

# Submission to the United Kingdom UN Universal Periodic Review, 4<sup>th</sup> Cycle, November 2022: HUMAN TRAFFICKING AND MODERN SLAVERY

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## 1. Introduction

1. Despite supporting recommendations 134.138 to 134.147 related to addressing human trafficking in the UK,<sup>1</sup> the UK's response system is marked by a series of retrograde developments and counterproductive measures. Research and analysis from the anti-trafficking sector has demonstrated the considerable shortcomings within the UK's anti-trafficking framework, failing victims and survivors of trafficking.<sup>2</sup>

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<sup>1</sup> All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain & Northern Ireland, A/HRC/36/9 (July 2017).

<sup>2</sup> See *e.g.*, Labour Exploitation Advisory Group, Opportunity Knocks: Improving responses to labour exploitation with secure reporting, April 2020. London: Focus on Labour Exploitation (FLEX). Available: <https://www.labourexploitation.org/publications/opportunity-knocks-improving-responses-labour-exploitation-secure-reporting> ; Labour Exploitation Advisory Group (2019) Detaining Victims: human trafficking and the UK immigration detention system. Available at: <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and->

2. This submission represents the concerns of a number of organisations working to end human trafficking.<sup>3</sup>

## 2. Enforcement of the legal and policy framework on labour, trafficking and modern slavery

3. In the 2020 mid-term report, the UK Government highlighted the progress of the Gangmasters and Labour Abuse Authority (GLAA) in addressing human trafficking, in response to recommendations 134.138 to 134.144, as well as 134.146 and 134.147.<sup>4</sup> However, the GLAA is considerably underfunded, with well-under the ILO recommended target of one inspector per 10,000 workers (currently 0.4 inspectors per 10,000 workers). The UK has one of the poorest resourced labour inspectorates in Europe, meaning that the GLAA only carries out 'intelligence-led' inspections and is therefore reliant on workers reporting their exploitation.
4. The UK government has tended to view trafficking and modern slavery as a discrete form of abuse rather than existing at the extreme end of a continuum of exploitation. Working conditions must be improved generally to avoid situations degrading to the stage where they amount to human trafficking. Strengthening the labour market enforcement can help to embed a model based on proactive protection rather than simply redress once a situation has degraded to a sufficient level of severity.
5. Moreover, joint operations with immigration control units play directly into the hands of exploiters. Research conducted by the Labour Exploitation Advisory Group (LEAG) has highlighted that joint operations have undermined trust in enforcement mechanisms among migrant workers thereby impeding operational effectiveness as well as their wider ability to detect and address exploitation.<sup>5</sup>
6. The UK government has an opportunity to improve this approach through the upcoming Employment Bill as well as the creation of the Single Enforcement Body. We encourage the UK government to implement a preventative approach and have a clear system for secure reporting within future legislation and policy.

### *Recommendations for Action*

- Increase resourcing of the GLAA and future Single Enforcement Body to ensure there is capacity to conduct regular proactive inspections.

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[uk-immigration-system](#); The Anti-Trafficking Monitoring Group (2019) Real people, Real lives: ten years of advocacy for victims of slavery in the UK. Available at: <https://www.ecpat.org.uk/real-people-real-lives-ten-years-of-advocacy-for-victims-of-slavery-in-the-uk>; University of Nottingham Rights Lab (2021) Re-trafficking - The current state of play: Research Report with the UK Independent Anti-Slavery Commissioner. Available at: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/november/re-traffickingthe-current-state-of-play.pdf>; National Audit Office (2017) Reducing Modern Slavery. Available at: <https://www.nao.org.uk/report/reducing-modern-slavery/>.

<sup>3</sup> Signatories: Focus on Labour Exploitation (FLEX); Helen Bamber Foundation; Anti-Slavery International; Kalayaan; Hope For Justice; Anti-Trafficking and Labour Exploitation Unit (ATLEU); Love146; JustRight Scotland; Unite the Union; Survivor Alliance; Kanlungan; Medical Justice; Anti-Trafficking Monitoring Group; Latin American Women's Rights Service (LAWRS); Unseen; Labour Exploitation Advisory Group (LEAG); Taskforce on Victims of Human Trafficking in Immigration Detention.

<sup>4</sup> United Kingdom, British Overseas Territories and Crown Dependencies Universal Periodic Review – Mid Term Report 2020, p.130. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/953430/uk-mid-term-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953430/uk-mid-term-report.pdf)

<sup>5</sup> Labour Exploitation Advisory Group (2020), *ibid.* note 2, pp. 20-23.

- End the policy of joint labour market enforcement operations with immigration enforcement, as well as the automatic sharing of information on workers' migration status with immigration enforcement.
- Adopt a prevention-based approach to encompass all forms of labour exploitation in labour market enforcement measures.
- Repeal section 24B of the Immigration Act 1971 which criminalises the act of working without required documentation in the UK.
- Work with migrant community organisations to inform migrant workers about their rights and ensure that migrants know when they are able to avail of secure reporting procedures and processes to report labour abuse and exploitation.
- Address structural issues which increase migrant workers' vulnerability to exploitation, including through the removal of tied-visas, recruitment fees.

