LEAG | LABOUR EXPLOITATION ADVISORY GROUP

DETAINING VICTIMS: HUMAN TRAFFICKING AND THE UK IMMIGRATION DETENTION SYSTEM

Detaining victims: human trafficking and the UK immigration detention system

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The Labour Exploitation Advisory Group (LEAG) is a group of experts from ten organisations working to prevent human trafficking for labour exploitation. LEAG is comprised of Focus on Labour Exploitation, Latin American Women's Rights Service, East European Resource Centre, Unite the Union, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Praxis Community Projects and Equality.

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CONTENTS

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VICTIMS OF HUMAN TRAFFICKING ARE BEING TREATED FIRST AS IMMIGRATION OFFENDERS AND SECONDLY AS VICTIMS, WHICH IS LEADING TO LONG-TERM AND SEVERE CONSEQUENCES.

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EXECUTIVE SUMMARY

This report describes the issues experienced by victims of human trafficking while in immigration detention in the UK who have been supported by members of the Labour Exploitation Advisory Group (LEAG).

It explores the main barriers to identification of victims of human trafficking prior to and while in detention, as well as the impact of detention on National Referral Mechanism (NRM) decision-making and on victims' physical and mental well-being. It sets out recommendations on how to make improvements in all four of these areas.

LEAG 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,[1] with those who have experienced trauma being at greater risk of developing mental health problems while in detention.[2] It is, therefore, extremely concerning that in 2018 the Home Office maintained detention in 77.6% of cases where someone was identified as vulnerable.[3]

LEAG members have identified numerous examples of detained victims of human trafficking, including victims who have been detained *after* receiving positive reasonable grounds decisions under the UK's framework for identifying and supporting victims ('the National Referral Mechanism'). This report finds that the Home Office is failing to protect victims of human trafficking from further harm prior to and while in immigration detention. LEAG believes that these failings demonstrate that the UK is in breach of various international responsibilities, including the responsibility to support victims in their physical, psychological and social recovery under Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings.[4] LEAG shares the view that victims of human trafficking are being treated first as immigration offenders and secondly as victims, which is leading to long-term and severe consequences to their health and the outcomes of their victim status under the National Referral Mechanism.

1 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/2016/06/14.03.21-MHIDGW-Immigration-detention-of-persons-with-mental-health-problems-consultation-response.pdf

2 Ibid.

3 Home Office, *Immigration Enforcement Data*, November 2018 and February 2019, DT_03, https://www.gov.uk/government/collections/migration-transparency-data

4 Council of Europe Convention on Action against Trafficking in Human Beings, 2005, https://rm.coe.int/168008371d

MAIN FINDINGS AND RECOMMENDATIONS

A number of organisations within LEAG believe that immigration detention should be ended completely but while detention continues to exist, LEAG believes the following system of safeguards would help to ensure that vulnerable adults, including victims of human trafficking, are not detained.

SECTION 1. BARRIERS TO IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING PRIOR TO DETENTION

Relevant authorities' limited understanding of what constitutes human trafficking, poor assessment of someone's vulnerability at the point of detention and the use of detention as a safeguarding measure are leading to the detention of victims of human trafficking. Some victims' limited language skills and knowledge of their rights act as further barriers to their identification, as they encounter difficulties accessing information about their rights and reporting abuse.

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- The UK Government should commission an independent review of whether or not immigration officials are following the presumption in favour of liberty and that detention is only being used as a last resort, as stated in the Home Office Chapter 55: Enforcement Instructions and Guidance.[5]
- All government agencies with the power to make arrests under immigration powers should receive compulsory training on human trafficking identification. The training should include real cases which fail to fit simplistic understandings of indicators of these abuses to ensure a 'one size fits all' approach is not perpetuated.
- Everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain.
- Detention gatekeepers should have access to all documents and files including past immigration and medical records and previous NRM referrals, of anyone being considered for detention, and people identified as vulnerable by the detention gatekeeper should not be detained. The detention gatekeeper intake pro-forma should include a question on indicators of human trafficking.
- Anyone outside detention considered to be a potential victim of human trafficking and who states that they wish to enter the NRM should be taken to government-funded, independently run Places of Safety[6] to receive advice and assistance before deciding whether to enter the NRM.

5 Home Office, *Chapter 55, Enforcement Instructions and Guidance*, 27 April 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721605/Chapter-55-detention-v25..pdf

6 In October 2017 the UK government committed to establish government-funded Places of Safety so that adult victims of human trafficking leaving immediate situations of exploitation could be given assistance and advice for up to three days before deciding whether to enter the NRM. See: https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5c08f8f54ae2375db96f6713/1544091902062/Places+of+Safety_BRC_ATLEU_HTF_ATMG.pdf

- Human trafficking training for first responders should make clear that victims should not be coerced into entering the NRM and that immigration detention should never be used as a safeguarding measure.

TO THE NATIONAL CRIME AGENCY:

- The National Crime Agency should disaggregate information on referrals to show how many potential victims of human trafficking have been identified and referred into the NRM by detention gatekeepers, and make it publicly available in its quarterly 'Modern Slavery Human Trafficking National Referral Mechanism Statistics'.

SECTION 2. BARRIERS TO IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING WHILE IN DETENTION

Immigration control factors are prioritised over detainee welfare and identification of vulnerability. Lack of adequate training for United Kingdom Visas and Immigration (UKVI) and Immigration Removal Centre staff and no appropriate mechanism to identify victims of human trafficking in detention are preventing timely identification. The Home Office's failure to publish data on potential victims of human trafficking in immigration detention reduces transparency around their identification and obstructs evidence-based policy making.

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- Fund an independent support provider to have presence in all Immigration Removal Centres to act as a first point of contact for people who have experienced trauma, abuse and exploitation. This independent support provider should also serve as a first responder under the NRM in detention.
- All UKVI and Immigration Removal Centre staff should receive training on identification of victims of human trafficking. The training should include real cases that fail to fit simplistic understandings of indicators of these abuses to ensure a 'one size fits all' approach is not perpetuated. All potential victims should be referred to the independent support provider in detention.

TO THE HOME OFFICE:

- The Home Office should amend the 'Adults at Risk' policy to state that no vulnerable adults, including potential victims of human trafficking, should be detained.
- Adopt recommendation 29 of the 2018 Shaw Report, which states that "all caseworkers involved in detention decisions should visit an Immigration Removal Centre either on secondment or as part of their mandatory training".[7]
- All detainees should be allowed to contact their Home Office caseworkers during their time in immigration detention, either directly or through an independent support provider.
- The Home Office 'Adults at Risk' policy and 'The Detention Centre Rules' should be amended to include human trafficking as a new cat-

7 Stephen Shaw, *Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office*, July 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf

egory, and anyone suspected to be a potential victim should receive prompt specialised advice and support to help them prepare for their NRM referral interview. Anyone referred to the NRM should be immediately released from immigration detention.

