2017, p.1. Available at: <https://detentionaction.org.uk/2017/11/16/trafficked-into-detention-new-research-from-detention-action/>

<sup>21</sup> The Detention Duty Advice (DDA) scheme is a publicly funded scheme whereby detainees can book a half an hour appointment with a legal aid immigration solicitor within the Immigration Removal Centre.

<sup>22</sup> Jesuits Refugee Service UK, Survivors of Trafficking in Immigration Detention, October 2018, p.2. Available at: <https://www.jrsuk.net/wp-content/uploads/2018/10/Topical-Briefing-Survivors-of-Trafficking-in-Immigration-Detention-13.10.18.pdf>

<sup>23</sup> Case study provided by Bail for Immigration Detainees

assessment under the ‘Adults at Risk’ policy<sup>24</sup>. Immigration detainees held in prisons are also denied access to free legal advice surgeries which are provided in Immigration Removal Centres. Detainees in prisons are very unlikely to be able to find a legal aid lawyer to help them apply for bail<sup>25</sup>. As noted, duty solicitors are often key to identifying potential victims of trafficking in *detention* so the lack of access to free legal advice means that vulnerable people held in *prison* under immigration powers may not be identified at all.

### **Recommendations**

3. Training on identifying and supporting potential victims of trafficking should be provided to all Immigration Removal Centre healthcare staff to ensure victims are identified swiftly once in detention
4. An independent first responder to the NRM should be immediately notified when a Rule 35 report is made if there is a possibility that a detainee is a trafficking victim
5. Neither victims of trafficking nor anybody else should be held in a prison under immigration powers.

### *Section 3.ii: Potential victims of trafficking being kept in detention despite positive RGD*

The ‘Adults at Risk’ policy’s two-step system is highly problematic since it often prioritises immigration control factors over a person’s wellbeing. Decision makers give immigration factors a weighting dependent on the level of risk assigned to someone. BID has cautioned that this system provides very little protection to level 1 and level 2 detainees. Level 3 detainees are more likely to be released from detention if the person does not yet have a removal date scheduled or represent a serious public concern<sup>26</sup>.

This focus on immigration control factors is especially concerning since criminal history is covered under ‘public protection concerns’. As mentioned, many victims of trafficking have been through the criminal justice system and have been convicted of crimes that are directly related to their trafficking experience. Nusrat Uddin of Wilsons Solicitors told the Home Affairs Committee in an oral evidence session during their inquiry into modern slavery<sup>27</sup>:

“What we are seeing is lack of adequate support for victims and what that is also leading to is that we often meet clients in detention centres [...] They have been identified and have come into contact with the police, but instead of being treated as a victim [...] they are prosecuted. They are then put into jail and subsequently served with deportation orders. We then find them in detention centres, where we have to unpick all of that—unpick the criminal prosecution, unpick how that affects their immigration status as well—and then get them referred into the NRM system and get them the adequate support and recognition in order to protect them and stop that cycle.”

The ‘Adults at Risk’ policy is failing to protect vulnerable adults by allowing immigration factors

<sup>24</sup> Bail for Immigration Detainees, Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the ‘Adults at Risk’ policy in practice, July 2018, p.13. Available at: [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/667/Adults\\_at\\_risk\\_2018.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf)

<sup>25</sup> Ibid, p.14.

<sup>26</sup> Bail for Immigration Detainees, Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the ‘Adults at Risk’ policy in practice, July 2018, p.11-12. Available at: [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/667/Adults\\_at\\_risk\\_2018.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf)

<sup>27</sup> Home Affairs Committee Oral Evidence: Modern Slavery, HC1460. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/oral/95163.html>

to outweigh detainees' vulnerability to harm by delaying their identification and refusing their release even after they have received positive reasonable grounds decisions. The charity Detention Action has identified different cases of potential victims of trafficking in detention who were not released despite Immigration Removal Centre doctors having completed rule 35(3) reports and provided evidence of trauma experienced as a result of their exploitation.<sup>28</sup>

**Case study: Home Office refuses to release potential victim of trafficking from detention**

Peter was in detention when he was identified and referred into the NRM. Once he received his positive reasonable grounds decision, Ashiana Sheffield contacted the Home Office to check when Peter would be released from detention. A Home Office staff member explained that Peter would not be released since his needs were being met in detention, in accordance with the May 2018 Court of Appeal decision on *EM v SSHD*.<sup>29</sup>

