

The ‘New Plan for Immigration’ Consultation Response

Introduction

Focus on Labour Exploitation (FLEX) is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.

FLEX’s work builds on the understanding that labour exploitation is situated at the extreme end of a spectrum ranging from labour compliance through to labour law violations, culminating at extreme exploitation in the form of offences such as forced labour and human trafficking for labour exploitation. These are at once serious crimes, human rights breaches and violations of labour law.

In the UK, FLEX has conducted research on a range of issues relevant to the current inquiry, including improving identification and support of victims of trafficking in the European Union (EU)¹ and the impact of migration status, labour market structures, and immigration control measures on vulnerability to exploitation.²

FLEX welcomes the opportunity to contribute to the government’s proposed ‘New Plan for Immigration’ (the plan/proposal). However, FLEX considers the consultation period inadequate to consider and address the magnitude of the plan to the best of its ability. We ask for further and continued opportunity to feed into the government’s plan as it evolves.

Scope of response

FLEX’s work focuses on preventing labour exploitation. This submission provides a response to all questions where our area of expertise is relevant to inform the developments of this proposal. With the recognition that adequate and robust support and protections are a key element to prevention, our response primarily looks at the plan with the aim of reducing risk of labour exploitation. FLEX’s underlying position and recommendation is that all workers, regardless of employment and immigration status, should be able and supported to report abuse and access vital protections. Such an approach is necessary, not only to protect individuals and promote redress, but in order to deter labour abuse and exploitation from taking place.

As a general comment, we are concerned that reforms in relation to the UK’s modern slavery identification and support system are being considered within the context of this immigration plan, as the issue of modern slavery is broader than immigration concern and policy. We expand on this comment in our response to Chapter 6.

¹ FLEX, Fairwork and ADPARE. 2016. *Improving the identification and support of victims of trafficking for labour exploitation in the EU*. Available at

<http://www.labourexploitation.org/sites/default/files/publications/PROACT%20Policy%20Paper.pdf>

² FLEX. 2017. *Risky business: Tackling exploitation in the UK labour market*. Available at

<https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

FLEX responds to the following sections and questions:

Foreword

Question 1 - Overall, how far do you support or oppose what is being said here? Please refer to the foreword of the New Plan for Immigration to support your answer to this question.

Strongly oppose.

Comment

The consultation submission site does not invite or allow a general comment in relation to the foreword or for an explanation to support the multichoice answer selection. Please see our response to question 45 which sets out the basis for our answer.

Chapter 1: Overview of the Current System

Question 2 - The UK Government is committed to building an asylum system that is firm and fair, based on three major objectives:

- **To increase the fairness and efficacy of our system so that we can better protect and support those in genuine need of asylum.**
- **To deter illegal entry into the UK, thereby breaking the business model of criminal trafficking networks and protecting the lives of those they endanger; and**
- **To remove more easily from the UK those with no right to be here.**

How effective, if at all, do you think each of the following will be in helping the UK Government achieve this vision? Please select one response for each statement.

A. *Strengthening safe and legal routes for those genuinely seeking protection in the UK.*

No answer.

B. *Reforming legal processes to ensure improved access to justice.*

No answer.

C. *Reforming legal processes to ensure speedier outcomes.*

No answer.

D. *Requiring those who claim asylum and their legal representatives to act in 'good faith' by providing all relevant information in support of their claim at the earliest opportunity.*

Not at all effective.

- E. *Enforcing the swift removal of those found to have no right to be in the UK, including Foreign National Offenders.*

No answer

- F. *Eliminating the ability for individuals to make repeated protection claims to stop their removal, when those follow-up claims could have been raised earlier in the process.*

Not at all effective

- G. *Preventing illegal entry at the border, for example, by making irregular channel crossings unviable for small boats or deterring other activities such as hiding in the back of lorries.*

Not at all effective

Question 3 – give further details for your answer

A, B, C. We have not responded due to the lack of information and detail provided within the proposal and/or because these are leading questions.

D. We do not support the introduction of a ‘good faith’ requirement, which in the proposal requires an individual to disclose abuse and act on entitlements as soon as possible. The proposal outlines that “(f)ailure to act in Good Faith may be considered when the Home Office or judge assess the credibility of someone’s claim, particularly in the context of repeat or unmeritorious claims brought at the point of removal action. If someone has not acted in Good Faith this should impact the credibility of their claim and testimony both in Home Office decision making and by the courts in any subsequent appeals.”

The assumption that individuals will be in a position to comply with the proposed requirement, and therefore would be failing to act in good faith if they do not, is in contradiction with the Home Office Modern Slavery Act Statutory Guidance (the MS Guidance) and as a proposal it would not increase fairness. We consider that an introduction of such a process could significantly and negatively impact victims of trafficking (as well as broader groups), as it is common that individuals who have been trafficked may delay in and/or be inconsistent when disclosing their experiences for justified and understandable reasons:

- It is common for victims of trafficking to present with memory recall delay, confusion or loss due to the traumatic experiences they have suffered.³⁴⁵ Poor memory and difficulty in recalling facts is recognised within the MS Guidance as an indicator of modern slavery and symptom of trauma.⁶

³ <http://www.helenbamber.org/wp-content/uploads/2019/01/Trauma-Informed-Code-of-Conduct.pdf>

⁴ United Nations Office On Drugs And Crime Vienna, An Introduction to Human Trafficking: Vulnerability, Impact and Action, UNITED NATIONS New York, 2008 available at: https://www.un.org/ruleoflaw/files/Intro_Human_Trafficking.pdf

⁵ Ekaterina V. Shkurkin, “The consequences of the sexual abuse in human trafficking”, paper presented at Human Trafficking Conference, Riga, 5 December 2004.

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 2.1. Available at:

- FLEX in research with partners has found that migrant victims' limited English language skills and knowledge of their rights in the UK can result in delay of disclosure, as they encounter difficulties accessing information about their rights and reporting abuse.⁷
- Victims may be fearful to come forward to authorities to report what has happened to them, resulting in a delay of identification and subsequent immigration claim.⁸
- As also recognised within the guidance, many victims do not self-identify as victims and as such do not report their experiences.⁹ Victims should not be penalised for this within the legal and immigration system, especially as it may be that first responder organisations and wider public bodies have failed to recognise indicators of trafficking/modern slavery, safeguard the individual and advise the individual of their options.
- The guidance also recognises that "it is not uncommon for traffickers and exploiters to provide stories for victims to tell if approached by the authorities. Errors, omissions and inconsistencies may be because their initial stories are composed by others and they are acting under instruction."¹⁰ The good faith requirement could unjustly penalise individuals who have been coerced and controlled to give certain accounts or withhold information by their exploiters.

FLEX is concerned that the introduction of this misguided 'good faith' requirement will:

- Result in the immigration applications of victims of trafficking being negatively impacted unfairly
- Reduce and disincentivize reporting of exploitation as victims fear that doing so will have negative impact on their immigration status and undermine their credibility
- Increase risk of exploitation, as it could be harder for victims to access societal protections (these often being linked to secure immigration status), and perpetrators can encourage distrust in authorities and the state system and use this as a method of control and coercion.

We are concerned with the lack of specifics and evidence of 'unmeritorious claims' within the proposal. However, to the extent the requirement has been proposed as an attempt to safeguard the immigration system against 'unmeritorious claims', we consider that the introduction of this element would not contribute to achieving this aim. In our response to question 3 I we comment further on the requirements already within the system for claimants and regarding ethical conduct. As such, in our view the introduction of the 'good faith' requirement does not add any protection to the process but only serves to cause harm to those in desperate need of safeguarding.

E. We have not responded as there is insufficient information regarding the proposed changes.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974794/March_2021_-_Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v2.1_.pdf

⁷ FLEX/LEAG (2019). Detaining Victims: Human Trafficking and the UK Immigration Detention System.