- Medical staff in detention centres should be required to complete compulsory training on identifying indicators of human trafficking. If medical staff suspects a detainee is a potential victim, they should be required to immediately contact the independent support provider in detention.
- The UK Government should collect and publish data on:
    a. how many NRM referrals were made within detention and the outcome of these referrals;
    b. the length of time it takes for reasonable grounds decisions to be made for people in detention;
    c. the number of detainees with positive reasonable grounds that are denied bail;
    d. how many potential victims are being detained after having received positive reasonable grounds decisions; and
    e. how many victims with positive conclusive grounds are being detained and subsequently removed from the UK.

  This data should be made available quarterly in the National Crime Agency 'Modern Slavery Human Trafficking National Referral Mechanism Statistics'.

SECTION 3. THE NATIONAL REFERRAL MECHANISM AND VICTIMS OF HUMAN TRAFFICKING IN IMMIGRATION DETENTION

Potential victims are being held in immigration detention for long periods of time while waiting for NRM reasonable grounds decisions, and some remain in detention after receiving positive reasonable grounds decisions. Detainees are more likely to receive a negative reasonable grounds decision, partially due to poor NRM referrals as well as NRM decision-makers' cross-examination of multiple accounts of someone's exploitation with an undue focus on perceived inconsistencies.

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- NRM referrals should follow the Trafficking Survivor Care Standards[8], which include ensuring that every referred person receives a copy of their NRM referral form.
- NRM referrals for people in detention should be made by an independent first responder instead of Home Office staff to avoid the current conflict of interest with the Home Office's responsibility for immigration enforcement. The independent first responder should have unrestricted access to immigration detention and prisons under immigration powers.
- NRM decision-makers should take into account that victims of trauma are likely to have some inconsistencies when recollecting their experiences, and focus on the likelihood that the person has experienced the events described rather than the specific details of the events.

8 Human Trafficking Foundation, *Trafficking Survivor Care Standards*, October 2018, p.39. Available at: https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf

They should also ensure that reasonable grounds decisions are based on a suspicion that a person is a potential victim, even if there is no proof at that stage.

- The Home Office should introduce a limit to the cumulative amount of time someone can spend in immigration detention. Upon entering detention, detainees should have immediate access to legal advice to be able to challenge their removal and to create opportunity for them to disclose cases of abuse and exploitation.
- The UK government should commission an independent review on whether its policies and practice related to victims of human trafficking in immigration detention are in line with its responsibilities under the EU Human-Trafficking Directive 2011/36/EU and the Council of Europe Convention on Action against Trafficking in Human Beings.

TO THE HOME OFFICE:

- Potential victims should be immediately released from detention after being referred to the NRM, and provided with key entitlements including: appropriate and secure accommodation, psychological assistance and legal information and support. Immigration control factors should not be accepted as reasons to refuse bail for potential victims of human trafficking.

SECTION 4. THE IMPACT OF DETENTION ON VICTIMS' MENTAL AND PHYSICAL HEALTH

Detention can cause severe mental and physical suffering and victims of human trafficking are among those particularly vulnerable to harm in detention. Inadequate healthcare, including denial of medicine and disbelief of detainees, is creating long-lasting impacts on victims of human trafficking in detention. Those who are outside detention continue to suffer from the mental and physical consequences of their time in detention after leaving, especially when required to report to the Home Office as part of their bail conditions.

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- The UK government should commission an independent review on the impact of immigration detention on victims of human trafficking, including access to services to recover from trauma and exploitation, rates of mental and physical health issues among victims in detention, and long-term impact of confinement on their mental and physical health.

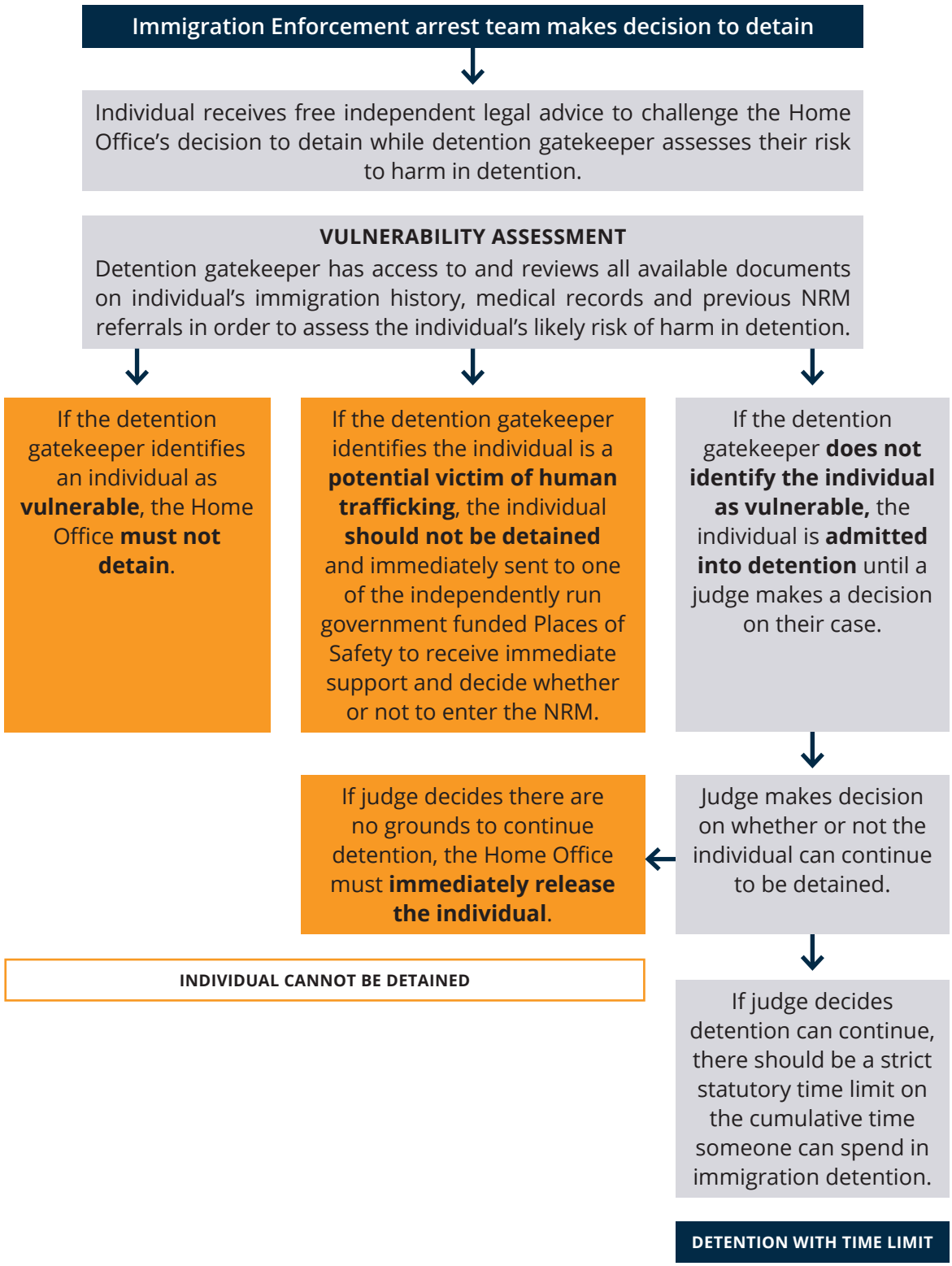
TO THE HOME OFFICE:

- Potential victims of trafficking should not be required to report to the Home Office while awaiting a conclusive grounds decision on their case. This would help to reduce some of the on-going impact of detention on potential victims and allow them to start recovering from the trauma they have experienced while in exploitation and during their time in detention.

DECISION-MAKING FOR UNPLANNED DETENTIONS

Immigration detention can be planned or unplanned. In the former, Immigration Enforcement will target an individual or a group of individuals whom they believe to be immigration offenders in order to detain them. In these cases, LEAG believes the Home Office should conduct a vulnerability assessment prior to detention consideration to ensure no vulnerable person is detained. Unplanned detentions are those where Immigration Enforcement comes into contact with an undocumented migrant and then decides to detain them.

While detention continues to exist, LEAG believes the following system of safeguards would help to ensure that vulnerable adults, including victims of human trafficking, are not detained.



INTRODUCTION

The Labour Exploitation Advisory Group (LEAG) is a group of experts from ten organisations supporting workers in, or at risk of, human trafficking for labour exploitation.[9] LEAG members represent a range of issues that are crucial to preventing labour exploitation, including migrants' rights, women's rights, labour rights and victim support. Members work together to assess the impact of formal and informal responses to human trafficking for labour exploitation by both government and non-government actors; and to identify barriers and develop joint strategies for improving the relevance and effectiveness of human trafficking responses for workers experiencing or at risk of exploitation.

LEAG members have identified troubling cases involving victims of human trafficking in immigration detention during the course of their work. LEAG members usually encounter victims who have experienced immigration detention in one of three ways:

- a detained victim is identified, referred into the National Referral Mechanism (NRM) while in detention and then signposted to a LEAG member for specialist support;
- a victim has left detention, either on bail or due to a live asylum claim, and their human trafficking indicators are picked up by a charity, first responder or the LEAG member, who then provides specialist support; or
- a victim is identified by a LEAG member while they are providing other services within a detention centre.

LEAG members have identified numerous examples of victims of human trafficking being detained. In some cases, the Home Office maintains detention even after the individual has been recognised as a potential victim of human trafficking by the UK National Referral Mechanism. LEAG believes this is a breach of the UK's responsibility to "assist victims in their physical, psychological and social recovery"[10] 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 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".[11] In this report LEAG identifies many cases where the Home Office is failing to meet the needs of victims of human trafficking in immigration detention.

The detention of victims of human trafficking also breaches Article 18 of the EU Victims' Rights Directive which establishes that victims should be

9 LEAG consists of experts from: Focus on Labour Exploitation, Latin American Women's Rights Service, East European Resource Centre, Unite the Union, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Praxis Community Projects and Equality.

10 Council of Europe Convention on Action against Trafficking in Human Beings, 2005, https://rm.coe.int/168008371d

11 Directive 2012/29/EU of the European Parliament and the Council of Europe of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2011/220/JHA, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF

> “The Home Office treats potential victims primarily as immigration offenders rather than victims.”

protected from “secondary and repeat victimisation, from intimidation and retaliation, including against the risk of emotional and psychological harm”.[12] LEAG members share the view that the Home Office treats potential victims primarily as immigration offenders rather than victims. 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.

This paper is divided into four sections that draw together LEAG members’ statements and case studies with desk-based research into the immigration detention system in the UK and its relation to potential victims of human trafficking. It also draws on information acquired through answers to written parliamentary questions and Freedom of Information requests.

Section 1 describes barriers to identification of victims of human trafficking *prior to* detention by relevant authorities, including police, the Home Office and the Gangmasters and Labour Abuse Authority (GLAA). It shows how the gap between what authorities *believe* exploitation looks like and what victims *actually experience* is preventing their identification prior to detention. It also looks at the limitations of the detention gatekeeper system and questions the independence of this role.

Section 2 focuses on the barriers to identification *within* detention, highlighting the issues with the Home Office’s ‘Adults at Risk’ policy[13] and of the ‘Detention Centre Rules’[14], focusing on Rule 35. Importantly, it sets out why these mechanisms have fallen short of identifying and supporting victims.

Section 3 covers the intersection between detention and the NRM, providing examples of how practices within detention are negatively affecting NRM decisions. It also notes the impact of the lack of a time limit on the length of detention on NRM referrals.

Finally, **Section 4** looks at the immediate and long-term impact of detention on victims’ mental and physical health, detailing findings from different experts on the negative consequences of immigration detention on vulnerable people.

12 Ibid.

13 Home Office, *Adults at risk in immigration detention*, version 5.0, March 2019. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784634/adults-at-risk-policy-v5.0ext.pdf

14 UK Government, *The Detention Centre Rules 2001*, April 2001. Available at: http://www.legislation.gov.uk/uksi/2001/238/pdfs/uksi_20010238_en.pdf; Home Office, *Detention services order 09/2016 Detention centre rule 35 and Short-term holding facility rule 32*, version 7.0, 05 March 2019, p.5. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783642/Detention_rule_35_process.pdf

APPROACH AND METHODOLOGY

This report reflects the views and experiences of LEAG members based on their work with victims of human trafficking who have been detained in the UK.

The research consisted of semi-structured interviews with LEAG members to gather their experiences and identify relevant case studies, alongside a review of existing research on the experiences of victims of human trafficking and other vulnerable adults in immigration detention in the UK. It draws on information gathered through parliamentary questions and additionally, Freedom of Information requests submitted by LEAG members.

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Findings from this research are based on the experience of 143 victims of human trafficking identified and/or supported by LEAG members.”

Findings from this research are based on the experience of 143 victims of human trafficking identified and/or supported by LEAG members who have experienced immigration detention before or after having been referred to the National Referral Mechanism (NRM).[15] This group includes not only victims who have been identified within immigration detention but also those who have experienced detention, were released and were then identified later within the community. This is because some victims are being released from detention for reasons other than their trafficking experience and are only identified as potential victims once they are outside detention. We have chosen to include these cases as they demonstrate that it is likely that the number of victims of human trafficking experiencing detention is higher than reported figures (see Section 2), since many are going unidentified while in detention. Case studies are provided to illustrate our findings and all victims’ names have been changed to ensure anonymity.