### 3. Obstacles in the identification and protection of victims of trafficking and modern slavery

7. Despite accepting recommendation 134.141 on the identification and provision of assistance to victims of human trafficking, as well as recommendations 134.138, 134.139, 134.142, 134.143 and 134.144 on national frameworks and mechanisms to counter human trafficking, sufficient progress has not been made. Shortcomings in National Referral Mechanism (NRM)<sup>6</sup> data collection<sup>7</sup> by the Home Office impedes the proper understanding of trafficking and modern slavery in the UK. The National Audit Office have previously held that the errors in NRM data make it '*difficult to use to understand modern slavery crime*' and that as a result the Home Office itself has an '*incomplete picture of the crime*'.<sup>8</sup> Improvements in data collection and data transparency are therefore necessary to action these recommendations. It is vital that this information remains publicly accessible (whilst ensuring the privacy of victims and survivors of human trafficking).<sup>9</sup>
8. Despite the reform of the NRM in 2017, the mechanism remains flawed. Over the last five years, the number of people referred into the NRM has tripled. However, more than two thousand potential victims of trafficking and modern slavery each year do not agree to be referred into the NRM<sup>10</sup> due to concerns about the process or the limited value of any support it offers.<sup>11</sup>

<sup>6</sup> The National Referral Mechanism is the UK national framework for identifying and referring potential victims of modern slavery and ensuring they receive the support. For more information, please see:

<https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

<sup>7</sup> The Anti-Trafficking Monitoring Group (2018). Before the Harm is Done Examining the UK's response to the prevention of trafficking. Available at: <https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>

<sup>8</sup> National Audit Office (2017). Reducing Modern Slavery. Available at: <https://www.nao.org.uk/report/reducing-modern-slavery/>

<sup>9</sup> Home Office, Modern Slavery Unit, NRM Reform Newsletter, 9 March 2022, '*Changes to the NRM Statistical Bulletin*.'

<sup>10</sup> Home Office (2022). Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2021. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021>

<sup>11</sup> HL Deb (8 March 2022), Nationality & Borders Bill. Vol. 819, Col. 1290. Available at: <https://hansard.parliament.uk/Lords/2022-03-08/debates/20397778-861E-4D27-B358-53B067DE72A3/NationalityAndBordersBill>

9. Organisations attempting to refer victims into the NRM are still experiencing a significant wait for a First Responder to be available. There is a lack of NGO First Responders as well as a poor geographical spread of those available. Some potential victims are therefore told to use the Home Office or the police instead. This is problematic as some victims are resistant to engage with the Home Office or Police due to fears of prosecution or deportation.<sup>12</sup> The lack of First Responders means that victims may miss their opportunity to ask for help, remain in a situation of exploitation while waiting for a referral, or lose confidence in the system. There is currently no process for applying to become a First Responder organisation, with expert organisations waiting years to obtain First Responder status following their request.<sup>13</sup>
10. The UK government in its 'New Plan for Immigration' and debate around the Nationality and Borders Bill has made unevidenced claims that there is considerable 'misuse and abuse' of the NRM. This is detrimental to the overall aim, and obligation to, reduce human trafficking. The Government received repeated requests throughout the passage of the Nationality and Borders Bill to provide evidence of 'misuse' of the migration system<sup>14</sup> but in response pointed solely to an increase in NRM referrals without any evidence of misuse.<sup>15</sup> The increase in referrals cannot be assumed to be an abuse or misuse of the system without any supporting evidence and had previously been cited by the UK Government as evidence the mechanism was working<sup>16</sup>. It is wholly inappropriate to base significant and damaging legislative changes, such as Part 5 of the Nationality and Borders Bill, on an unevidenced and questionable assumption.
11. Research has pointed to a need to increase the number of referrals rather than limiting the number of individuals who may be able to avail of support and protection. Their research has identified that potential victims of modern slavery face a 'referral lottery,' with many identified by first responders not being referred to the NRM.<sup>17</sup>
12. There is also a need to improve screening for modern slavery indicators as well as disclosure opportunities. The Home Office has continually failed in this respect. This was demonstrated by the use of a truncated screening process in 2020 for people arriving into the UK, where the use of a narrower set of questions (departing from the Home Office's own guidance) resulted in a failure to ask questions that would elicit information about trafficking. This resulted in the detention of victims who were only later identified as victims of modern slavery offences. Case law has challenged this process and as a result the UK Government were ordered<sup>18</sup> to

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<sup>12</sup> Labour Exploitation Advisory Group (2020), *ibid*, note 2.

<sup>13</sup> Government has advised that no more NGOs will be made First Responders until guidance and a transparent application process is in place. This guidance is still pending and no new NGOs have become First Responders since at least 2017.