Available at: <https://labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

⁸ Ibid 5

⁹ Ibid 4

¹⁰ Ibid 4

F. This statement is misleading. The current system already operates a process to prevent repeated protection claims when follow up claims could have been made earlier. We refer to and support the consultation response from the Immigration Legal Practitioners Association (ILPA) which sets out this process in relation to asylum and protection claims. We emphasise that, for the reasons set out in response to D, it is essential that any system allows victims of trafficking to make subsequent claims when further evidence and information comes to light. An inability to do so would render these individuals at significant risk of harm and unable to access the protections they need and are entitled to.

G. There is significant evidence demonstrating that current deterrence methods are not effective but only increase risk to vulnerable individuals.¹¹¹² FLEX is concerned further controls will increase risk of harm and injustice. As ILPA has set out in its response, “the proposals also fail to acknowledge that resettlement programmes are not available to everyone.” Further, in the event someone is being coerced and controlled they may have no power over their method of entry and as such they need to be protected on such routes and not placed at further risk of harm or penalised directly or indirectly. Finally, FLEX’s view is that this plan needs to be viewed in the wider context of the end of free movement. FLEX does not consider there to be enough practical migration options for numerous individuals, both those seeking protection and economic survival. Later in our response, FLEX comments on the need for general migration routes to more appropriately respond to the many factors that lead to the use of high risk routes, as, in the absence of alternate accessible options, these routes will continue to be seen as the only viable route for those seeking survival and/or responding to a demand for workers in the UK. The government’s strategy to reduce risk of harm should focus on improving migration routes, not increasing the use of dangerous deterrence methods.

Chapter 2

FLEX refers to and endorses the response of the Anti Trafficking Monitoring Group (ATMG) in relation to Chapter 2. FLEX is a member of the ATMG.

Chapter 4 - Chapter 4: Disrupting Criminal Networks and Reforming the Asylum System

Question 19. To protect life and ensure access to our asylum system is preserved for the most vulnerable, we must break the business model of criminal networks behind illegal immigration and overhaul the UK’s decades-old domestic asylum framework.

In your view, how effective, if at all, will the following proposals be in achieving this aim?

¹¹ Refugee Council. Remote Controls: how UK border controls are endangering the lives of refugees
Sile Reynolds Helen Muggeridge, December 2008

¹² Tyerman, T., and van Isacker, T. (2020). Border Securitisation in the Channel. Available at:
<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/10/border>

- Ensuring that those who arrive in the UK, having passed through safe countries, or have a connection to a safe country where they could have claimed asylum will be considered inadmissible to the UK's asylum system.
- Seeking rapid removal of inadmissible cases to the safe country from which they embarked or to another third country.
- Introducing a new temporary protection status with less generous entitlements and limited family reunion rights for people who are inadmissible but cannot be returned to their country of origin (as it would breach international obligations) or to another safe country.
- Bringing forward plans to expand the Government's asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of inadmissible asylum seekers.
- Making it possible for asylum claims to be processed outside the UK and in another country.

FLEX's answer to all options is "not at all effective".

Question 20. To protect the asylum system from abuse, the Government will seek to reduce attempts at illegal immigration and overhaul our domestic asylum framework.

In your view, how effective, if at all, will the following proposals be in achieving this aim?

- Changing the rules so that people who have been convicted and sentenced to at least one-year imprisonment and constitute a danger to the community in the UK can have their refugee status revoked and can be considered for removal from the UK.
- Supporting decision-making by setting a clearer and higher standard for testing whether an individual has a well-founded fear of persecution, consistent with the Refugee Convention.
- Creating a robust approach to age assessment to ensure the Government acts as swiftly as possible to safeguard against adults claiming to be children and can use new scientific methods to improve the Government's abilities to accurately assess age.

FLEX's answer to all options is "not at all effective".

Question 21. The UK Government intends to create a differentiated approach to asylum claims. For the first time how somebody arrives in the UK will matter for the purposes of their asylum claim.

As the Government seeks to implement this change, what, if any, practical considerations should be taken into account?

FLEX does not agree with this proposal. We consider that this proposal would create a two-tiered system with different classes of 'asylum seeker.' FLEX is very concerned with the proposal and the impact such a system could have, as:

- In FLEX's view, this proposal is inconsistent with the underlying principles of the Refugee Convention; non-discrimination, non-penalisation and non-refoulement. The Convention stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay.¹³ An asylum case should be considered on

¹³ 1951 Refugee Convention

the basis as set out by the Convention. FLEX wish to emphasise there is no such thing as a sham asylum-seeker or an illegal asylum-seeker. As an asylum-seeker, a person has entered into a legal process and everybody has a right to seek asylum in another country.¹⁴

- As set out previously in our response, individuals may have been coerced or controlled, without choice and/or in a position of significant vulnerability which determined their method of entry to the UK. They should not be penalised for such circumstances. These circumstances increase their vulnerability and need for safety and protection.
- We repeat our comments in response to Question 3, G.
- We support and refer to the comments of the ATMG in their response to this question in relation to those who have travelled through a ‘third safe country’.
- FLEX is concerned that if it is harder for individuals to claim asylum due to illegal entry and/or if they are awarded reduced protections due to their method of entry to the UK, then this will disincentive individuals from making a claim for protection/asylum in the first place; which will leave them without a regular status and at risk of further harm. As such a group would not be able to access social protections, FLEX considers it likely that these proposals would increase irregularity, which in turn is likely to lead to an increase in labour abuse and exploitation, including human trafficking and other offences that fall under the Modern Slavery Act 2015. This is because irregular migrants are at heightened risk of exploitation as their immigration status gives employers, recruiters, gangmasters and others an unparalleled tool for coercion: the threat of denunciation to immigration authorities. Irregular migrants also have fewer alternative avenues of employment compared to others and limited or no access to mainstream welfare support, which increases their dependence on their employer, and are often prevented from seeking help from public authorities, such as the police or labour inspectorates, for fear of arrest or deportation. Research by the European Agency for Fundamental Rights (FRA, 2019: 67) finds that “vulnerability linked to residence status is the most important risk factor causing or contributing to labour exploitation”.
- FLEX also considers that this impact explained in point four would be exasperated, and the proposal would increase undocumented workers in the UK, and correspondingly the risk of trafficking and exploitation, because despite the end of free movement and the expected rapid increase in demand for migrant workers following the post-pandemic reopening of various industries, there are no regular and safe routes of entry for workers in many low-paid sectors.

In our response to question 25 we outline alternative recommendations for reform of the asylum system.

Question 22. The UK Government intends on introducing a more rigorous standard for testing the “well-founded fear of persecution” in the Refugee Convention.

As the Government considers this change, what, if any, practical considerations should be taken into account?

¹⁴ See commentary from the UNCHR available at: <https://www.unhcr.org/uk/asylum-in-the-uk.html>

FLEX strongly rejects the proposal for ‘a more rigorous standard of testing’ for the well-founded fear of persecution test. The proposal does not provide sufficient evidence of the scope or nature of this alleged gap in the system to justify this change and the public resources it would involve. Furthermore, the existing test is already vigorous and a high threshold, as asylum seekers and victims of trafficking are often in a position where they are unable to provide evidence of their situation due to the circumstances that brought them to the UK. They also can experience extreme difficulty navigating the system due to the trauma they have suffered and for the reasons set out in response to question 3. An increase in difficulty in claiming asylum due to stricter evidence requirements would push a higher number of qualifying asylum seekers into irregularity and place individuals at more risk of exploitation, for the reasons set out in our response to question 21.

Question 23. The Government is aware that currently it can take many months to consider asylum applications and intends to ensure that claims from those who enter the UK illegally are dealt with swiftly and efficiently.

To help achieve this, in your view, which of the following steps would be the most important? Please rank the following statements from most to least important.

FLEX does decline to answer this question as it does not agree with the proposals put forward.

