

Focus on Labour Exploitation

The Foundry, 17 Oval Way

London SE11 5RR

T: 0203 752 5516

info@labourexploitation.org

www.labourexploitation.org

Rt. Hon. Priti Patel MP
Secretary of State for the Home Department
Home Office
2 Marsham Street
London SW1P 4DF

07 May 2020

Dear Rt. Hon. Priti Patel MP,

Re: Immigration detention of victims of modern slavery in the UK

We are writing to you as members of the *Taskforce for Victims of Human Trafficking in Immigration Detention*¹ to share our concerns in relation to the Home Office's current policy on the immigration detention of victims of offences under the Modern Slavery Act. Our membership includes experts on national and international anti-human trafficking mechanisms, immigration lawyers, medical professionals and frontline service providers supporting victims who have experienced, or are in, immigration detention in the UK.

We welcome the opportunity to share our comments on the current immigration detention policy on victims of trafficking in the UK in order to improve the new policy which we are told is currently being developed.

It is our view that the current Home Office policies do not adequately prevent the detention of victims of trafficking. Once detained, potential victims experience a number of barriers to identification and support as a result of poorly performing mechanisms to assist those who have experienced modern slavery offences. Below, we set out the main issues with the current system and our recommendations for its improvement.

1. Focus on removal and poor understanding of human trafficking indicators

Taskforce members have identified a number of cases in which government authorities, such as police, immigration enforcement and other Home Office staff, have failed to identify victims who have subsequently been arrested, detained and even removed prior to identification. Members consider that an improved policy could ensure that this mistreatment is minimised.

¹ The Taskforce works to end the immigration detention of victims of human trafficking in the UK. Members include: Focus on Labour Exploitation (Chair), Bail for Immigration Detainees, Anti-Slavery International, Latin American Women's Rights Service, Duncan Lewis Public Law Solicitors, Medical Justice, Ashiana Sheffield, Association of Visitors to Immigration Detainees (AVID), Helen Bamber Foundation, Jesuit Refugee Service UK and ECPAT UK. For more information: <https://www.labourexploitation.org/about-us/taskforce-victims-trafficking-immigration-detention>

Members are concerned that relevant authorities either do not have sufficient understanding of human trafficking indicators or do not take necessary time to uncover detailed accounts of an individual's experience which would help them to be identified prior their consideration for immigration detention. For instance, Operation Magnify, a Home Office enforcement campaign aimed at identifying businesses employing and exploiting undocumented migrant workers has led to the arrest and subsequent detention of 97 potential victims of trafficking for immigration offences between January 2015 and November 2019.² In May 2019, the Independent Chief Inspectors of Borders and Immigration (ICIBI) raised the issue that the Home Office often does not identify potential victims of trafficking as a result of "focusing on the fact that someone was working illegally rather than that they may be a victim of abuse, exploitation and slavery".³

Our members find that, in reviews of the decision to detain, case workers often misidentify indicators of trafficking as negative immigration factors. For example, in some cases where an individual stopped reporting because they were trafficked, this is treated as absconding. This can happen even where an individual has a positive reasonable grounds decision, suggesting that focus on immigration control obstructs victim identification and support.

Poor understanding of human trafficking indicators prior to, and at the point of consideration for immigration detention, means that thousands of potential victims are being detained prior to identification. Recent data shows that in 2019, 2850 potential victims were referred to the National Referral Mechanism (NRM) from within Immigration Removal Centres (IRC).⁴ These numbers show the limited performance of current mechanisms aimed at avoiding the detention of vulnerable people and the need for improved policy on detention of victims of trafficking.

Taskforce members have also supported victims who had been trafficked, arrested, detained, removed and then re-trafficked to the UK only to be identified by a support provider, despite having had contact with a number of statutory first responders throughout their experience of arrest and within immigration detention. This demonstrates that failure to identify victims as victims facilitates re-trafficking and hinders the UK's response to tackle modern slavery offences.

There is a clear need for all government agencies with the power to make arrests under immigration powers to receive compulsory training on human trafficking indicators. This should include real cases, including those in which indicators of trafficking are not standard or simplistic to avoid a 'one size fits all' approach. This will ensure victims' complex experiences of exploitation are identified, and the government's anti-slavery aims and commitments are better met.