The Court of Appeal decision on *EM v SSHD*<sup>30</sup> ruled that potential victims of trafficking can have their needs met under articles 11(2) and (5) of the Directive 2011/26/EU while in immigration detention, despite evidence of the long-term negative impact of detention on vulnerable adults. LEAG is concerned that cases like Peter's will become more common following this ruling. Potential victims who are not released from detention following positive reasonable grounds decisions lack access to specialist support to help them develop a greater understanding of what happened to them, be better able to provide a truthful and accurate account of their experience, including details that are essential to NRM decision-making.

Dr Chisholm, a clinical psychologist with expertise in treating victims of trauma, who provided evidence during *EM v SSHD*, stated that Home Office staff in detention do not 'attempt to build trust beyond general forms, and [do not] attempt to assist in creating a coherent autobiographical memory'<sup>31</sup>, demonstrating how treatment of victims in detention differs from those who receive specialist support outside. He also mentioned the support services provided in detention are not adequate for potential victims of trafficking as 'the staff appears to have no experience and awareness of the specific issues associated with trafficking and had no formal professional qualifications'<sup>32</sup>.

While the Directive 2011/26/EU does not demand that potential victims receive specialist support while going through the NRM, LEAG sees this as essential to ensure a fair NRM decision-making process and to provide victims with the support they need to recover from the traumatic events they have experienced.

**Recommendations**

6. As soon as a victim of trafficking is referred to the NRM they should be immediately released from detention.

**Section 4: The impact of detention on NRM decisions**

As described, detention affects potential victims' access to specialist trafficking support and advice. Since potential victims do not trust immigration authorities it also stops them from

<sup>28</sup> Detention Action, *Trafficked into detention: how victims of trafficking are missed in detention*, November 2017, p.1. Available at: <https://detentionaction.org.uk/2017/11/16/trafficked-into-detention-new-research-from-detention-action/>

<sup>29</sup> Case study provided by Ashiana Sheffield

<sup>30</sup> *EM v SSHD* [2018] CEWCA Civ 1070.

<sup>31</sup> *Ibid* (50).

<sup>32</sup> *Ibid*.

disclosing experiences of trafficking that are essential for their release and for their NRM referral. A poor NRM referral makes it difficult for potential victims to receive a fair assessment of the likelihood that they have been trafficked, adding to the long-lasting negative consequences of their exploitation.<sup>33</sup>

LEAG members have noted a series of poor referrals being made by the UKVI for people in detention. They often lack detailed information about someone's experience, including timelines and details of the types of abuses and exploitation. In some cases, first responders have even written down people's names or nationality wrong, showing a clear disregard for how important the referral form is for their reasonable and conclusive grounds decision-making. The charity Detention Action describes a similar experience, disclosing that of the 16 men with indicators of trafficking they had been supporting in detention, only nine were referred to the NRM and only two had received positive reasonable grounds decisions, 'an acceptance rate that falls well below the national average of between 74% and 90%'.<sup>34</sup> **LEAG is concerned that the fact that the Home Office is responsible for immigration enforcement as well as identifying and referring potential victims in detention is leading to a high number of victims in detention receiving negative reasonable or conclusive grounds decisions.**

LEAG members have also described how the Home Office is failing to provide people with a copy of their NRM referral form which means that support service providers, such as LEAG members, and even the referred person are unaware of what was included in their form. LEAG has also witnessed cases in which the Home Office has only provided the referred person with access to the cover sheet of their NRM form, meaning that they were being instructed to give consent and sign a document that they had not seen. These poor practices demonstrate a **lack of understanding of NRM procedures by Home Office staff in detention, despite their responsibility to identify and support vulnerable adults under their care.**

Poor referrals are not the only issue experienced by potential victims in detention. While the NRM guidelines state that there should be no more than five working days between NRM referral and a reasonable grounds decision, BID has noted that people are sometimes kept in detention for months while waiting for a reasonable grounds decision to be made. In some cases, people waiting for a reasonable grounds decision are detained *after* having been referred into the NRM.