Question 25. Please use the space below to give further feedback on the proposals in chapter 4. In particular, the Government is keen to understand:

- a) If there are any ways in which these proposals could be improved to make sure the objective of overhauling our domestic asylum framework is achieved; and**
- b) Whether there are any potential challenges that you can foresee in the approach being taken around asylum reform.**

Please provide as much detail as you can.

FLEX agrees the asylum system needs reform in order to reduce the negative impact the current system has on asylum seekers.¹⁵¹⁶ However, FLEX does not consider the proposal would achieve these aims. FLEX’s recommendations to reform the asylum system include:

- Lift the ban that prevents asylum seekers from being able to work. A report by the ‘Lift the Ban’ coalition found that this change could significantly benefit the UK economy through providing net gains for the Government of £97.8 million per year. The report also presented evidence to show that such a policy change would be popular amongst the UK public, with 71% agreeing that asylum seekers should be allowed to work.¹⁷ FLEX considers that such a reform would reduce the risk of

¹⁵ https://www.freedomfromtorture.org/sites/default/files/2019-09/FFT_LessonsNotLearned_Report_A4_FINAL_LOWRES_1.pdf

¹⁶ <https://www.redcross.org.uk/far-from-a-home>

¹⁷ ‘Lift the Ban’ coalition report. ‘Why giving people seeking asylum the right to work is common sense’ Available at: <https://www.refugee-action.org.uk/wp-content/uploads/2020/07/Lift-The-Ban-Common-Sense.pdf>

exploitation as individuals without a right to work are more vulnerable to trafficking and exploitation, as set out in our response to question 21. Allowing a right to work would also benefit the UK's economy in the longer term as it would provide asylum seekers the opportunity to develop their skills and increase their chances of being able to integrate once they are granted refugee status. The idea that allowing asylum seekers the right to work could act as a pull factor to the UK or influence individuals to choose the UK to claim asylum has been widely discredited by research.¹⁸ As set out in the report, “there is not one piece of credible, published evidence to support the long-term validity of this premise” and that “there is little to no evidence of a link between economic rights and entitlements and the destination choices of those seeking asylum.”¹⁹

- Invest in more staff and decision makers (Home Office and Judicial) in order to reduce delays in the system and improve the quality of decision making. As at March 2020, 31,516 asylum seekers (61%) had been waiting for more than six months, an increase of 68% from the same time last year (2019).²⁰ The extremely long waiting times are not only expensive for the state (including in terms of support costs for individuals reliant on asylum support pending the outcome of their cases) but, as has been shown by extensive research, are associated with an increased risk of psychiatric disorders for those waiting for a decision.²¹
- Increase legal aid rates for asylum, humanitarian and claims connected with human trafficking to increase access to justice for asylum seekers, a more effective judicial system and sustainability for the legal aid sector. FLEX comments further on access to quality funded legal advice in our responses to questions 30 and 31.
- Improve the quality of support and accommodation available for asylum seekers. FLEX is extremely concerned about reports regarding the poor quality of asylum support accommodation.²²²³ FLEX considers that substandard housing and minimal support payments increase risk of exploitation of asylum seekers as they may be pushed into exploitative work arrangements in order to improve their living situation and ensure their basic needs are met. Many victims of trafficking within the National Referral Mechanism who are asylum seekers are accommodated via the asylum support system. Under the Council of Europe Convention on Action against Trafficking in Human Beings (The Convention/ECAT)²⁴ the UK is required to adopt such measures as may be necessary to “assist victims in their physical, psychological and social recovery. Such assistance shall include at least standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance.” In the Explanatory Report to ECAT, accommodation must be ‘appropriate and secure as victims need adapted and

¹⁸ Lucy Mayblin and Poppy James (2016) ‘Labour market access for asylum seekers’, Policy Briefing: 03/16.2, available at: <https://asylumwelfarework.files.wordpress.com/2015/03/is-access-to-the-labour-market-a-pull-factor-for-asylum-seekers-long.pdf>

¹⁹ Ibid 12

²⁰ <https://www.refugeecouncil.org.uk/latest/news/number-of-people-waiting-more-than-six-months-for-their-asylum-claim-to-be-processed-surges-by-68/>

²¹ Camilla Hvidtfeldt, Jørgen Holm Petersen, Marie Norredam, Prolonged periods of waiting for an asylum decision and the risk of psychiatric diagnoses: a 22-year longitudinal cohort study from Denmark, *International Journal of Epidemiology*, Volume 49, Issue 2, April 2020, Pages 400–409, <https://doi.org/10.1093/ije/dyz091>

²² See, for example, Home Affairs Committee, Asylum accommodation, HC 637, 31 January 2017

²³ <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-housing-hotels-home-office-b1819197.html>

²⁴ Council of Europe Treaty Series - No. 197 Council of Europe Convention on Action against Trafficking in Human Beings Warsaw, 16.V.2005

protected accommodation’, and what this will look like in a particular case ‘depends on the victim’s personal circumstances’. Further, under Article 11(1) of the European Directive on preventing and combating trafficking²⁵ member states ‘shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings...’. Under Article 11(5), those assistance and support measures ‘shall include at least standards of living capable of ensuring victims’ subsistence through measures such as the provision of appropriate and safe accommodation.” FLEX is concerned that the quality of accommodation provided to victims of trafficking via the asylum support system falls short of what is required of the UK under its international obligations and does not facilitate an environment where victim can recover from their period of exploitation.

- Stop the detention of vulnerable persons. FLEX believes no vulnerable person, including victims of human trafficking, should be detained. Studies have demonstrated that a high proportion of immigration detainees are diagnosed with depression, post-traumatic stress disorder (PTSD), anxiety, and suffer from self-harm and suicidal ideation,²⁶ with those who have experienced trauma being at greater risk of developing mental health problems while in detention.²⁷ It is, therefore, extremely concerning that alongside the proposals the Home Office is changing the Adults at Risk detention guidance²⁸ leaving victims of human trafficking more vulnerable to being detained.²⁹ FLEX expands further on the impact of detention on victims of trafficking and the risk of exploitation later in this response at Question 31.

In our response to question 21 we set out our concerns in relation to challenges that we can see in relation to the proposed approach being taken around asylum reform, specifically the increased risk of exploitation as a result of the introduction of a ‘two-tiered system’ and the difficulty in accessing, and a potential reduction, of protections.

Chapter 5 - Streamlining Asylum Claims and Appeals

Question 26 - The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government’s end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law.

In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

²⁵ European Directive on preventing and combating trafficking 2011/36

²⁶ Mental Health and Immigration Detention Working Group, Response to Immigration Detention of persons with mental health problems consultation, 2016. Available at: <http://www.medicaljustice.org.uk/wp-content/uploads/2016/03/Mental-Health-in-Immigration-Detention-Working-Group.pdf>

²⁷ Ibid 21

²⁸ A copy of the guidance is accessible at: <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>

²⁹ See SLSC 49th Report, accessible at:

<https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/245/24504.htm>

- Developing a “Good Faith” requirement setting out principles for people and their representatives when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.
- Introducing an expanded ‘one-stop’ process to ensure that asylum claims, human rights claims, referrals as a potential victim of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. This would require people and their representatives to present their case honestly and comprehensively – setting out full details and evidence to the Home Office and not adding more claims later which could have been made at the start.
- Considering introducing a ground of appeal to the First Tier Tribunal for certain Modern Slavery cases within the ‘one-stop’ process.

FLEX’s response to points one and two is “not at all effective”. FLEX does not respond to point 3 as there is not enough information to allow us to consider the question and provide an answer.

Question 27 - The Government wants to ensure the asylum and appeals system is faster, fairer and concludes cases more effectively. The Government’s end-to-end reforms will aim to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action, while maintaining fairness, ensuring access to justice and upholding the rule of law.

In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims:

- Providing more generous access to advice, including legal advice, to support people to raise issues, provide evidence as early as possible and avoid last minute claims.

Don’t know

- Introducing an expedited process for claims and appeals made from detention, providing access to justice while quickly disposing any unmeritorious claims.