2. Misuse of immigration detention powers

In conversations with members of the Taskforce, police officers have described frustration regarding the current lack of systems through which police can provide potential victims with safe accommodation when they are perceived to be in immediate danger but are not ready to disclose their experience of exploitation or make a decision on whether they want to engage with the National Referral Mechanism (NRM).

² Information acquired through a Freedom of Information request to Home Office 2019/55965 data covers the period from January 2015 to November 2019.

³ Independent Chief Inspector of Borders and Immigration, *An inspection of the Home Office's approach to Illegal Working (August – December 2018)*, May 2019, p.47.

⁴ Information acquired through a Freedom of Information request to Home Office 2020/57809.

In the absence of such systems, some police officers described using immigration detention as a way to 'protect' victims with insecure immigration status from returning to an exploitative situation and to give them time to reflect on their experience and decide if they would like to disclose. Others have described being unable to "turn a blind eye" if someone is in the country without regular status, despite them being concerned that the person is a potential victim of trafficking. So if a victim does not disclose at the first point of contact with a police officer, for example due to fear of reprisals from their exploiter, distrust of government authorities or still being under control of their trafficker, a proportion of police officers contact the Home Office so that the potential victim is considered for immigration detention.

It is our expert view that the use of immigration detention to 'safeguard' victims of trafficking is wholly inappropriate. Numerous studies demonstrate the negative impact of immigration detention on mental health, being especially harmful to people who have experienced trauma, causing or exacerbating retraumatisation, Post-Traumatic Stress Disorder, anxiety, panic attacks and suicidal ideation. Therefore, immigration detention should never be used as a safeguarding measure.

Detention should never be used as a safeguarding measure. Potential victims should, instead, be taken to a safe place and given time to recover before being interviewed and deciding whether or not they would like to enter the NRM. While we expect the currently proposed Places of Safety to address some of these concerns, it is imperative that victims do not feel pressured to enter the NRM for fear that not doing so will lead to their detention and removal once they leave the 'place of safety'.

3. Limitations to the Detention Gatekeeper (DGK) system

In 2017 the Home Office introduced 'detention gatekeepers' to scrutinise all proposed detentions independently of the Immigration Enforcement's arresting team and to ensure that people whose vulnerability could be exacerbated by detention were not detained. However, Taskforce members continue to support potential victims of human trafficking who have not been identified at the point at which they were being considered for detention.

A key issue is that even people who have been identified by the DGK as vulnerable can be admitted to immigration detention, as DGK's decision making is often overruled by other Home Office departments. The ICIBI recognised this concern in his recently launched 'Annual inspection of Adults at Risk in Immigration Detention (2018-2019)' stating that the DGK system, among many other safeguarding systems within detention, is undermined by a lack of genuine empowerment since the final decision to detain rests elsewhere.⁵

Additionally, while DGK aim at scrutinising all proposed detentions independently from the arresting team, DGK rely on information provided by the arresting team to make their decision, which affects the independence of this process. To address this, the ICIBI has recommended that during the admissions process the detainee is seen by the IRC supplier, healthcare and GP and embedded Detention Engagement Team within 24 hours of arrival so that a joint decision is made on the individual's suitability to be detained.⁶ This system could be a useful step, acting as a quality assurance check on the DGK. This

⁵ Independent Chief Inspector of Borders and Immigration, *Annual inspection of 'Adults at Risk in Immigration Detention' (2018-2019)* (November 2018 – May 2019), May 2020, p.11.

⁶ Ibid, p.13.

recommendation has, however, not been accepted by the Home Office in its response to the ICIBI's analysis report.

To address these shortcomings, DGK should have access to all documents and files including past immigration and medical records and previous NRM referrals, with the individuals' consent, of anyone being considered for detention. People identified as vulnerable by the DGK should not be detained. The 'detention gatekeeper intake pro-forma' should include a question on indicators of human trafficking. Additionally, everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain.

4. Home Office expectation of self-identification by victims of trafficking

Taskforce members have noted that there appears to be an expectation by the Home Office that victims of trafficking will voluntarily disclose their experience of exploitation to relevant authorities either before or during their time in detention. In some cases, victims present clear indicators of modern slavery offences and yet, they are only identified or supported once they disclose those instances of exploitation to charities, solicitors or medical professionals working within immigration detention centres, instead of being proactively identified by authorities.