While this report provides valuable insight into the issues faced by victims of human trafficking in immigration detention in the UK, we acknowledge that our findings do not necessarily reflect all victims’ encounters with immigration detention. Lack of transparency around the number of victims of human trafficking held in immigration detention in the UK make it difficult to build a complete picture of the UK detention system’s impact on victims of human trafficking. This issue is further explored in Section 2.

Equally, barriers to identification of victims of human trafficking, which are discussed in Sections 1 and 2, mean that data accuracy is limited, as it does not consider victims who have not been identified in detention or have been removed before being identified.

Finally, while this research draws on the experiences of 143 victims of human trafficking, this should not be taken as the total number of victims of human trafficking in detention supported by LEAG members, which is expected to be higher, since experience with detention, or of trafficking, may take time to uncover for a series of reasons, including need to develop trust with the victim, unwillingness to disclose previous exploitation or trauma, among others. LEAG members offer different specialised services, which means that it is possible that some victims are supported by more than one member, which could lead to one individual being counted more than once. We have sought to address this whenever possible. LEAG members also recognise they may support a larger number of victims of human trafficking who have experienced detention but who were never identified as victims and therefore are not included in this research.

15 From these, 66 were supported directly by LEAG members and 77 were identified by Focus on Labour Exploitation (FLEX) through the Parliamentary Answer 231997, 18 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-13/231997/

GLOSSARY OF TERMS

Administrative or forced removal	Enforced removal of someone who does not have leave to remain in the UK, including people whose leave to remain was denied or expired.[16]
'Adults at Risk'	Immigration detention policy on adults at risk in immigration detention
Deportation	Enforced removal of someone, usually after they have served a criminal sentence in the UK of 12 months or longer.[17]
Detention centre	Includes Immigration Removal Centres and Short Term Holding Facilities
The EU Trafficking Directive	The European Union Anti-Trafficking Directive 2011/36/EU
The EU Victims' Rights Directive	Directive 2012/29/EU of the European Parliament and the Council of Europe of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings
GLAA	The UK Gangmasters and Labour Abuse Authority
GRETA	Group of Experts on Action Against Trafficking in Human Beings
ICE	UK Home Office Immigration Compliance and Enforcement team
Immigration detention	Administrative practice of holding people who are subject to immigration control in custody.
Immigration Removal Centres	Centres in which people can be held indefinitely by the UK government to establish their right to stay in the country, deport or remove them.
ICIBI	Independent Chief Inspector of Borders and Immigration
JCHR	Joint Committee on Human Rights
NRM	The UK National Referral Mechanism is the system by which victims of trafficking or modern slavery are identified and provided with support.
Potential victim of trafficking	Someone who is identified as potentially being a victim of trafficking, whether or not they have been referred into the UK National Referral Mechanism.
Rule 35	Part of the Detention Centre Rules; requires doctors to disclose to the Home Office any person (1) whose health is likely to be injuriously affected by continued detention; (2) who is suspected of having suicidal intentions; (3) who may have been a victim of torture.
Short Term Holding Facilities	Centres in which people can be held for up to seven days by the UK government to establish the right to stay in the country, deport or remove them.

16 Based on Right to Remain's definition, see https://righttoremain.org.uk/toolkit/removal/; However, LEAG recognises that there have been cases where individuals have been removed despite having the right to remain in the UK.

17 Ibid.

RESEARCH FINDINGS

SECTION 1. BARRIERS TO IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING PRIOR TO DETENTION

LEAG members' experience suggests that victims of human trafficking are not being identified at first point of contact with a relevant authority, such as the Home Office, the police or the Gangmasters and Labour Abuse Authority (GLAA). Many are detained without being recognised or referred to the National Referral Mechanism (NRM), and potentially removed and then re-trafficked, resulting in lasting damage to their physical and mental health. Members have also witnessed government authorities using detention to convince victims to enter the NRM and promoting detention of victims as a safeguarding measure.

1.1 RELEVANT AUTHORITIES FAILING TO IDENTIFY VICTIMS OF HUMAN TRAFFICKING

LEAG has identified cases in which government authorities have failed to identify victims, which has led to victims being arrested, detained and even removed before identification.

CASE STUDY: HOME OFFICE ARRESTED AND DETAINED POTENTIAL VICTIMS DURING OPERATION MAGNIFY[18]

In October 2015 the Home Office launched Operation Magnify, an enforcement campaign that aimed to identify businesses in the construction sector that were employing and exploiting undocumented migrant workers.[19] Between 2015 and 2018, all 85 construction workers later accepted to the NRM as potential victims of human trafficking had been arrested for immigration offences prior to their identification.[20] Of those 85, 77 were detained under immigration powers[21], a clear failure from the Home Office to identify vulnerability prior to arrest and detention. The Home Office was unable to provide information on the offences for which the detention took place, as the information requested is not recorded in a reportable format.

POOR UNDERSTANDING OF HUMAN TRAFFICKING AND FOCUS ON REMOVAL IS LEADING TO DETENTION AND REMOVAL OF VICTIMS

LEAG is concerned that, in seeking to effect swift removal from the UK, the Home Office ignores or overlooks human trafficking indicators. As a result, potential victims of trafficking are removed without being identified.

> "It's something we see over and over again. People end up in detention because their vulnerability as a potential victim of human trafficking is not acknowledged beforehand because of lack of training and I think sometimes because of the pressures of the job."
>
> **LEAG member**

"It's something we see over and over again. People end up in detention because their vulnerability as a potential victim of human trafficking is not acknowledged beforehand because of lack of training."

18 Case study provided by Focus on Labour Exploitation.

19 Home Office, *Campaign to tackle illegal working in construction begins*, 14 October 2015, https://www.gov.uk/government/news/campaign-to-tackle-illegal-working-in-construction-begins

20 UK Parliament, Construction: Undocumented Workers: Written Question – 135423, 26 November 2018, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-04-13/135423/

21 UK Parliament, Construction: Undocumented Workers: Written Questions – 231997, 18 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-13/231997/

> “
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> The police then organised an operation where she was working, picked up her things and ultimately made her street homeless.”

“We supported a domestic worker who was being made to work over 15 hours per day. She was verbally abused by her employer and physically abused by the employer’s children. Since she was working in her employer’s home there was no one there witnessing the abuse. One time she was severely beaten and ended up in the hospital so the NHS reported the incident to the police. The police then organised an operation where she was working, picked up her things and ultimately made her street homeless because she had nowhere else to go. They didn’t look into the indicators of human trafficking even though she was working excessively long hours, in isolation, under abusive working conditions, while being verbally abused by her employer and physically abused by her employer’s son. GPs are not being trained to assess if people are trafficked, the police stopped the investigation because the physical harm was done by children, and the GLAA refused to take her case when we contacted them because they didn’t think the case was serious enough to be investigated.”