Not at all effective

- Providing a quicker process for Judges to take decisions on claims which the Home Office refuse without the right of appeal, reducing delays and costs from judicial reviews.

Not at all effective

- Introducing a new system for creating a panel of pre- approved experts (e.g. medical experts) who report to the court or require experts to be jointly agreed by parties.

No response

- Expanding the fixed recoverable costs regime to cover immigration judicial reviews (JRs) and encouraging the increased use of wasted costs orders in Asylum and Immigration matters.

Not at all effective

- *Introducing a new fast-track appeal process. This will be for cases that are deemed to be manifestly unfounded or new claims, made late. This will include late referrals for modern slavery insofar as they prevent removal or deportation.*

Not at all effective

Question 28 - The Government believes that all those who are subject to the UK's immigration laws, including those who have arrived here illegally or overstayed their visa, should be required to act in good faith at all times. Currently, the system is susceptible to being abused and there has to be an onus on individuals to act properly and take steps to return to their country of origin where they have no right to remain in the UK. This duty will apply to anyone engaging with the UK authorities on an immigration matter.

As a part this requirement, to what extent do you agree or disagree with each of the following principles:

- 1) *Individuals coming to the UK (as a visitor, student or other legal means) should leave the country on their own accord, by the time their visa expires.*

No response

- 2) *Individuals seeking the protection of the UK Government should bring their claims as soon as possible.*

Strongly disagree

- 3) *Individuals seeking the protection of the UK Government should always tell the truth.*

Strongly disagree

- 4) *Failure to act in good faith should be a factor that counts against the individual, when considered by the Home Office or judges as part of their decision making.*

Strongly disagree

- 5) *Where an individual has not acted in good faith, this will be a relevant and important factor which decision makers and judges should take into account when determining the credibility of the claimant.*

Strongly disagree

Question 29 - The Government propose an amended 'one-stop process' for all protection claimants. This means supporting individuals to present all protection-related issues at the start of the process. The objective of this process is to avoid sequential and last-minute claims being made, resulting in quicker and more effective decision making for claimants.

Are there other measures not set out in the proposals for a ‘one-stop process’ that the Government could take to speed up the immigration and asylum appeals process, while upholding access to justice? Please give data (where applicable) and detailed reasons.

The government needs to seriously consider and mitigate the impact of any proposed new ‘one stop process’ on victims of trafficking. We also wish to emphasise that though it may be relevant to someone’s immigration case, a reasonable grounds and conclusive grounds trafficking decision is not an immigration decision and should not be made through a lens of immigration policy and enforcement.

We refer to our response to question 3 in which we set out how there are many justifiable reasons why victims of trafficking may delay in disclosing their experience of exploitation, including that many individuals may not know they are or identify as a victim. It may also take time for indicators of trafficking to be picked up. As we have set out in this response, FLEX considers that people with insecure immigration status and in the immigration or asylum system are at increased risk of exploitation. Trafficking and exploitation can occur after someone has entered the system so they would not have been able to raise their exploitation at the beginning of the process.

There is little detail provided in the proposal as to the actual practicalities of how this new one stop process would work. We do agree that the delays in both the asylum and trafficking decision-making system need addressing, especially because of the adverse impact delays have on survivors who are left in limbo with great uncertainty about their future.³⁰ However, on the information provided, we are concerned that the proposal does not factor in the nature of trafficking cases and as such trafficking victims could be negatively and unjustly impacted. Any immigration and identification system must allow for evidence of trafficking to be brought at any stage in the process, and an appeals process that allows decisions to be reconsidered when further evidence has come to light.

We repeat our recommendation of reform set out in our response to question 25 and refer to our response to question 30 where we set out further recommendations for reforms to the system.

Question 30 - Please use the space below to give further feedback on the proposals in chapter 5. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the asylum and appeals system is faster, fairer, and concludes cases more effectively;

(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around streamlining appeals.

Please provide as much detail as you can.

³⁰ ATMG. Before the Harm is done. Examining the UK’s response to the prevention of trafficking. September 2018

One stop process

Please see response to question 29 in relation to the new 'one stop' process and the challenges we foresee for victims of trafficking. We echo our comments in this response that due to the nature of trafficking cases any appeals process must allow decisions to be reconsidered when further evidence about a trafficking case has come to light.

Good faith requirement

Please see our response to question 3 (point D). We repeat these comments and note further that there are already safeguards within the legal system to prevent abuse. Immigration advisors and practitioners must be regulated.³¹ Under the Solicitors Regulation Authority (SRA) Standards and Regulations, Solicitors must act:

- In a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.
- In a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
- With independence.
- With honesty.
- With integrity.
- In a way that encourages equality, diversity and inclusion.
- In the best interests of each client.³²

Both the SRA and OISC “have a responsibility to ensure that persons regulated by them are operating in fit, competent and professional manner, providing good quality advice and services to the public.”³³ Further, solicitors providing legally aided advice and representation must consider the merits of the case including the likelihood of success and benefit to the client before they make an application on behalf of their client³⁴

A concerning finding from research undertaken in 2020 regarding access to immigration advice for victims of trafficking, was that lack of access to asylum and immigration legal aid lawyers puts victims of trafficking at risk of exploitation from unregulated asylum and immigration providers.³⁵

As such, FLEX's view is that the introduction of a 'good faith requirement' will not further the government's stated aim of decreasing 'unmeritorious claims' but will penalise and result in significant injustice for victims of trafficking. Instead, the government should:

- Work to ensure that the legal aid sector is sufficiently funded so victims of trafficking and asylum seekers can access quality legal advice from regulated providers (we expand further on this later in our response) and are not driven to unregulated advisors due to lack of alternative options. This would also reduce the risk of further exploitation; and

³¹ Guidance from the Office of the Immigration Services Commissioner (the OISC) in relation to its regulation and solicitors. 6 November 2020.

³² [https://uk.practicallaw.thomsonreuters.com/7-633-7078?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/7-633-7078?transitionType=Default&contextData=(sc.Default))

³³ Ibid 25

³⁴ The Civil Legal Aid (Merits Criteria) Regulations 2013 and subsequent amendments

³⁵ Young Legal Aid Lawyers ('YLAL'), "A Sector at Breaking Point: Justice Denied for Victims of Trafficking" 2020.

- Work to increase enforcement against unregulated advisors.

Legal advice

As a general position, FLEX supports action to increase the availability of and access to legal advice. Under ECAT member states must ensure victims of trafficking have access to legal counsel “and information, in particular as regards their legal rights and the services available to them.”³⁶

Research into the immigration legal aid market found that there was a “market failure” in asylum and immigration legal aid, with much of the country having little or no access to legal aid and the legal aid “fixed fee” being entirely inadequate for lawyers to undertake high quality work on complex cases.³⁷

As stated above, inability to access quality legally aided funded legal advice can increase risk of exploitation, as individuals may be driven to exploitative work to cover legal costs and/or end up in a situation of debt bondage. FLEX also considers that when looking at increasing access to legally aided advice, broader issues with the legal aid scheme need to be addressed.

Specifically in relation to the proposed new legal advice offer for the ‘one stop process’, FLEX raises the following points and recommendations:

- Any ‘new advice offer’ needs to factor the nature of trafficking cases including delayed recall and disclosure of information
- There needs to be sufficient time to allow an individual to secure representation. In YLAL’s research into the sector, 70.6% of respondents stated that it was either ‘impossible’ (2.9%), ‘extremely difficult’ (20.6%) or ‘difficult’ (47.1%) to find legal aid representation for victims of trafficking.³⁸ The individual should not be penalised for the state of the legal aid sector.
- There needs to be adequate time for the legal advisor to consider the factual background of the case. Trafficking immigration matters can be extremely complex³⁹ and practitioners need to have time to assess the contents of files, take instructions and provide proper advice.
- Advice needs to be adequately funded to ensure practitioners are able to afford to take on these matters and this area of law is sustainable for the legal aid sector. As such, time should be paid at an hourly rate and not on a fixed fee or escape fee model.