<sup>14</sup> HL Deb (8 March 2022), Nationality & Borders Bill. Vol. 819, Col. 1297. Available at: <https://hansard.parliament.uk/Lords/2022-03-08/debates/20397778-861E-4D27-B358-53B067DE72A3/NationalityAndBordersBill>; HL Deb (10 Feb 2022), Nationality & Borders Bill. Vol 818, Col. 1829 & 1837. Available at: <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill>

<sup>15</sup> HL Deb (10 Feb 2022), Nationality & Borders Bill. Vol 818, Col. 1844. Available at: <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill>

<sup>16</sup> Home Office (2017). Modern slavery victims to receive longer period of support. Available at: <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

<sup>17</sup> After Exploitation (2020), 'The Referral 'Lottery''. Available at: <https://afterexploitation.com/national-referral-mechanism/>; The Anti-Trafficking Monitoring Group (2021). A Review of the National Referral Mechanism Multi-Agency Assurance Panels. Available at: [https://www.antislavery.org/wpcontent/uploads/2021/02/MAAPs\\_report\\_final.pdf](https://www.antislavery.org/wpcontent/uploads/2021/02/MAAPs_report_final.pdf)

<sup>18</sup> *DA & Ors v The Secretary of State for the Home Department* [2020] EWHC 3080 (Admin).

ensure that the screening process involved asking the Journey Questions, which frequently elicited indicators of trafficking. It was further ordered that the UK government must ensure that those conducting asylum screening interviews are aware of the relevant test for an NRM referral.

13. The absence of secure reporting procedures has resulted in victims of trafficking with insecure status being reluctant to approach law enforcement and labour market enforcement authorities, out of fear that these bodies will prioritise immigration enforcement over their wellbeing and share their data with the Home Office.<sup>19</sup> This provides perpetrators with another tool to keep victims in exploitative conditions and deprives victims of a meaningful ability to exit their exploitation.
14. The UK Government's own data confirms that the median time taken from a referral to a conclusive grounds decision, for decisions made in 2020, was 339 days.<sup>20</sup> These delays leave people vulnerable to further exploitation as they are waiting for long periods, often on limited subsistence support, and generally without the right to work during this time. The Helen Bamber Foundation sees first-hand the negative impact that delays have on a person's mental health and their ability to recover from their experiences of trafficking, a finding supported by recent clinical papers.<sup>21</sup>
15. *Poor decision making* - In addition to delays there remain concerns that the decision making within the NRM is flawed and inconsistent. It was hoped that the introduction of the Multi-Agency Assurance Panels (MAAPS) would improve this, however, research by ATMG<sup>22</sup> highlighted flaws within the process including the MAAPs lack of decision-making powers, the lack of multi-agency involvement at the reasonable grounds stage and poor information-sharing practices.<sup>23</sup> Furthermore, Freedom of Information data obtained by After Exploitation in 2021 found that out of 325 negative decisions that were appealed or challenged, 255 were reversed.<sup>24</sup> The time spent waiting for a reconsideration leads to further uncertainty and delays for the victims. The reconsideration process and judicial review process required to challenge negative decisions is lengthy and often leaves survivors without support whilst they await the outcome, which in turn places them at risk of being further exploited or re-trafficked. Thus meaning there is a lack of an effective process to challenge negative decisions.
16. *Post conclusive grounds support* - Even when an individual has been conclusively identified as a victim of trafficking, there are significant gaps in protection and support. In 2019, in response to a legal challenge<sup>25</sup> the UK government conceded that the 45-day policy in place at the time was incompatible with Articles 12(1) and (2) of the Council of Europe Convention on Action against Trafficking in Human

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<sup>19</sup> Labour Exploitation Advisory Group (2020), *ibid*, note 2.

<sup>20</sup> Home Office (2021) Corporate report: 2021 UK Annual Report on Modern Slavery. Available at: <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery/2021-uk-annual-report-on-modern-slavery-accessible-version>.

<sup>21</sup> Phillimore & Cheung (2021) The violence of uncertainty: Empirical evidence on how asylum waiting time undermines refugee health.

<sup>22</sup> The Anti-Trafficking Monitoring Group (2021), *ibid*, note 17.

<sup>23</sup> Reasonable grounds decisions are the first stage of determination of whether someone may be a victim of human trafficking. This decision is made on the basis of the information contained in the NRM referral – though other available evidence may also be used, and the decision is to be made within 5 days of the referral. Where the decision-maker ‘suspects but cannot prove’ the person is a victim of human trafficking, slavery, servitude, and forced or compulsory labour, and that a ‘reasonable person having regard to the information in the mind of the decision maker, would think there are reasonable grounds to believe the individual had been a victim’ then the potential victim will be entitled to further help and assistance.

<sup>24</sup> After Exploitation (2021) ‘New data: Majority of trafficking claims found to be ‘positive’ after reconsideration.’ Available at: <https://afterexploitation.com/2021/07/02/new-data-majority-of-trafficking-claims-later-found-to-be-positive-after-reconsideration/amp/>

<sup>25</sup> *NN & LP v SSHD* [2019] EWHC 1003 (Admin).

Beings (ECAT)<sup>26</sup> because it limited support to a fixed period of time without reference to the individual's needs. This was considered a welcome step towards recognising that support for victims should be adjusted to reflect individual needs. In 2019 the Recovery Needs Assessment (RNA) process was introduced along with accompanying guidance<sup>27</sup>, however, there were concerns that this was done without consulting those with lived experience and the wider anti-trafficking sector by both the sector<sup>28</sup> and UN officials.<sup>29</sup> Whilst support is no longer time-limited, it is only available for '*needs arising out of a person's trafficking experience*' and '*current needs.*' Forthcoming research by the Anti-Trafficking Monitoring Group, which included feedback from survivors going through the process as well as other stakeholders experiencing it on a day to day basis, found that this process is failing to meaningfully aid recovery. The RNA process has been found to be unnecessarily time-consuming and survivors do not receive adequate support. Any support granted is not for a sufficient period of time. The research found that survivors are leaving the process with high existing needs which increases their risk of being re-trafficked or being exploited further. An overhaul of this system is needed to ensure a victim-centred approach is taken which addresses the issues found *via* the legal challenge and which aids rather than hinders recovery.