Latin American Women’s Rights Service

LEAG is concerned that authorities either do not have sufficient understanding of human trafficking or do not take the necessary time to uncover detailed accounts of an individual’s experience. As a result, key indicators of human trafficking are often missed. Different LEAG members described having to advocate on someone’s behalf in order to get first responders to refer them to the NRM, including by having to explain to first responders what human trafficking means and how their client fits the criteria.

CASE STUDY: HOME OFFICE FAILINGS LEAD TO RE-TRAFFICKING OF REMOVED VICTIM[22]

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

Authorities missed a series of opportunities to identify Nadine as a potential victim of human trafficking; when she was arrested, when she was being considered for detention, while in detention and before removal, which meant she did not receive the support she needed and was later re-trafficked.

> “
>
> There is a gap between what authorities believe exploitation looks like and what victims actually experience.“

Frontline authorities often have a limited understanding of what constitutes human trafficking. For instance, LEAG members stated that it is a common belief among police and other first responders that if a person is allowed to leave the house or if they have access to their passport, they cannot be victims. Different LEAG members, including the East European Resource Centre (EERC) and the Latin American Women’s Rights Service (LAWRS) find that domestic servitude is often treated solely as domestic abuse if the perpetrator is a family member or someone close to the victim. This creates a gap between what authorities believe exploitation looks like and what victims actually experience, meaning that many people go unidentified or are detained without being given access to the support and recovery to which they are entitled.

22 Case study provided by Ashiana Sheffield.

> “Many people go unidentified or are detained without being given access to the support and recovery to which they are entitled.“

LAWRS explained that authorities’ failure to identify victims increases their risk of destitution, as victims are left without the support they are entitled to under the NRM, including financial and accommodation assistance. It also exacerbates visa dependency in cases where the victim’s immigration status is dependent on their exploiters. In these cases, the unidentified victim is unlikely to have access to alternative forms of regularising their immigration status, such as applying for asylum or for discretionary leave to remain based on their status as a victim of human trafficking. Equally important, it means that unscrupulous employers are not being identified and brought to justice.

In its inspection of the Home Office’s approach to illegal working, published in May 2019, the Independent Chief Inspector of Borders and Immigration (ICIBI) raised that despite a “common view from stakeholders” that human trafficking is part of a “continuum of abuse occurring within certain UK labour sectors, ranging from low-level forms of labour abuse to more extreme forms of exploitation and slavery”, the Home Office often fails to recognise this continuum, “focusing on the fact that someone was working illegally rather than that they may be a victim of abuse, exploitation and slavery”.[23]

> “The Home Office’s Immigration Compliance and Enforcement teams regularly operate in sectors where they are likely to encounter vulnerable individuals who are being exploited but do not have the resources, time or expertise to interview potential victims of human trafficking.”

The ICIBI also noted that the Home Office’s Immigration Compliance and Enforcement (ICE) teams regularly operate in sectors where they are likely to encounter vulnerable individuals who are being exploited but do not have the resources, time or expertise to interview potential victims of human trafficking in sufficient depth to establish their true working conditions. The report states that “ICE teams were not predisposed to identify potential victims during illegal working visits, since their focus was removal” and that “there was little sense of an understanding or operational interest in other sectors [other than nail bars] where exploitation and modern slavery is believed to be common”.[24] LEAG has long raised that potential victims are going unidentified in sectors such as cleaning and hospitality, where levels of abuse and exploitation are high and yet, there seems to be less interest from labour inspectorates and the Home Office to ensure workers in these sectors are identified and supported than workers in other sectors. Other charities providing evidence to the ICIBI also mentioned the authorities’ knowledge gap, quoting a migrant worker who told them “for immigration enforcement to believe that we are victims, we have to prove that we have been raped, starved and beaten”.[25]

> “For immigration enforcement to believe that we are victims, we have to prove that we have been raped, starved and beaten.”

All these issues are leading to cases like Nadine’s, described before, where, if indicators of human trafficking are not obvious or if someone does not fit a stereotypical profile of a victim, they do not get identified nor receive the support to which they are entitled to recover from exploitation.

23 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. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

24 Ibid, p.47-49.

25 Ibid, p.47.

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- The UK Government should commission an independent review of whether or not immigration officials are following the presumption in favour of liberty and that detention is only being used as a last resort, as stated in the Home Office Chapter 55: Enforcement Instructions and Guidance.[26]
- All government agencies with the power to make arrests under immigration powers should receive compulsory training on human trafficking identification. The training should include real cases which fail to fit simplistic understandings of indicators of these abuses to ensure a 'one size fits all' approach is not perpetuated.

1.2 LIMITATIONS TO THE DETENTION GATEKEEPER 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.[27] However, LEAG 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 and who, as a result, are spending long periods in immigration detention without being identified or accessing specialised support.

DETENTION GATEKEEPERS DO NOT HAVE TO CONSIDER INDICATORS OF HUMAN TRAFFICKING

Bail for Immigration Detainees (BID) considers the 'detention gatekeeper intake pro-forma', the form that the gatekeeper completes prior to detention to be highly problematic: it is very short and makes no reference to human trafficking or its indicators. LEAG members are not alone in this concern: in November 2018, Duncan Lewis LLP solicitor Toufique Hossain highlighted this issue to the UK Parliament's Joint Committee on Human Rights, stating that "it is pretty concerning that the person or the authority responsible for green-lighting detention effectively has three pages of very simple questions for deciding whether someone should be detained."[28]

2,669

PEOPLE CONSIDERED VULNERABLE BY THE DETENTION GATEKEEPERS WERE DETAINED IN 2017

The basic nature of the form is not the only problem with this system. Even people who have been identified by the detention gatekeeper as vulnerable can be admitted to immigration detention, as detention gatekeepers' decision making is often overruled. A Freedom of Information request submitted by BID revealed that in 2017, 2,669 people considered vulnerable by the

26 Home Office, *Chapter 55, Enforcement Instructions and Guidance*, 27 April 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721605/Chapter-55-detention-v25..pdf

27 UK Parliament, Immigrants: Detainees: Written Question – 71612, 26 April 2017. Available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/

28 UK Parliament, Oral Evidence: Immigration detention 21 November 2018, HC 1484. Available at: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/immigration-detention/oral/92861.html

detention gatekeepers were subsequently detained. In the same period only 141 people identified as vulnerable[29] by the gatekeeper were not detained.[30]

It is equally concerning that while the Home Office states detention gatekeepers receive training on modern slavery, the National Referral Mechanism process and the 'Adults at Risk' in detention policy,[31] BID notes that in many cases detention gatekeepers are not sensitive to key indicators and fail to adequately investigate cases of human trafficking.