³⁶ Ibid 19, Article 12

³⁷ Wilding, J., Droughts and Deserts: A Report on the Immigration Legal Aid Market (Joseph Rowntree Foundation, 2019)

³⁸ Ibid 29

³⁹ Dr Samantha Currie and Johanna Bezzano, An Uphill Struggle: Securing Legal Status for Victims and Survivors of Trafficking Research Report, February 2021 available at: <https://www.liverpool.ac.uk/media/livacuk/law/2-research/An.Uphill.Struggle-Currie.and.Bezzano-Research.Report-Feb.2021.pdf>

FLEX strongly welcomes reform that provides for legally aided advice ‘pre NRM’. However, it is essential that:

- This is available for all potential victims pre reasonable grounds decision, regardless of nationality and immigration status, not just those with existing immigration and asylum claims. As set out in our response to chapter 6, the majority of NRM identifications are UK nationals who also should be able to receive pre NRM advice about their trafficking case. There are many individuals who also need access to pre NRM advice who will not have existing immigration and asylum claims. For example, FLEX research has found that migrant workers on the agricultural seasonal workers pilot are at risk of trafficking and exploitation.⁴⁰ Currently workers on the scheme would not be able to access legally aided legal advice about their option to enter the NRM framework if they are a potential victim. As set out in this response, FLEX also considers there to be an increased risk of exploitation for many migrants as the end of free movement left more individuals with insecure status, and it is expected that not all those eligible to apply for status under the EUSS will be able to meet the deadline, facing significant barriers. It is important that there are mechanisms in place that allow individuals to understand their legal rights and options, not only does this safeguard the individuals, but it also helps combat exploitative practices.
- Advice needs to be adequately funded to ensure practitioners are able to afford to take on these matters and this area of law is sustainable for the legal aid sector.

As set out in the Slavery and Trafficking Survivor Care Standards, “(e)arly legal advice will mean that issues are more likely to be resolved early on, potentially preventing cases ending up in costly litigation and unnecessary trauma”.⁴¹ Early legal advice also ensures a person can make an informed choice about entering the NRM and their future.⁴² Further, early legal advice could make the identification process smoother as solicitors would be in a position to clearly set out details about complex cases for the SCA, which could reduce subsequent reconsideration requests and judicial reviews.

Expedited appeals

There is little detail about the proposed reforms which make it difficult to comment. The government’s statement sets out this reform is proposed to prevent ‘unmeritorious appeals.’ In light of the other proposed changes including the ‘good faith’ proposal, FLEX is concerned that victims of trafficking who delay in disclosing information about their exploitation could be adversely impacted by this proposed appeals process, unjustly, given the many reasons why information could be disclosed (and a claim be brought) late, for this group.

⁴⁰ Focus on Labour Exploitation and Fife Migrants Forum, March 2021. Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot. London. Available here: <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

⁴¹ Slavery and Trafficking Survivor Care Standards 2018. Human Trafficking Foundation

⁴² Principles that underpin early support provision for survivors of trafficking British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit (ATLEU). November 2018.

FLEX consider any proposal needs to factor the complexity of trafficking matters and the time needed to provide quality advice and representation, and also the difficulty individuals face in securing representation.

Expedited appeals (from detention)

The Courts have found that the Detained Fast Track system, which provided strict time limits for preparing appeals alongside mandatory detention, was unlawful. This was primarily because “*the time limits are so tight as to make it impossible for there to be a fair hearing of appeals in a significant number of cases*”.⁴³ As such it is highly concerning that the government are seeking to bring such a process back. Any new proposal needs to consider the previous litigation that has been brought and adhere to the ruling of the courts.

We are concerned that a new expedited appeals process within detention would place victims of trafficking at increased risk of harm and injustice. It is difficult for individuals within detention to access representation and to be able to disclose details about their situation; detention is a highly traumatic environment in itself which can impact on an individual’s ability to engage with their legal representation and the system.⁴⁴ FLEX and LEAG conducted an in-depth assessment of the issues experienced by victims while in immigration detention in the UK.⁴⁵ It found that relevant authorities were failing to identify victims of trafficking prior to their consideration for detention. In many cases, this stemmed from a prioritisation of immigration enforcement over safeguarding, as well as a lack of understanding of the indicators of exploitation. Detention gate-keepers, who are responsible for assessing people's vulnerability prior to detention, were also failing to identify victims. However, even when they did assess someone as too vulnerable to detain, the Home Office maintained the decision to detain in 2669 cases, in sharp contrast to the 141 where vulnerable people were not detained.⁴⁶ Victims also faced significant barriers to identification within immigration removal centres, including a culture of disbelief by authorities and detention staff. Once identified and referred into the National Referral Mechanism (NRM), a number of victims were denied bail and access to specialist support services. Victim support services explained that this was leading to harmful effects on their mental and physical health, as well as recovery from their experience of exploitation.

There are already too many victims of trafficking that experience detention. In 2019, the UK saw a steep increase in the number of victims of human trafficking being held in immigration removal centres, jumping from 507 in 2018⁴⁷ to 1,256 in 2019.⁴⁸ In May 2020, the Home Office was forced to review its policy on detaining victims of trafficking, after a successful

⁴³ Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors [2015] EWHC 1689 (Admin) (12 June 2015)

⁴⁴ FLEX and the Labour Exploitation Advisory Group, Detaining victims: human trafficking and the UK immigration detention system, July 2019. Available here: <https://labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

⁴⁵ Ibid 35

⁴⁶ Information acquired through a Freedom of Information request (47701) made by Bail for Immigration Detainees and answered in 18 February 2018. Data covers the period 01 January 2017 to 31 December 2017.

⁴⁷ Taylor, Diane, The Guardian, More than 500 victims of trafficking detained in 2018, UK study finds, 9 July 2019. Available at: <https://www.theguardian.com/law/2019/jul/09/more-than-500-victims-of-trafficking-detained-in-2018-uk-study-finds>

⁴⁸ After Exploitation, 1256 potential trafficking victims detained last year, 14 February 2020. Available here: <https://afterexploitation.com/2020/02/14/1256-potential-trafficking-victims-detained-last-year/>

legal challenge showed that victims were being held in immigration centres illegally.⁴⁹ As set out in FLEX's response to question 25, there are significant concerns that the proposed changes to the adults at risk detention policy would decrease protection to victims and make it even harder for them to receive bail after being identified. FLEX and other specialist organisations have written to the Secretary of State detailing what is needed to ensure the UK complies with its international obligations on protecting and supporting victims of trafficking, which includes:

- Improvements to the pre-detention vulnerability assessments;
- The introduction of a non-governmental independent first responder within detention centres; and
- An end to the knowing immigration detention of potential and recognised victims of human trafficking.⁵⁰

It is not only the detention of victims that is harmful, but the fear of detention and removal places victims at increased risk of harm and undermines the UK's efforts to identify victims, shut down exploitive practices and combat modern slavery operations. This includes the enforcement and identification efforts of police and labour market enforcement bodies. FLEX and LEAG research has found that undocumented migrants believe that reporting abuse and exploitation could put them at risk of arrest, detention and removal from the country. FLEX and LEAG conducted a detailed assessment of how information about workers' immigration status becomes available to immigration authorities following an interaction with the police and labour inspectorates.⁵¹ It found that despite not being legally required to report irregularities with workers' immigration status to immigration authorities, all labour inspectorates in the UK have done this at least once since 2016. Police are also not legally required to inform immigration enforcement of undocumented victims of crime, but there are a number of instances where they have done so. Migrants are also being put at risk during simultaneous operations, which have conflicting priorities: identify and support workers who have experienced abuse and exploitation, and find migrants with irregular status.