**Case study: detained whilst waiting for RGD**

Dan was referred into the NRM. Two months later he was detained while still waiting for the Home Office to decide whether there were reasonable grounds to believe he was a potential victim of trafficking. Dan spent two months in detention before receiving a positive reasonable grounds decision, which then led to his release from detention, four months after his referral was made.<sup>35</sup>

The Home Office is also failing to refer potential victims to the NRM immediately after having identified them as vulnerable through rule 35 procedures.

<sup>33</sup> Detention Action, Trafficked into detention: how victims of trafficking are missed in detention, November 2017, p.3. Available at: <https://detentionaction.org.uk/2017/11/16/trafficked-into-detention-new-research-from-detention-action/>

<sup>34</sup> Ibid, p.4; in 2013 and 2014. Home Office, 'Review of the National Referral Mechanism for victims of human trafficking' (November 2014), p.25. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/467434/Review\\_of\\_the\\_National\\_Referral\\_Mechanism\\_for\\_victims\\_of\\_human\\_trafficking.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf)

<sup>35</sup> Case study provided by Bail for Immigration Detainees

**Case study: victim of trafficking spends 18 months in detention without being referred to the NRM**

Ngoc 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 BID had taken Ngoc on as a client that steps were taken to ensure that he was referred into the NRM. By this point he had been in detention for well over a year.

Even once BID recognised that an NRM referral needed to be made, it was difficult to initiate this process because the Home Office is the only first responder with a presence in 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 trafficking over a long period of time. It therefore requested another first responder to refer Ngoc to the NRM. They eventually did this after initially arguing that the Immigration Removal Centre where he was held could refer him, as they were first responders. He 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.<sup>36</sup>

**Recommendations**

7. NRM referrals for people in detention should be made by an independent first responder rather than Home Office staff to avoid the current conflict of interests with the Home Office's responsibility for immigration enforcement and decision to detain. The independent first responder should have a presence in immigration detention.

8. Potential victims of trafficking should receive free independent specialist legal advice in detention to understand their rights and decide whether they would like to enter the National Referral Mechanism (NRM).

**Section 5: Lack of Home Office data on potential victims of trafficking in detention**

LEAG members usually only come in to contact with potential victims who are in detention after they have been identified. BID is an exception as they have a presence in IRCs and prisons and encounter victims of trafficking prior to having been identified. But this is not the case for most organisations supporting victims of trafficking. Considering the poor identification of vulnerable adults in detention mentioned above, LEAG is concerned that many more victims are not being identified in detention or are being removed before being identified, as was Nadine's experience.

**It is especially troubling that the Home Office does not publish, or even record, data on the number of victims of trafficking in detention.** A recent FOI request made by BID found that the Home Office does not store data on the number of immigration detainees who are referred into the NRM, and a response to a parliamentary question also revealed that although the Home Office records the number of referrals to the NRM, this information does not distinguish between those detained under immigration powers and those living in the

<sup>36</sup> Case study provided by Bail for Immigration Detainees

community<sup>37</sup>. The Prime Minister considers modern slavery to be ‘the great human rights issue of our time<sup>38</sup>, and by including victims of trafficking or modern slavery in its ‘Adults at Risk’ policy, the Government recognises that detention may be harmful to this group<sup>39</sup>. It is therefore alarming that that the Government does not keep track of how many potential victims of trafficking are detained.

LEAG considers this information vital to assess the quality of identification in detention and NRM referrals made by UKVI on behalf of detainees. Without access to this data, it is impossible to assess how effective and efficient the Home Office has been in identifying vulnerable adults in detention, as we are deprived of access to systemic data. Yet, from LEAG members’ experience supporting those who have been identified in detention, the Home Office is failing in the different aspects described above.

### **Recommendations**

9. Data on the number of potential victims of trafficking being identified by “Detention Gatekeepers” and in detention should be recorded and made public to ensure a fair assessment of the effectiveness and efficiency of the Home Office in identifying vulnerable people prior to and while in detention.

<sup>37</sup> UK Parliament, Immigrants: Detainees: Written Question - HL11382, 26 November 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-11-12/HL11382/>

<sup>38</sup> See <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article>

<sup>39</sup> Home Office, Adults in Immigration Detention version 3.0, 02 July 2018. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721603/adults-at-risk-policy-guidance\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721603/adults-at-risk-policy-guidance_v3.pdf)