This concern was noted by the Group of Experts on Action Against Trafficking in Human Beings (GRETA) in their 2016 report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK. GRETA stated that in the UK "the detection of victims of human trafficking appears to rely essentially on self-identification by the victims".⁷

Self-identification is problematic for a number of reasons. In our experience, many victims of trafficking are unaware that there are systems to identify and support them, making them unlikely to disclose traumatic experiences to people they do not know or trust. Even when they disclose, victims describe their experience of exploitation using their own terms and language. This means they are often not aware that what they went through is characterised as trafficking and therefore, makes self-identification and self-reporting to authorities unlikely. Additionally, detention re-triggers trauma for many people who have been trafficked, blocking self-identification and disclosure. This is exacerbated when the first responder, the person who disclosure needs to be made to, is also the authority responsible for their detention. Even if a trafficked person is able to self-identify under these circumstances, disclosure is likely to not contain all relevant evidence of their trafficking experience, which then leads to incomplete NRM referral forms that make positive identification as trafficked person less likely.

The high number of victims being identified by Taskforce members and other charities working in detention suggests the need for a non-governmental independent support provider to be present in detention and able to act as the first point of contact for people who have experienced trauma, abuse and exploitation.

5. Continued detention following NRM referral

While in most cases a positive reasonable grounds decision leads to release from detention, there are a number of cases where the Home Office has maintained the detention of people with these decisions despite the overwhelming evidence that

⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom – Second Evaluation Round*, 07 October 2016, p.39.

immigration detention negatively affects people who have previously experienced trauma, such as victims of trafficking.

Keeping potential victims in detention also goes against GRETA's recommendation that UK authorities should "improve the identification of victims of trafficking in detention centres and ensure that following a positive reasonable grounds decision, possible victims of trafficking are speedily removed from detention and offered assistance and protection as provided in the [Council of Europe] Convention [on Action against Trafficking in Human Beings]."⁸

In addition to maintaining detention of potential victims of trafficking, the Home Office has detained people *after* they have been referred to the NRM and are awaiting a reasonable grounds decision, despite the government ensuring that "potential victims of modern slavery cannot be removed while consideration is being given to whether there are reasonable grounds to believe they are a victim."⁹ Their detention, therefore, contradicts the Hardial Singh principle that the Home Office can only use detention for the purpose of removal or for assessing someone's claim to be in the UK.

At a minimum, the UK should follow GRETA's recommendation. However, in order to avoid further harm and trauma from having their freedom of movement restricted and from the wider experience of immigration detention, potential victims should be released from detention immediately after being referred to the NRM so they can start their recovery in an appropriate setting.

6. Breaches to the UK's international responsibilities towards victims of human trafficking

The Taskforce considers that the immigration detention of victims of trafficking breaches the UK's responsibility to "assist victims in their physical, psychological and social recovery" under Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings. These responsibilities are also covered by Articles 8 and 9 of the EU Victims' Rights Directive, which the UK has ratified. These articles state that victims should receive support tailored to their needs, especially those victims who have "suffered considerable harm due to the severity of the crime".

The detention of victims of human trafficking also breaches Article 18 of the EU Victims' Rights Directive which establishes that victims should be protected from "secondary and repeat victimisation, from intimidation and retaliation, including against the risk of emotional and psychological harm".

We share the view that current Home Office policy leads potential victims of trafficking to be treated primarily as immigration offenders rather than victims of a serious crime. This is resulting in some victims of human trafficking spending more than a year in immigration detention leading to long-term emotional, physical and psychological consequences.

The UK should comply with these international obligations by introducing policies that end the knowing immigration detention of potential and recognised victims of human trafficking.

⁸ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom – Second Evaluation Round, 07 October 2016, p.39.

⁹ UK Parliament, Slavery: Written Question: HL14851, 09 April 2019.

The Taskforce urges the Home Secretary to reconsider the policies and practices described above to ensure that the UK best meets its international obligations and does not contravene its objectives to tackle modern slavery.

Yours sincerely,



Lucila Granada
Chief Executive
Focus on Labour Exploitation
lucilagranada@labourexploitation.org

Taskforce members signatory to the above:

Ali McGinley, Director, Association of Visitors to Immigration Detainees

Claire Clarke, Director, Bail for Immigration Detainees

Emma Ginn, Director, Medical Justice

Gisela Valle, Director, Latin American Women's Rights Service

Jasmine O'Connor, CEO, Anti-Slavery International

Kerry Smith, Chief Executive Officer, Helen Bamber Foundation

Sarah Teather, Director, Jesuit Refugee Service UK