These practices are having a significant impact on the UK's efforts to tackle labour exploitation. We found evidence that migrants are enduring long periods of exploitation for fear that reporting will lead to negative immigration consequences. Documented migrants who are unaware of their status, or the rights derived from it, are also fearful of reporting. We identified a number of cases in which police and labour inspectors missed valuable opportunities to support workers and identify exploiters due to their close relationship with immigration authorities. The evidence shows that the UK is experiencing a cycle of employer impunity, with a number of abusive and exploitative employers financially benefiting from underpaying and mistreating their workforce without facing consequences.

⁴⁹ Bulman May. The Independent. Home Office to review detention policy after admitting trafficking victim was locked up unlawfully, 19 May 2020. Available at: <https://www.independent.co.uk/news/uk/home-news/home-office-review-trafficking-victims-immigration-detention-a9520661.html>

⁵⁰ FLEX & Taskforce on Victims of Trafficking in Immigration Detention, Letter to SHHD, May 2020. Available at: <https://www.labourexploitation.org/publications/letter-secretary-state-home-department-immigration-detention-victims-human-trafficking>

⁵¹ FLEX and the Labour Exploitation Advisory Group, Opportunity Knocks: Improving responses to labour exploitation with secure reporting, April 2020. Available at: <https://www.labourexploitation.org/publications/opportunity-knocks-improving-responses-labour-exploitation-secure-reporting>

As such, FLEX recommends that labour inspectors and police introduce secure reporting systems that guarantee workers will not face immigration consequences when they report problems at work.

Expert evidence

FLEX considers there to be insufficient detail as to the proposed reforms to provide a robust response on this proposal.

However, we consider it essential that the government ensure that, due to the nature and complexity of trafficking cases, victims of trafficking are able to access a broad range of independent and highly qualified experts.

Further recommendations

Research has found that poor-quality decision-making by the Home Office creates additional work for the legal providers and slows down the system.⁵² FLEX recommends that the Home Office:

- Invest in staff training and structures that improve the quality of decision making
- Improve practice and response times in relation to disclosure of documents and case files to legal representatives to ensure cases are not delayed due to the inability to access client information and file history.

Chapter 6: Supporting Victims of Modern Slavery

Question 31 - The Government believes there is a need to act now to build a resilient system which identifies victims of modern slavery as quickly as possible, and ensures that support is provided to those who need it, distinguishing effectively between genuine and vexatious accounts of modern slavery. In your view, how effective, if at all, will each of the following intended reforms be in achieving these aims?

- 1) *Improving First Responders' understanding of when to make a referral into the National Referral Mechanism (NRM) and when alternative support services may be more appropriate.*

No answer

- 2) *Clarifying the Reasonable Grounds threshold.*

Not at all effective

- 3) *Clarifying the definition of "public order" to enable the UK to withhold protections afforded by the NRM where there is a link to serious criminality or risk to UK national security.*

Not at all effective

⁵² Ibid 31

- 4) *Legislating to clarify the basis on which confirmed victims of modern slavery may be eligible for a grant of temporary, modern slavery specific, leave to remain.*

Don't know

- 5) *Bringing forward other future legislation to clarify international obligations to victims in UK law.*

Don't know

- 6) *Continuing to strengthen the criminal justice system response to modern slavery, providing additional funding to increase prosecutions and build policing capability to investigate and respond to organised crime.*

Don't know

- 7) *Introducing new initiatives (as set out in Chapter 6 of the New Plan for Immigration) to provide additional support to victims, improve the Government's ability to prevent modern slavery in the first place, and increase prosecutions of perpetrators.*

Don't know

Question 32 - Please use the space below to give further feedback on the proposals in chapter 6. In particular, the Government is keen to understand:

(a) If there are any ways in which these proposals could be improved to make sure the objective of building a resilient system which accurately identifies possible victims of modern slavery as quickly as possible and ensures that support is provided to genuine victims who need it is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach the Government are taking around modern slavery.

Please provide as much detail as you can.

FLEX would like to take this opportunity to comment generally about this chapter of the proposal.

FLEX supports and welcomes reform to the NRM that would lead to better support and decision making. However, FLEX is concerned that NRM reforms are being considered within a plan for immigration when a trafficking decision is not an immigration decision. Further, though migrants are vulnerable to exploitation and trafficking within the UK, the largest number of identified victims and those in the NRM framework in both 2019 and 2020 were British nationals.⁵³ These proposals are going to impact all potential victims of trafficking, not just migrant victims.

⁵³ <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020>

FLEX is very concerned about the framing of the chapter and subsequent justification for proposed reforms. The introduction refers to “an alarming increase in the number of illegal migrants, including FNOs and those who pose a national security risk to our country, seeking modern slavery referral – enabling them to avoid immigration detention and frustrate removal from our country.” It goes on to state that “child rapists, people who pose a threat to national security and illegal migrants who have travelled to the UK from safe countries have sought modern slavery referrals...”. These are strong and concerning allegations. However, there is no detail provided as to the number and proportion of cases that concern such individuals. The release of the evidence behind these statements is of the highest importance. It is concerning that a proposal which is presented as aimed at improving identification and support, is being formed in response to this unknown number of individuals who are alleged to abuse the system as opposed to those who are in need but unable to access the system. It is even more concerning that the proposals could be grossly disproportionate to the risk of abuse, especially if factoring the negative impact of the proposals, including the increased risk of harm and exploitation, on the majority of potential victims.

The extremely tight timeframe to respond to this consultation has meant that anti-trafficking, asylum and other specialist organisations have little opportunity to request and receive further information regarding the proposal and the evidential process that supports it. Further, the sector has little time to provide the Home Office with data to ensure that any further developments are evidence-based and appropriately informed. In light of the breadth and significance of the proposal (including beyond this chapter), this survey should be regarded as the start of a much longer consultation process.

FLEX invite the government to extend the consultation period and engage in a much more open dialogue with specialist organisations, public and individuals to whom these policies will apply. Otherwise, the Home Office risks not only implementing an unjust plan, but an impractical plan, in breach of the UK’s legal obligations and at great expense.

Any proposal, including for reform of the NRM, should be formed on a strong evidence base, in consultation with survivors and specialist anti-trafficking organisations.

We set out in more detail our concerns regarding the proposal in relation to first responders, and the reason we did not answer the multichoice on this proposal. We also comment on the reasonable grounds threshold and the definition of public order proposals and the reason why we consider the planned changes to be “not at all effective”. For the remaining options we answered “don’t know” as our position would depend on the details of the proposed reforms, which are not set out in the plan.

Training for first responders (and further recommendations)

Though in general we welcome plans to improve training for first responders, our position is dependent on what that training encompasses. Later in our response we address our concerns with the proposed changes to the reasonable grounds test and credibility. If training is proposed in order to increase ‘vetting’ of individuals coming forward and reduce referrals to the NRM, we do not support it.

It is essential that potential victims have trust and confidence to come forward for help and as such first responder organisations have a crucial role to play in the way they relate and

support potential victims. As set out previously in this submission, we are concerned that potential victims can be missed and not identified by first responder organisations and accordingly not provided the opportunity to access support and go through the formal NRM identification process. This can also delay their access to legal advice, justice and result in longer periods of detention.⁵⁴

If a potential victim is unable to come forward for help, whether this be due to distrust in authorities and the system or because the first responder organisation has failed to identify and refer them, this increases the risk of harm and exploitation to the individual involved; they remain in their position of exploitation and/or without support to meet their basic needs.

For all these reasons, training should reflect best practice as set out in the Slavery and Trafficking Survivor Care Standards⁵⁵, and include (but not be limited to):

- a thorough understanding of indicators of trafficking and modern slavery so that individuals can identify complex cases;
- the informed consent process and the difference between a duty to notify and NRM referral;
- trauma training to ensure a trauma informed approach is used;
- the rights and entitlements of victims and their support options. The first responder should be able to make recommendations as to 'suitable support' based on the wishes and individual needs of the potential victim and the factual circumstances of the referral, and this should be taken into account by the prime contractor;
- How to complete quality and clear NRM referrals to aid the Single Competent Authority decision making;
- The continued role of first responder to support the identification and decision-making process, including providing further evidence and reconsideration requests.