CASE STUDY: DETENTION GATEKEEPER FAILS TO IDENTIFY VICTIM OF HUMAN TRAFFICKING[32]

Li was a highly vulnerable individual who was receiving medication and psychiatric support for depression and had a history of self-harm with suicidal intention. There were numerous indicators that she was a victim of human trafficking, including records of experiences of torture in relation to unpaid debts recorded on a Rule 35 report. These indicators were not picked up by the gatekeeper or Immigration Removal Centre staff. Li was detained for six months before a referral was made to the NRM, a process that had to be initiated by BID caseworkers. Li was released upon receipt of a positive reasonable grounds decision.

CONFLICT OF INTEREST BETWEEN IMMIGRATION CONCERNS AND SAFEGUARDING OF VICTIMS

Detention gatekeepers aim at scrutinising all proposed detentions independently from the arresting team. However, detention gatekeepers rely on information provided by the Home Office team that has made the arrest to make their decision which affects the independence of this process. BID has described that this is a problem because the information provided may not contain essential documents such as medical records and other evidence that would facilitate someone's identification as a potential victim of human trafficking. Detainees are not entitled to representation during this process, and as the detention gatekeeper does not meet the detainee face-to-face, there is no opportunity to provide further evidence of their vulnerability.

> "There is a clear conflict of interest with the Home Office's responsibility to enforce immigration regulations, and its responsibility to ensure that vulnerable people are kept out of detention."

As it currently stands, detention gatekeepers are part of the Immigration Enforcement Directorate within the Home Office. Their recruitment, oversight and management are all carried out by the same government authority with the responsibility to enforce immigration regulations,[33] showing a clear conflict of interest with the responsibility to ensure that vulnerable people are kept out of detention.

IMMIGRATION DETAINEES HAVE FEWER PROTECTIONS AND RIGHTS THAN UK PRISONERS

In its 2019 report on immigration detention, the Joint Committee on Human Rights (JCHR) noted that there is a "stark contrast" between those being

29 Vulnerability is understood here in terms of the Home Office's 'Adults at Risk' policy. The 'Adults at Risk' policy states that if the evidence suggests that the length in detention is likely to have harmful effect on the individual, they should not be detained unless there are public interest concerns which outweigh any risk identified.

30 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.

31 UK Parliament, Immigration Enforcement Directorate: Staff: Written Question – 233004, 20 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-15/233004/

32 Case Study Bail for Immigration Detainees.

33 UK Parliament, Immigration Enforcement Directorate: Staff: Written Question – 233003, 20 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-15/233003/

detained in immigration detention and those detained by the criminal justice system. In the latter case, if the police wish to detain someone for more than 36 hours, they need to apply to a magistrate who will determine whether or not detention should continue.[34]

People in immigration detention are required to initiate the process if they want their case to be brought before a judge in the form of a bail hearing[35]. After four months, the Secretary of State is required to refer the case to the First-tier Tribunal for what is known as an automatic bail hearing.[36] However, there is no automatic legal representation at these hearings and data gathered through a Freedom of Information request by BID reveals that from 15 January 2018 to 30 June 2018 just 4% of referrals for automatic bail hearings led to a grant of bail. Those with criminal convictions are excluded from the automatic bail process, which creates further barriers for victims of human trafficking with criminal convictions based on crimes they were forced to commit as a result of their exploitation (see Section3 for more information).

IN THE FIRST SIX MONTHS OF 2018

JUST 4%

OF REFERRALS FOR AUTOMATIC BAIL HEARINGS LED TO A GRANT OF BAIL

LEAG echoes the JCHR concern that "immigration detainees should not have lesser protections and rights than those detained under the criminal justice system. The decision on whether to continue detention should be made by a judge and should be made promptly."[37] LEAG believes everyone under consideration for detention should receive independent free legal advice and have their detention brought before a judge prior to the decision to detain. This would create an opportunity for victims to disclose cases of abuse or exploitation with their legal representatives and to ensure that vulnerable people are not detained.

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- Everyone under consideration for detention should receive independent free legal advice and there should be independent judicial oversight of the decision to detain.
- Detention gatekeepers should have access to all documents and files including past immigration and medical records and previous NRM referrals, of anyone being considered for detention, and people identified as vulnerable by the detention gatekeeper should not be detained. The detention gatekeeper intake pro-forma should include a question on indicators of human trafficking.

TO THE NATIONAL CRIME AGENCY:

- The National Crime Agency should disaggregate information on referrals to show how many potential victims of human trafficking have been identified and referred to the NRM by detention gatekeepers, and make it publicly available in its quarterly 'Modern Slavery Human Trafficking National Referral Mechanism Statistics'.

34 Joint Committee on Human Rights, *Immigration Detention*, February 2019. Available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148402.htm

35 Immigration bail hearings are heard in the First-tier Tribunal (Immigration & Asylum Chamber).

36 Since 10 February 2019 the Home Office is running a two-month automatic bail hearing pilot, which is expected to run for six months. See: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-02-07/HCWS1309/

37 Joint Committee on Human Rights, *Immigration Detention*, February 2019. Available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148402.htm

1.3 DETENTION POWERS ARE BEING MISUSED

The 1983 case of Hardial Singh[38], which established basic limits on the power to detain, makes it clear that the Home Office can only use immigration detention for the purpose of removal or for assessing someone's claim to be in the UK[39] but LEAG believes these powers are being misused.

DETENTION BEING PROMOTED AS A SAFEGUARDING MEASURE

> "LEAG members have witnessed cases in which detention was used in order to supposedly safeguard victims of human trafficking."

LEAG members have witnessed cases in which detention was used in order to supposedly safeguard victims of human trafficking. LEAG explained that law enforcement agencies often refer to immigration detention as a way to "protect" victims from returning to an exploitative situation. Numerous studies demonstrate the negative impact of immigration detention on mental health.[40] Detention can re-traumatise those who have suffered previous trauma, and has been seen to negatively affect the mental health of people who had no prior history of such issues[41] (see Section 4 for more details). It is therefore extremely concerning that detention is being promoted as a measure to safeguard potential victims.

Detention should never be used as a safeguarding measure. Potential victims should, instead, be taken to a safe place, given time to recover, before being interviewed and given time to decide whether or not they would like to enter the NRM.

DETENTION USED AS THREAT TO CONVINCE VICTIMS TO ENTER THE NRM

> "A LEAG member has witnessed police officers telling European workers that if they refused to enter the NRM they would be detained on the grounds of them not exercising treaty rights."

In another concerning situation, a LEAG member has witnessed police officers telling European workers that if they refused to enter the NRM they would be detained on the grounds of them not exercising treaty rights.[42] This kind of approach serves to increase trauma and mistrust in the government agencies that are supposed to safeguard people who have experienced abuse and exploitation.