17. *Leave to remain* – In the UK, historically it was almost unheard of for a recognised victim of trafficking to be granted discretionary leave to remain, particularly if that person had an outstanding asylum claim, despite there being a policy in place to allow for it.<sup>30</sup> Following significant litigation on the issue there have been improvements, but it remains the case that limited numbers are being granted and any grant of leave is usually for 12 months. Recent case law upholds previous findings that confirmed victims of trafficking who claim asylum should be granted permission to stay while their asylum claim is decided.<sup>31</sup> However, this may soon be superseded by the Nationality and Borders Bill. Freedom of Information data gathered by the Scottish Refugee Council showed that between April 2016 and June 2021 only 7% (447 out of 6,066) confirmed trafficking victims who requested leave to remain were granted it.<sup>32</sup> A recurrent issue is that leave is frequently only granted when a person is in therapy or receiving a particular treatment which 'medicalises' the process rather than looking at the persons 'personal situation' as required by Article 14 of ECAT. It also ignores that a person may not be in such treatment due to lack of availability or not yet being ready rather than this being a reflection of a lack of need. The failure to grant leave results in victims being subject to the hostile environment, leaving them without the right to seek lawful employment, rent property or secure benefits to support them. A grant of leave entitles a person to social welfare, access to the labour market, education and training. These avenues of support and provision of space and time would assist

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<sup>26</sup> Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197, available at: <https://www.refworld.org/docid/43fded544.html>.

<sup>27</sup> UK Visas & Immigration (2021) Guidance - Recovery needs assessment (RNA): process guidance. Available at: <http://www.gov.uk/government/publications/recovery-needs-assessment-rna-process-guidance>.

<sup>28</sup> Letter to the Home Office on RNA guidance (4 November 2019). Available at: <https://www.antislavery.org/what-we-do/uk/anti-trafficking-monitoring-group/letter-msu-rna-4-11-19/>.

<sup>29</sup> Special Rapporteur on the situation of human rights defenders et al. (2019) Letter dated 3 Jan 2019. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24281>.

<sup>30</sup> Home Office, (Dec 2021) Discretionary leave considerations for victims of modern slavery, version 5.0. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040852/Discretionary\\_leave\\_for\\_victims\\_of\\_modern\\_slavery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040852/Discretionary_leave_for_victims_of_modern_slavery.pdf)

<sup>31</sup> *R (EOG & KTT) v Secretary of State for the Home Department* [2022] EWCA Civ 307

<sup>32</sup> The Guardian (2022) 'Revealed: just 7% of trafficking victims given leave to remain in UK'. Available at: <https://www.theguardian.com/uk-news/2022/jan/04/trafficking-victims-leave-to-remain-uk-data>

them in recovering from their experiences of trafficking and reduce their risk of being re-trafficked or exploited further.

#### *Recommendations for Action*

- Improve data collection (including data on re-trafficking and victim ethnicity) and data transparency related to and within the National Referral Mechanism to allow for greater analysis and accountability.
- Increase the number of available specialist non-governmental First Responders.
- Ensure that victims are not put at risk due to the narrowing of identification opportunities, in breach of ECAT.
- A more robust decision making process is required with greater reliance on and powers to MAAPS.
- Systems should be in place to update survivors when an NRM decision will not be made within 3 months.
- All victims who receive a positive Conclusive Grounds decision should receive at least 12 months leave to remain and support, with the right to work, study and secure benefits attached.

#### **4. Negative Impacts of the UK's Immigration Enforcement-Centred Approach**

18. Despite the Government's support of 134.138 to 134.147 as well as 134.163, 134.121, 134.216 and 134.220, their immigration enforcement-centred approach to human trafficking has severely impacted their ability to meet these recommendations.
19. Though the UK government lauded the creation of the Single Competent Authority in April 2019, which addressed issues with differences in NRM decision making, the creation of the IECA in November 2021 is a backwards step which reverses, without justification, previous progress. The IECA will make NRM decisions for many adults who are subject to forms of immigration control and therefore returns the UK to a two-tier discriminatory system.
20. The NRM must be completely separate from immigration enforcement to build trust with victims and make it safe for victims to seek help. The IECA conflates the two, raising a serious conflict of interest and playing into the hands of exploiters. It will leave many too fearful to come forward and disclose their abuse; and will lead to greater exploitation of migrants by traffickers who will know that they can use their immigration status as a tool for coercion.<sup>33</sup> Ultimately, it will hinder police efforts to counter trafficking. Detention is an extremely poor context for disclosure and having a competent authority making NRM decisions from the perspective of immigration enforcement will only exacerbate this problem.
21. Freedom of Information data obtained by LEAG shows a significant increase in numbers of victims of trafficking in immigration detention. In 2017, 86 people – 14% of those suspected of being victims of trafficking – obtained reasonable grounds decisions after being locked up. This decision indicates someone is a

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<sup>33</sup> Labour Exploitation Advisory Group, 'Opportunity Knocks: Improving responses to labour exploitation with secure reporting,' April 2020. London: Focus on Labour Exploitation (FLEX).

potential victim of modern slavery.<sup>34</sup> Given the difficulties of disclosing their modern slavery victim status from detention and that the burden of proof is on the potential victim, these high numbers show that victims are disclosing trauma and being identified as trafficked against the odds. They show alarming failings in screenings for modern slavery indicators prior to detention<sup>35</sup> and highlight the importance of ongoing access to information and specialist legal advice once in detention to ensure that victims of modern slavery who have been wrongly detained have opportunities to disclose.