In December 2020 it was announced that the Victim Care prime contractor would no longer be acting as a first responder under the Victim Care Contract, though the Salvation Army Volunteer Service would still continue to take referrals by email.⁵⁶ FLEX is concerned that this change in position leaves many potential victims, who do not trust or feel confident to approach a public authority first responder to make a referral, with very limited options. Though there are a number of non-government organisations (NGOs) who have first responder status, these organisations operate with limited capacity and cannot be expected to shoulder and be primarily responsible to discharge the state's duty. FLEX considers the proposed changes within this plan exasperate the need for potential victims to have confidence that coming forward to public authority first responder organisations will not have negative consequences for them and for them to have alternative options.

As such, FLEX recommends:

⁵⁴ Ibid 4

⁵⁵ Human Trafficking Foundation Survivor Care Standards, 2018

⁵⁶ Home Office NRM Reform Newsletter, 18th December 2020

- All organisations when operating in capacity of first responder have clear separation from immigration enforcement and secure reporting pathways, to ensure that potential victims can have trust and confidence to come forward. This in term reduces risk of exploitation and assists the government’s efforts to identify modern slavery criminal activity;
- The government ensure there are clear NGO first responder organisations with sufficient capacity and ability to undertake referrals so that potential victims can access as an alternative to a statutory body;
- An NGO first responder that operates within detention settings (see response to question 30);
- The government ensure adequate resourcing of all first responder organisations so that victims are not at risk of harm due to slow and delayed referrals and a failure to identify and effect a quality referral.

FLEX also considers the implementation of the places of safety would greatly assist first responders to do a more quality and effective job. We comment further on this later in our response to this question.

Finally, there needs to be monitoring of first responder conduct and outcomes. Data needs to be collected about the number of individuals who choose not to enter the NRM and the reasoning for this, to assist with identifying gaps in the support framework.

Public Order Grounds Exemption

FLEX is concerned that this proposal will result in:

- More victims being detained unreasonably. Please see our response to question 30 which sets out the wider impact of this including increased risk of exploitation.
- An increase in victims being unable to access support and recover from their exploitation.
- An increase in distrust of authorities (from both migrants and UK nationals) and fear of reporting exploitation.
- A reduction in overall identifications of potential victims and prosecution of perpetrators. As set out in the explanatory report to ECAT, “the greater victims’ confidence that their rights and interests are protected, the better the information they will give.”⁵⁷
- More opportunities for perpetrators to coerce and control.

Individuals with a criminal record are vulnerable to exploitation and trafficking especially if they find themselves with limited employment options. It is essential that any support and identification framework is designed for such individuals to have a chance of recovery and to access non-exploitative work options. FLEX is concerned this proposal fails to give due consideration to individuals in this category, whether foreign or UK nationals.

We note that the government’s proposal states that there will be consultation on this point, and FLEX welcomes the opportunity to contribute further.

⁵⁷ Explanatory Report – CETS 197 – Action against Trafficking in Human Beings

A new Reasonable Grounds Test and Credibility

FLEX strongly rejects any reform that increases the threshold required for a positive reasonable grounds decision and more stringent credibility testing at any stage of the identification process.

It is essential that the reasonable grounds threshold is not increased. The primary priority of government must be to safeguard any potential victim and victims are in an extremely vulnerable position at point of entry in to the NRM. It is unreasonable to assess credibility and have a burdensome evidential threshold at the point of entry due to the nature of trafficking cases and the immediate support needs of potential victims. We refer to our response to question 3 and to Chapter 5 why these proposals fail to factor the specific nature of trafficking cases, including delayed recall and disclosure. It is also difficult for potential victims to evidence their exploitation as it is common for them to lack papers, payslips and other documentation.⁵⁸ Factors that support and indicate that someone is a victim should not be used against a person to deny them support and status as one.

The recovery and reflection period allows the Single Competent Authority the opportunity to extensively investigate an individual's case, including reviewing corroborative evidence and undertaking consideration of a person's credibility.⁵⁹ It is not reasonable or practical to introduce an initial investigative period, which is in essence what this proposal would do. Further, it is not the role of first responder organisations to act as decision maker on status and credibility. This role is for the SCA and only in a manner of procedural fairness and where there is an accountability framework in place.

We are concerned that any increase to the reasonable ground threshold and/or credibility testing would:

- Place more pressure on the system and slow it down further
- Increase litigation against the Home Office due to the unreasonable nature of the proposals
- Increases distrust in the NRM and the authorities, resulting in a decrease of reporting, identifications and subsequent prosecutions
- Place victims at risk of incorrect negative decisions and subsequent harm from the implications on their ability to access support
- Place individuals at increased risk of exploitation and harm as perpetrators have increased methods of coercion and control and individuals feel they have no option but to remain in exploitation

Ultimately, to safeguard victims and the system, we consider the burden should be on the government to prove someone is abusing the system, not on the victim to prove they are in fact a victim and have been exploited in order to access safeguarding and support. Such an approach plays into the hands of perpetrators.

We note there will be further consultation on this point and we welcome opportunity to comment further.

⁵⁸ Ibid 4

⁵⁹ Ibid 4

Providing victims of modern slavery with increased support

FLEX welcomes any proposal that makes it easier and more certain for victims to be granted leave to remain. From the government's statement it is not clear on what basis grants of leave will be made available and how this will be framed in legislation. Given the current extremely low grants of discretionary leave⁶⁰ it is essential that there is an improvement of the current system.

FLEX's primary recommendation would be that the government grant an automatic period of leave to confirmed victims of trafficking and that this be confirmed in legislation. Failing this, FLEX strongly advocates that discretionary leave must be available on a much broader basis than currently outlined in the guidance⁶¹, and the standard for granting leave reduced (including the amount of supporting evidence required).

FLEX supports the confirmation of the UK's international obligations to support victims within domestic legislation, but only if there is no reduction, limitation, withering down or removal of these rights.

FLEX repeats its recommendation as set out earlier in this response that pre NRM legal advice be made available for all individuals regardless of exiting claims and immigration status. In order to improve the proposed reforms, FLEX also recommends the UK:

- Implement the 'places of safety' principles as set out in the "Principles that underpin early support provision for survivors of trafficking" briefing.⁶²
- Allow access to work for survivors in the NRM as set out in the "Access to work for survivors of slavery" briefing.⁶³

Further, FLEX repeats its recommendations in relation to the detention of victims of trafficking and secure reporting pathways. FLEX also endorses and supports the response of the ATMG.

Chapter 7: Disrupting Criminal Networks Behind People Smuggling

Question 33 - Illegal immigration can cause significant harm and can endanger the lives of those undertaking dangerous journeys. It can also endanger those emergency service workers and Border Force officers who respond to illegal journeys such as those made by small boat. The Government is determined to introduce tough new measures to deter illegal migration by strengthening the protection of the UK's borders. In your view, how effective,

⁶⁰ ECPAT, Child Trafficking in the UK a snapshot, October 2020 available at: <https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=b92ea99a-6dd8-480c-9660-e6c0f0764acf>

⁶¹ Ibid 4

⁶² Ibid 36

⁶³ FLEX, ATLEU, ATMG, Kalayaan, Survivor Alliance, Sophie Hayes Foundation, Coop. *Access to work for survivors of slavery to enable independence and sustainable freedom*, March 2021. Available here: <https://www.labourexploitation.org/publications/access-work-survivors-slavery-enable-independence-and-sustainable-freedom>

if at all, will each of the following intended reforms be in helping to meet this aim:

- *Introducing tougher criminal offences for those attempting to illegally enter the UK, (including raising the penalty for illegal entry from 6 months to 2 – 5 years).*
- *Widening existing powers to tackle those promoting or facilitating illegal migration, including raising the maximum sentence for facilitation to life imprisonment.*
- *Giving additional powers to Border Force including searching freight containers for immigration purposes, seize and dispose of any vessels and the ability to stop and redirect vessels from the UK where persons being conveyed are suspected of seeking to enter the UK illegally.*
- *Increasing the penalty to a maximum of 5 years in prison for Foreign National Offenders who return to the UK in breach of a deportation order.*
- *Overhauling the Clandestine Civil Penalty Regime.*
- *Implementing an Electronic Travel Authorisation (ETA) scheme to identify and block the entry of those who present a threat to the UK.*

FLEX responds ‘not at all effective’ to all the options in this section.