38 R (Hardial Singh) v Governor of Durham Prison [1983] EWHC 1 (QB).

39 Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the 'Adults at Risk' policy in practice*, July 2018, p.6. Available at: http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf

40 See Mary Bosworth, *Appendix 5: the Mental Health Literature Survey Sub-Review* in Stephen Shaw, Review into the welfare in detention of vulnerable persons, January, 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf; Guy Coffey *et al.*, *The meaning and mental health consequences of long-term immigration detention for people seeking asylum*, Social Science & Medicine, 2010, 70, p.2070-2079; Katy Robjant *et al.*, *Mental health implications of detaining asylum seekers: systematic review*, The British Journal of Psychiatry, 2009, 194, p.306–312; *Medical Justice, Mental Health in Immigration Detention Action Group: Initial Report 2013*, 2013. Available at: http://www.medicaljustice.org.uk/wp-content/uploads/2016/03/Mental-Health-in-Immigration-Detention-Working-Group.pdf

41 Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the 'Adults at Risk' policy in practice*, July 2018, p.8. Available at: http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf

42 According to the EU Directive 2004/38/EC, European Union citizens and their family members are granted free movement within EU member states if they are exercising 'treaty rights'. This is understood as the EU citizen's involvement in working, studying, job-seeking or being self-sufficient in another EU member state. See: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- Anyone outside detention considered to be a potential victim of human trafficking and who states that they wish to enter the NRM should be taken to government-funded, independently run Places of Safety[43] to receive advice and assistance before deciding whether to enter the NRM.
- Human trafficking training for first responders should make clear that victims should not be coerced into entering the NRM and that immigration detention should never be used as a safeguarding measure.

43 In October 2017 the UK government committed to establish government-funded Places of Safety so that adult victims of human trafficking leaving immediate situations of exploitation could be given assistance and advice for up to three days before deciding whether to enter the NRM. See: https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/5c08f8f54ae2375db96f6713/1544091902062/Places+of+Safety_BRC_ATLEU_HTF_ATMG.pdf

SECTION 2. BARRIERS TO IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING WHILE IN DETENTION

> "Victims of human trafficking who are not identified by relevant authorities before detention experience added barriers to identification once detained."

Section 1 explored the barriers to identification of victims *prior to* immigration detention; this section describes barriers to identification *within* detention. Based on LEAG members' evidence, victims of human trafficking who are not identified by relevant authorities before detention experience added barriers to identification once detained. This includes: insufficient training on identification of human trafficking indicators for both UKVI and Immigration Removal Centre staff, limitations to the support provided to vulnerable people within detention, and the Home Office practice of weighing immigration control factors against the risk of someone's physical or mental well-being being worsened by detention.

While most detainees are held in immigration detention centres, some detainees are held in prison under immigration powers upon completion of a custodial sentence. These detainees face additional barriers, including lack of protective mechanisms for identifying vulnerability and limited access to legal advice.

2.1 HOME OFFICE FAILS TO SAFEGUARD VICTIMS

> "Detention is often used as a first rather than last resort."

The 'Home Office Enforcement Instructions and Guidance'[44] states that there is a presumption in favour of liberty and that alternatives to detention should be used whenever possible. However, in BID's experience, detention is often used as a first rather than last resort.[45] LEAG finds that the Home Office rarely demonstrates that detention is necessary and that all alternatives have been exhausted before sending someone to immigration detention.

IN 2018 THE HOME OFFICE MAINTAINED DETENTION IN **77.6%** OF THE CASES WHERE SOMEONE WAS IDENTIFIED AS VULNERABLE

THE HOME OFFICE 'ADULTS AT RISK' POLICY IS FAILING VICTIMS

In September 2016, the Home Office introduced the 'Adults at Risk' policy[46], which aimed at reducing the number of vulnerable people in immigration detention.[47] In it, the Home Office established a two-step system in which 'immigration control factors' are weighed against a detainee's vulnerability to harm in detention in order to determine whether or not they should be released. This system has been found by LEAG members to serve to maintain detention in the vast majority of cases where a detainee is accepted as vulnerable, as vulnerability factors are regularly outweighed by 'immigration control' factors.

In 2018, the Home Office has maintained detention in 77.6% of the cases where someone was identified as vulnerable.[48] This is leading potential victims of human trafficking to be held in detention for long periods of time

44 Home Office, *Chapter 55, Enforcement Instructions and Guidance*, 27 April 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721605/Chapter-55-detention-v25..pdf

45 Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the 'Adults at Risk' policy in practice*, July 2018, p.6. Available at: http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf

46 Home Office, *Adults at risk in immigration detention*, version 5.0, March 2019. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784634/adults-at-risk-policy-v5.0ext.pdf

47 Stephen Shaw, *Review into the Welfare in Detention of Vulnerable People: A report to the Home Office by Stephen Shaw*, January 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

48 Home Office, *Immigration Enforcement Data*, November 2018 and February 2019, DT_03, https://www.gov.uk/government/collections/migration-transparency-data

even after receiving positive reasonable grounds decisions under the NRM, as demonstrated in Section 3. In fact, the Home Office's previous policy, which was superseded in September 2016, was more protective. Section 55.10 of the Home Office's Enforcement Instruction and Guidance stated that anyone suffering from serious mental health conditions that could not be "satisfactorily managed" within detention should only be detained in "very exceptional circumstances".[49] As BID explained, "the onus was on the Home Office to demonstrate that there were very exceptional circumstances which justified detention and the courts had held there was a very high threshold for proving very exceptional circumstances."[50]

"Since the implementation of the Home Office's 'Adults at Risk' policy, there has been a decrease in the release rate of vulnerable detainees following submission of Rule 35 reports."

Since the implementation of the Home Office's 'Adults at Risk' policy, there has been a decrease in the release rate of vulnerable detainees following submission of Rule 35 reports to the Home Office. In the third quarter of 2016, prior to the introduction of the 'Adults at Risk' policy, the Home Office released 39% of detainees with Rule 35 reports. Numbers have sunk to as low as 12.5% in the first quarter of 2018[51] but have since seen an increase to 34% in the first quarter of 2019.[52] Despite the increase, release of vulnerable detainees has maintained a lower rate compared to the period prior to the introduction of this policy averaging 22.6% in 2018.[53]

The 'Adults at Risk' policy directs caseworkers to designate detainees a 'level' of vulnerability:[54]

> **Level 1:** a self-declaration (or a declaration made on behalf of an individual by a legal representative) of being an adult at risk should be afforded limited weight, even if the issues raised cannot be readily confirmed.
>
> **Level 2:** professional evidence (for example from a social worker, medical practitioner or non-government organisation (NGO)), or official documentary evidence, which indicates that the individual is (or may be) an adult at risk should be afforded greater weight. Such evidence should normally be accepted and consideration given as to how this may be impacted by detention. Representations from the individual's legal representative acting on their behalf in their immigration matter would not be regarded as professional evidence in this context.
>
> **Level 3:** professional evidence (for example from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm, for example, increase the severity of the symptoms or condition that have led to the individual being regarded as an adult at risk, should be afforded significant weight. Such evidence should normally be accepted and any detention reviewed in light of the accepted evidence. Representations from the individual's legal representative acting on their behalf in their immigration matter would not be regarded as professional evidence in this context.