22. There has been a significant increase in the numbers of survivors of trafficking placed and held in immigration detention centres – with a tenfold increase in the last four years.<sup>36</sup> In 2021, the Home Office changed its policy to remove a presumption that victims of trafficking would be released from detention – instead bringing them under the general ‘Adults at Risk in Immigration Detention’ policy. The government has itself admitted that this will increase the likelihood of survivors of trafficking being detained on the basis of their immigration status.<sup>37</sup> Victims of trafficking now also must provide additional professional evidence demonstrating not only that they are an adult at risk, but that detention is likely to cause them harm, before they will be released.<sup>38</sup>

#### *Recommendations for Action*

- Reverse the 2021 changes to the Adults at Risk policy regarding the detention of victims of trafficking.
- Reverse the decision to introduce the Immigration Enforcement Competent Authority.
- Establish Multi-Agency Assurance Panels for NRM decision making.
- Adopt a victim-centred approach to address and identify human trafficking, and ensure that immigration enforcement is separated from trafficking responses through the creation of secure reporting procedures and processes in law enforcement and labour market enforcement.
- Work with migrant communities and relevant organisations to inform migrant workers about their rights and ensure that migrants know when they are able to securely report labour abuse and exploitation without risk of data being shared without consent.

## **5. Access to Justice and Legal Aid**

23. Access to legal support remains a serious challenge for many victims, despite the Government’s support of recommendation 134.154 which called on the

<sup>34</sup> Labour Exploitation Advisory Group (2022) Identifying victims of trafficking in immigration detention - National Referral Mechanism decision making between 2017-2022. Available at: <https://www.labourexploitation.org/publications/identifying-victims-trafficking-immigration-detention-national-referral-mechanism>

<sup>35</sup> *DA & Ors v The Secretary of State for the Home Department* [2020] EWHC 3080 (Admin); *NB & Ors, R (On the Application Of) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin).

<sup>36</sup> *Id.*

<sup>37</sup> Bulman, M., (2021) *The Independent*, ‘Home Office admits new immigration plans may see more trafficking victims locked up.’ Available at: <https://www.independent.co.uk/news/uk/home-news/modern-slavery-trafficking-detention-home-office-b1820549.html>

<sup>38</sup> House of Lords (2021) Secondary Legislation Scrutiny Committee - 49th Report of Session 2019–21. Available at: <https://committees.parliament.uk/publications/5150/documents/50839/default/>

Government to ensure the accessibility of appropriate legal aid to safeguard access to justice for all, particularly for the most marginalised groups in society.

24. In their mid-term review response the UK Government indicated that there was to be a post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which they stated was an '*opportunity of engagement with stakeholders to inform its wider consideration on the future of legal support in the justice system.*'
25. The review<sup>39</sup> and accompanying action plan<sup>40</sup> indicated that the Government would target legal aid to those who need it most. Unfortunately, there remain significant issues within the legal aid context. In relation to victims of trafficking it remains the position that they are not entitled to legal aid for most immigration applications until they have been referred into the NRM and have received a positive reasonable grounds decision. Whilst it is technically possible for them to apply for exceptional case funding, in practice survivors will struggle to find legal representatives to assist, because of the risk of unpaid time and burden of other unpaid expenses like interpreter fees for legal representatives, if exceptional case funding is not granted. This means survivors need to apply for funding themselves, which they are unlikely to know about and may struggle in navigating the process. There can also be very long delays in the process for obtaining exceptional legal aid funding.<sup>41</sup> A paper by the Public Law Project highlights why the exceptional case funding process is a barrier to justice in its own right.<sup>42</sup> Proposed changes to this in the Nationality and Borders Bill will fail to address the problem because only those already eligible for legal aid or able to access exceptional case funding because they can show they need it in relation to a claim that removing them from the United Kingdom would be unlawful under the Human Rights Act, will be able to access legal advice prior to NRM referral.<sup>43</sup> This will not assist people who cannot articulate the basis of a potential immigration claim or do not have a human rights related application.
26. Even where legal aid is in scope for survivors to access by right, there remains a significant access issue. There are significant 'legal aid deserts' around England and Wales where there are either no legal aid practitioners or there is no capacity for

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<sup>39</sup> Ministry of Justice (2019). Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf)

<sup>40</sup> Ministry of Justice (2019). Legal Support: The Way Ahead An action plan to deliver better support to people experiencing legal problems. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777036/legal-support-the-way-ahead.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777036/legal-support-the-way-ahead.pdf)