Question 37 - Please use the space below to give further feedback on the proposals in chapter 7. In particular, the Government is keen to understand (a) If there are any ways in which these proposals could be improved to make sure the objective of defending the UK border and preventing illegal entry is achieved; and (b) Whether there are any potential challenges that you can foresee in the approach the Government are taking to defend the border.

Please provide as much detail as you can.

FLEX is concerned that the proposal will have a negative impact on vulnerable individuals including victims of trafficking and those in need of protection.

We repeat our earlier comments in relation to method of entry, and we are concerned that these proposals will result in such individuals being classed and treated as ‘illegal migrants’ as opposed to at risk individuals in need of support and protection.

We also repeat our earlier comments and emphasise that in relation to chapter 7’s proposals:

- Victims of trafficking may be coerced and controlled to enter by ‘illegal means’ and should not be punished for this.
- We consider that a lack of general migration routes combined with continued demand for migrant workers and the end of free movement is a driving factor for the use of illegal entry routes. The government should focus on introducing more general routes as opposed to making illegal entry points more dangerous.
- We consider these reforms could leave individuals more vulnerable to exploitation as the risk of punishment and negative repercussions creates distrust in authorities and fear of reporting abuse and exploitation.
- These proposals give perpetrators stronger methods of control and coercion.

Chapter 8 - Enforcing Removals including Foreign National Offenders (FNOs)

Question 38 - It is an essential responsibility of any Government to enforce and promote compliance with immigration laws, ensuring the swift return of those not entitled to be in the UK. The Home Secretary is also under a duty to remove any foreign national offender who has been served a sentence for an offence in the UK of 12 months or more.

In your view, how effective, if at all, will each of the following reforms be in helping us to build on these principles?

- Consulting with Local Authority partners and stakeholders on implementing the provisions of the 2016 Act to remove support from failed asylum- seeking families who have no right to remain in the UK.
- Considering whether to more carefully control visa availability where a country does not co-operate with receiving their own nationals who have no right to be in the UK.
- Increasing the early removal provision for Foreign National Offenders who leave the UK from 9 months to 12 months to encourage departure and also add a new 'stop the clock' provision so that they must complete their sentence if they return. This would be in addition to any sentence for returning in breach of a deportation order.
- Amending the list of factors for consideration of granting immigration bail and the conditions of immigration bail.
- Placing in statute a single, standardised minimum notice period for migrants to access justice prior to enforced removal and confirm in statute that notice need not be re-issued following a previous failed removal, for example where the person has physically disrupted their removal.

FLEX responds 'not at all effective' to all the options in this section.

Question 39 - The Government intends on amending the list of factors for consideration of Immigration Bail in paragraph 3 of Schedule 10 to the Immigration Act 2016 (legislation.gov.uk), to include an individual's compliance with proper immigration process.

To what extent, if at all, do you agree or disagree with this proposal?

FLEX responds 'disagree'

Question 40 - This question relates to the proposals around providing prior notice of a set period (known as the notice period) before the individual is removed. This notice period provides the opportunity to seek legal advice and bring legal challenges ahead of removal.

In your view, should this notice period be:

- **A minimum of 72 hours, as is currently the case**
- **5 working days**
- **7 calendar days**

- **Other length of time (please specify and explain your answer)**

Earlier in this submission at questions 30 and 31 FLEX has commented on the state of the legal aid system and the difficulty faced by individuals when trying to secure legal advice and representation. FLEX is therefore hesitant to prescribe a specific period of time, but we emphasise that there needs to be sufficient time for an individual to receive quality and legally aided advice.

Question 41 - Please use the space below to give further feedback on the proposals in chapter 8. In particular, the Government is keen to understand

(a) If there are any ways in which these proposals could be improved to make sure the objective of enforcing and promoting compliance with immigration laws, ensuring the swift return of those not entitled to be in the UK is achieved; and

(b) Whether there are any potential challenges that you can foresee in the approach the Government is taking around removals.

Please write in your answer in full, providing as much detail as you can.

FLEX is extremely concerned regarding the proposals in relation to support for failed asylum- seeking families who have no right to remain in the UK. We consider that without support these families are at great risk of harm and exploitation. Without a means to meet their basic needs we are concerned these families would be very vulnerable to traffickers.

We remind the government that Section 55 of the Borders Citizenship and Immigration Act 2009 imposes a duty on the Defendant in relation to the welfare of children:

“(1) The Secretary of State must make arrangements for ensuring that—
 (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
 (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.
 (2) The functions referred to in subsection (1) are—
 (a) any function of the Secretary of State in relation to immigration, asylum or nationality...”

We also remind the government of its duties under the Human Rights Act 1998 (including but not limited to Articles 3, 4, 6 and 8).

FLEX repeats its previous comments and concerns in relation to the proposal driving individuals into exploitative work, increasing mistrust in authorities, detention and access to legal aid and justice.

Public Sector Equality Duty (and other general questions)

Question 42 – 44

FLEX considers that the government needs to undertake its own thorough equalities impact assessment of the proposal, and that this should have taken place and factored into the forming of the proposal itself before publication. We suggest the government undertake this (with appropriate expertise) and then publish the assessment alongside a plan to resolve any failure in relation to equalities.

Question 45 - Is there any other feedback on the New Plan for Immigration content that you would like to submit as part of this consultation?

Overall, FLEX strongly opposes the proposal and finds the consultation process inadequate considering the significance of the proposed changes. The plan does not provide sufficient evidence to justify the proposed changes and the public resources and expenditure the changes would involve. It has also been difficult to provide feedback and assessment on certain areas of the plan due to the lack of detail surrounding many of the proposals. FLEX also considers the consultation period insufficient to consider and address the magnitude of the plan. It is essential that the government allows for a proper consultation, so that any change in policy is based on evidence and monitored through independent evaluation. We ask the government, and emphasise the need, for further and continued opportunity to feed into the proposal as it evolves.

Turning to the plan itself, though FLEX agrees that the asylum and trafficking system are in need of reform, FLEX is concerned that reforms in relation to the UK's modern slavery identification and support system are being considered within the context of this immigration plan. Further, FLEX considers that the plan if implemented would place individuals at increased risk of harm, labour abuse and exploitation. There is risk that the proposals would result in a reduction of identification of potential victims of trafficking and modern slavery, and correspondingly, a reduction in the identification of trafficking networks and prosecution of perpetrators.

“FLEX is extremely concerned that individuals who need protection and support would, as a direct and indirect consequence of these plans, be driven into exploitative circumstances.”

Ultimately, FLEX believes elements of the plan are inconsistent with and undermine the UK's Modern Slavery priorities, as well as its legal obligations, including in relation to victims of trafficking. Within our response we make recommendations for reforms that the UK could implement, and that we consider would support a fair approach, whilst reducing risk of exploitation and harm. These recommendations include removing barriers to work for asylum seekers and victims of trafficking, ensuring that victims of trafficking are not detained or imprisoned under immigration powers, establishing secure reporting pathways and increasing access to quality funded legal advice and representation.

FLEX's underlying position and recommendation is that **all workers, regardless of employment and immigration status, should be able and supported to report abuse and access vital protections.** Such an approach is necessary, not only to protect individuals and promote redress, but in order to deter labour abuse and exploitation from taking place.

Focus on Labour Exploitation

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