<sup>41</sup> The Anti-Trafficking and Labour Exploitation Unit (ATLEU) assisted the *pro bono* department of a non-legal aid law firm when they helped a potential survivor apply for exceptional case funding (ECF) in August 2020. The funding was requested in order to provide advice on an NRM referral *and* associated immigration advice. This application was refused, a request to review the decision was refused and a decision on a second review is pending a final decision from the Legal Aid Agency. One ground of refusal at first review stage was that no decision had yet been made to remove the individual (as they have not come forward to the authorities) and "*if a decision to deport or remove your client from the United Kingdom is made, an application for ECF could be made at that stage.*" The application and the review submissions remain undetermined, 17 months after the original submission, although the applicant was recently invited to update the Legal Aid Agency on her circumstances. ATLEU assisted the same *pro bono* department to make another application for ECF for a similar case in January 2021. That application was refused on 23 January 2022, a review was submitted and is still pending a decision. One of the survivors assisted by the *pro bono* firm needed a lot of reassurance to submit her information to the Legal Aid Agency as she did not understand the distinction from the Home Office.

<sup>42</sup> Public Law Project (2021) Legal Aid for immigration – bring it back - Public Law Project. Available at: <https://publiclawproject.org.uk/resources/legal-aid-for-immigration-bring-it-back/>.

<sup>43</sup> Helen Bamber Foundation (2021) Nationality and Borders Bill: Briefing for House of Lords Second Reading. Available at: <https://www.helenbamber.org/sites/default/files/2022-01/Nationality%20and%20Borders%20Bill%20House%20of%20Lords%20Second%20Reading%20Briefing%20151221.pdf>

them to take on cases. Poor decision making from both the Home Office and Legal Aid Agency, inadequate funding and some poor quality providers are significantly hindering access to justice.<sup>44</sup> Research conducted by the Anti-Trafficking and Labour Exploitation Unit (ATLEU) in 2018 found that some survivors can wait up to 12 months to access immigration advice.<sup>45</sup> The scale of the problem remains high, with a survey undertaken by Young Legal Aid Lawyers in 2020 finding that 70% of respondents supporting survivors found it impossible, extremely difficult or difficult to find immigration legal advice for their clients.<sup>46</sup>

27. Numerous barriers are encountered by those attempting to access their right to compensation with consequently very few survivors receiving any in practice. A report by ATLEU recommended guidance and training to improve decision making by the Legal Aid Agency in applications for legal aid in compensation cases, and a specific contract for compensation work that would allow legal aid lawyers to plan and grow talent to work in this area.<sup>47</sup> There is no right to legal aid for survivors to apply for criminal injuries compensation. Advice can only be provided if an application for exceptional case funding is successful. A report by ATLEU recommended Legal aid should be automatically available to survivors of trafficking and slavery for advice on the Criminal Injuries Compensation Scheme and concluded that the exceptional case funding scheme as operated is not one that can be genuinely accessed by an unrepresented survivor.<sup>48</sup>
28. Victims of trafficking continue to be wrongly criminalised for drug, benefits or immigration offences that were the result of their exploitation.

#### *Recommendations for Action*

- Legal aid should be available for anyone to receive assistance with the process of identification in the NRM, even if they do not have the need for advice on leave to remain, following from the government's recommendation in 2017 that survivors should be able to access advice before entering the NRM.
- Legal aid should be made available to everyone in the NRM, without further means testing for matters related to any Article 12 entitlements.
- Legal aid fees for representing survivors should be reviewed and paid at hourly rates, recognising the complexity of the work and difficulty for lawyers to run these cases sustainably on fixed fees.
- A legal aid contract for compensation work should be introduced
- Data collection by the government on access to legal aid for survivors across all areas of law should be improved, monitored and published regularly to better understand the advice deserts and how to act on them.
- Ongoing guidance and training should be given within the Legal Aid Agency to ensure a high quality of decision making, and increase the capacity of decision makers with this body to deal with applications related to survivors.
- Legal aid should be brought into scope for advice on applications to the

<sup>44</sup> Wilding, J., (2019). Droughts and Deserts: A report on the immigration legal aid market final report.pdf. Available at: <https://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>

<sup>45</sup> ATLEU (2018), Legal Aid for victims of trafficking and modern slavery, Evidence submitted for the UK government's post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

<sup>46</sup> Young Legal Aid Lawyers (2020), A sector at breaking point: Justice denied for victims of trafficking.

<sup>47</sup> ATLEU (2018), Legal Aid for victims of trafficking and modern slavery, Evidence submitted for the UK government's post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

<sup>48</sup> ATLEU (2020), Survivors of trafficking and the Criminal Injuries Compensation Scheme.

## 6. Overseas Domestic Workers

29. The government has not adequately acted on recommendation 134.220 relating to the protection of overseas domestic workers.
30. The restrictions in the UK's Overseas Domestic Worker visa increases the vulnerability of migrant domestic workers to abuse, exploitation and trafficking. Although since 2016 ODW visa holders can theoretically change employer within the domestic work sector, they cannot apply to renew their six-month visa, even if they have an offer of ongoing new employment. This makes the right to change employer meaningless in practice. It is not realistic to find a new job in a private household, an area of work which usually requires care and trust, with only a few months left on your visa and no options to renew this. The 2016 changes do not sufficiently enable workers to escape abuse and exploitation. Nor does the visa allow for access to public funds.
31. The hidden nature of domestic work in a private household and lack of labour market enforcement in this area; the blurred boundaries around work and time off when you live in the place where you also work; and the multiple dependencies on the employer for employment, accommodation, visa status and often information about the UK and local laws, all diminish the ability of workers on the 2016 ODW visa to leave abusive and exploitative employers. This reduces their negotiating power as workers and so their options to prevent or to address exploitation and abuse.
32. In cases where workers do escape abusive employment, unless their treatment amounts to and fits the legal definition of trafficking or slavery, they are not in a position to access the protection and assistance. The net result is that workers who experience other violations of their labour rights which do not meet the threshold of trafficking, are left without status in the UK, are unable to access reporting mechanisms, and their employers go unpunished.
33. Some additional safeguards announced by the Government in 2016 have not been operating in practice. The key recommendation that all workers should be able to apply to renew their visa for up to 2.5 years subject to ongoing employment was not accepted. Information letters are not systematically issued at visa application centres and there is no monitoring. Other safeguards have not been implemented at all; the Government has dropped plans to introduce information meetings for newly arrived domestic workers.
34. Migrant domestic workers employed by diplomats experience substantial challenges in enforcing their rights, as diplomatic immunity is frequently invoked, even in cases of trafficking and modern slavery.
35. While the Government has committed to consulting with civil society organisations, early discussions suggest that the Government is not considering restoring the pre-2012 visa route, despite the very serious abuses suffered by migrant domestic workers and the role that the restrictions of the current ODW play in driving vulnerability.
36. In order to implement recommendation 134.220, the Government must reinstate the pre-2012 ODW visa which allows domestic workers to change employer and the linked and required right to renew the visa.

### *Recommendations for Action*

- Revise regulation and administrative practices in order to protect the human rights of domestic migrant workers, in particular reinstate the pre-2012 Overseas Domestic Worker visa which allows domestic workers to change employer and the linked and required right to renew the visa.

## **7. Business & Human Rights**

37. Despite the UK's support of recommendations 134.138 to 134.147 and noting of recommendation 134.153, the UK's business and human rights framework must be strengthened to properly address human trafficking.
38. Section 54 (Transparency in Supply Chains - TISC) of UK Modern Slavery Act provides a useful route for increasing transparency among companies. Since its introduction, TISC has arguably improved awareness of modern slavery among UK businesses, particularly in sectors such as fashion, food retail and construction.<sup>49</sup> Among investors, TISC has seemingly contributed to an increase in the attention paid to modern slavery risks in national and global supply chains, showing senior management that this is a serious issue.<sup>50</sup>
39. However, despite these benefits, TISC is simply not enough. Five years since its introduction, TISC has not led to tangible, positive changes to modern slavery in supply chains and for the workers they employ. The Business & Human Rights Resource Centre has found significant failings in compliance since its implementation, with only a 40% compliance rate amongst relevant businesses. Many of the companies producing modern slavery statements have approached TISC as a compliance exercise, meeting only the basic legal requirements of the law in terms of disclosure. To meet recommendation 134.145, the UK must adopt robust monitoring and enforcement processes.
40. Following calls to improve the legal framework on corporate accountability, in 2020 the UK Government committed to strengthening the TISC provision. Including, its extension to the public sector, introducing mandatory reporting requirements for Modern Slavery Statements, and financial penalties for failure to publish a Statement.
41. As of March 2022 none of these commitments have been implemented apart from the introduction of a Government-run registry for statements.
42. Further, a more ambitious approach is needed to drive effective action. Even with the announced measures to strengthen TISC, these will simply create sanctions for failing to produce a Modern Slavery Statement, but still will not require businesses to take concrete measures to prevent, mitigate and remediate forced labour and modern slavery in their supply chains, nor provide penalties for a failure to do so.
43. To ensure meaningful accountability, the UK must move beyond a voluntarism model towards binding obligations. The UK Government should put in place a law

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<sup>49</sup> Business & Human Rights Resource Centre, Modern Slavery Act: Five years of reporting, February 2021. Retrieved from [https://media.business-humanrights.org/media/documents/MSR\\_Embargoed.pdf](https://media.business-humanrights.org/media/documents/MSR_Embargoed.pdf)

<sup>50</sup> Rathbones, 2020 Votes Against Slavery report, 2021. Retrieved from [https://www.rathbones.com/sites/rathbones.com/files/imce/5558\\_votes\\_against\\_slavery\\_2021\\_final\\_16\\_feb\\_2021.pdf](https://www.rathbones.com/sites/rathbones.com/files/imce/5558_votes_against_slavery_2021_final_16_feb_2021.pdf)

to prevent, mitigate and remediate modern slavery in supply chains, which is backed up by meaningful sanctions and penalties for non-compliance.

44. More should be done in terms of worker engagement and input as well as complaints mechanisms for those most at risk.

#### *Recommendations for Action*

- Commit to and implement a Business, Human Rights and Environment Act that creates a corporate duty to prevent negative human rights and environmental impacts, mandating those operating in the UK to conduct proactive human rights and environmental due diligence across their operations, subsidiaries and value chains and prevent identified risks, including by addressing the impacts of their own business models. The new law must also hold UK companies accountable through strong accountability measures and strict liability provisions if they fail to prevent human rights abuses and environmental harm, and enable victims of abuses to access justice and remedy in line with the UN Guiding Principles on Business and Human Rights and international human rights law.
- Adopt a prevention-based approach to labour exploitation through business and human rights policies and procedures, requiring organisations to take positive and proactive measures to prevent risks, including structural interventions such as addressing purchasing and outsourcing practices.
- Implement mandatory and meaningful stakeholder engagement (including workers, trade unions and communities who are affected by companies' activities) for the design, implementation and monitoring of business and human rights measures.
- Implement robust mandatory public reporting requirements, and establish an enforcement mechanism to ensure compliance among organisations.

## **8. Seasonal Workers Scheme**

45. The UK's increased reliance on temporary worker visas has created an environment in which labour exploitation can proliferate. Despite the UK's own concerns regarding the scheme as contained in the Department for Environment, Food and Rural Affairs and Home Office review of the Seasonal Workers Pilot in December 2021, the Government has decided to expand the scheme, including to the ornamental horticulture industry.<sup>51</sup>
46. Agriculture is a high-risk sector for human trafficking for forced labour due to the nature of its supply chain, remote working and isolation, and high prevalence of migrant workers who often face additional barriers accessing information and

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<sup>51</sup> Statement of changes to the Immigration Rules: HC 1118, 15 March 2022. Available at: <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1118-15-march-2022>

support due to factors such as the language barrier, limited access to information, and low unionisation rates, among others.<sup>52</sup>

47. We welcome the Government's commitment to continue monitoring this scheme, as well as its stated commitment to worker welfare, which will be considered one of four thematic areas for future reviews. However, considerable proactive action is required in order to ensure that labour exploitation is not entrenched within the system, and that the UK does not engage in a race-to-the-bottom with regard to labour standards.
48. To counteract the risk of exploitation arising from the Seasonal Worker Scheme (SWS) it is necessary to ensure adequate and effective inspections and monitoring of working conditions as well as effective complaint mechanisms for workers on the scheme.
49. Given the high proportion of Ukrainian nationals participating in the SWS<sup>53</sup> there is an additional need to mitigate additional risks to them and their families as a result of the conflict in Ukraine. In March 2022, the Government announced that Ukrainian nationals in the UK on the Seasonal Workers Visa (SWV) scheme will have their visas extended until 31 December 2022 on their behalf by the Home Office together with their employer.<sup>54</sup> It is currently unclear what information and specialist immigration advice is being offered directly to workers, in Ukrainian, in conjunction with this offer. It is currently unclear what changes will be made to the conditions of the SWV to accommodate the changed circumstances of Ukrainian SWV holders who may need to bring their families to safety in the UK.
50. There should be recourse to public funds for these workers as well as increased work options given that the very seasonal nature of the work for which they entered the UK could mean that there is not sufficient ongoing work available from the same sponsor, or even in the same sector. The accommodation or other conditions locally may not be suitable for workers who may have family, including children or other dependents, with them.

#### *Recommendations for Action*

- Ensure that seasonal workers are provided with timely, accessible and meaningful information and contracts in their country of origin prior to travel.
- Provide an independently managed emergency fund for workers who have not received adequate work, or for whom the work has not been as described, who need to be able to return home and repay expenses.
- Set minimum standards for accommodation to be upheld for seasonal agricultural workers and prohibit employers from charging workers for accommodation if for any reason their wages drop below the real living

<sup>52</sup> Independent Anti-Slavery Commissioner, 'Dame Sara Thornton raises concerns over labour exploitation risk for migrant workers in the agricultural sector,' 25 January 2022. Available at: <https://www.antislaverycommissioner.co.uk/news-insights/iasc-raises-concerns-over-labour-exploitation-risk-for-migrant-agricultural-workers/>.

<sup>53</sup> In December 2021, 67% of Seasonal Worker visas were issued to Ukrainian nationals. Home Office, (2022) 'National statistics: Why do people come to the UK? To work.' Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2021/why-do-people-come-to-the-uk-to-work>

<sup>54</sup> UK Visas and Immigration and Home Office, 'UK visa support for Ukrainian nationals' last updated 4 March 2022. Available at: [https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-andukrainian-nationals-in-ukraine-and-the-uk?utm\\_medium=email&utm\\_campaign=govuk-notificationstopic&utm\\_source=841b1ffe-0cea-4635-a015-c94b8fe68434&utm\\_content=daily](https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-andukrainian-nationals-in-ukraine-and-the-uk?utm_medium=email&utm_campaign=govuk-notificationstopic&utm_source=841b1ffe-0cea-4635-a015-c94b8fe68434&utm_content=daily)

wage.

- Establish clear independently run complaints mechanisms which are informed by the needs of workers to make sure they are accessible and enforceable in practice and guarantee that seasonal workers' workplace grievances may be aired and remedied during their time in the UK.
- Ensure secure reporting mechanisms and a separation between the enforcement and monitoring of working conditions and immigration enforcement, recognising that people on insecure and temporary immigration statuses are often reluctant to report abuse due to fear of facing immigration consequences.

*Mitigating increased risk of exploitation for Ukrainian nationals on the SWV:*

- Guarantee recourse to public funds, including accommodation and health care.
- Allow for change of work sector.
- Guarantee access to specialist information and legal advice
- Provide routes to bring family members, and provide appropriate accommodation and support.