49 Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the 'Adults at Risk' policy in practice*, July 2018, p.8. Available at: http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf

50 Ibid, p.8.

51 Ibid, p.13.

52 Home Office, *Immigration Enforcement Data*, May 2019, DT_03, https://www.gov.uk/government/collections/migration-transparency-data

53 Home Office, *Immigration Enforcement Data*, November 2018 and February 2019, DT_03, https://www.gov.uk/government/collections/migration-transparency-data

54 Home Office, *Adults at risk in immigration detention*, version 5.0, March 2019, p.12-13. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784634/adults-at-risk-policy-v5.0ext.pdf

“

Tan was denied bail for having a criminal history, which was a direct result of having been forced to cultivate cannabis.”

When considering the likely risk of harm for the period identified, decision-makers are entitled not to place decisive weight on assertions that are unsupported by medical evidence.

This is then balanced against immigration control factors:

- **Length of likely detention**: the higher the level of risk of harm to the individual (on the basis of available evidence), the shorter the length of detention should be maintained.
- **Compliance history**: including having failed to comply with attempts to effect voluntary return; having made a protection or human rights claim following a negative immigration decision, unless they are able to provide a good justification for this delay; having previously absconded; having failed to comply with re-documentation processes, among other scenarios.
- **Public protection concerns**: such as criminal history, serious offences, risk of harm to the public.[55]

LEAG finds this balancing exercise highly problematic as in most cases immigration control factors are considered to outweigh risk of harm and vulnerable people often spend long periods of time in detention.

CASE STUDY: VICTIM DENIED BAIL FOR CRIMINAL HISTORY LINKED TO HIS EXPLOITATION[56]

Tan was trafficked to the UK and forced to work in a cannabis factory. He was encountered by police and arrested, then prosecuted for cannabis cultivation. Tan says that no one spoke to him about indicators of human trafficking prior to or after his conviction. Tan served a prison sentence and then was moved to an Immigration Removal Centre, where a charity identified him as a potential victim of human trafficking. Tan was referred to the National Referral Mechanism by a first responder outside detention and upon receiving a positive reasonable grounds decision he was released.

Unfortunately, Tan was later kidnapped and forced back into working in a cannabis factory. He managed to escape and a few weeks later he was picked up by Immigration Enforcement and taken back to an Immigration Removal Centre. While in detention, Tan was re-referred to the NRM, which later granted him positive conclusive grounds, and received a Rule 35 report indicating he was a victim of torture. BID applied for bail for Tan but his bail was denied with mentions of his criminal history and risk of absconding.

Tan was denied bail for having a criminal history, which was a direct result of having been forced to cultivate cannabis. The fact that Tan failed to report to the Home Office during his first bail period because he was forced back into exploitation was used to determine that he had ‘a risk of absconding’. BID believes that cases like this show that a system that weighs the level of risk to a vulnerable individual against immigration control factors risks severely neglecting their needs and failing to support their recovery.

Section 45 of the UK Modern Slavery Act 2015 states that a person is not guilty of an offence if they are compelled to do it due to a situation of slavery or to relevant exploitation. Yet, in many cases supported by LEAG, people forced into cannabis cultivation are only identified after having been convicted, served their custodial sentence and subsequently detained under immigration powers, facing deportation on the basis of their criminal conviction. While it is possible to initiate an appeal process to overturn their criminal conviction without a positive conclusive grounds decision, many

55 Ibid, p.13.

56 Case study provided by Bail for Immigration Detainees.

> “Some victims are wrongly advised by their legal representatives that they cannot appeal against their conviction, routinely many have plead guilty to the criminal offence.”

victims are unaware of this right. Phillipa Southwell from Birds Solicitors explained that some victims are wrongly advised by their legal representatives that they cannot appeal against their conviction, routinely many have plead guilty to the criminal offence. She clarified that entering a guilty plea does not ban victims from appealing against a conviction for a crime they were forced to commit as a result of their exploitation.[57]

RECOMMENDATION

TO THE HOME OFFICE:

- The Home Office should amend the ‘Adults at Risk’ policy to state that no vulnerable adults, including potential victims of human trafficking, should be detained.

2.2 POOR CASEWORK AND VICTIM IDENTIFICATION PRACTICES

LEAG is concerned about the minimal human trafficking-related training undertaken by UKVI and Immigration Removal Centre staff. The UKVI is the only NRM first responder with unrestricted access to Immigration Removal Centres and therefore, the main first responder in immigration detention. LEAG members are concerned that the level of training required for UKVI staff is inadequate for their role as first responders, and that their responsibility for the identification and referral of victims into the NRM is in direct conflict with their immigration enforcement responsibilities.

TRAINING FOR UKVI STAFF IS MINIMAL

UKVI staff are only required to complete two e-learning courses on modern slavery; a 60 minute course on modern slavery for non-Border Force staff and a 30 minute training on the National Referral Mechanism process.[58]

> “BID has worked with victims who have not been identified by UKVI staff prior to or even in detention, spending months and sometimes years waiting for a removal decision without receiving support to recover.”

LEAG considers this level of training inadequate for their role as first responders. BID has worked with victims who have not been identified by UKVI staff prior to or even in detention, spending months and sometimes years waiting for a removal decision without receiving support to recover. In these cases, BID has helped identify and ensure victims were referred to the NRM. Human trafficking identification requires a good understanding of the issue, as well as of the barriers victims’ face in reporting abuse. The ICIBI stated that, following an examination of case records and visits to ICE teams, inspectors pointed to shortcomings in the identification of potential victims of human trafficking for labour exploitation. Frontline immigration enforcement officers admitted that they would benefit from better training, which LEAG believes to be essential in order to identify cases of exploitation that do not fit the stereotypical profile.[59]

As LEAG research has previously demonstrated, people experiencing exploitation are often unaware of how and where to report cases of exploita-

57 FLEX interview with Phillipa Southwell from Birds Solicitor.

58 UK Parliament, UK Visas and Immigration: Training: Written Question – 233000, 18 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-13/232000/; UK Parliament, UK Visas and Immigration: Training: Written Question – 235301, 26 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-21/235301/

59 Independent Chief Inspector of Borders and Immigration, *An inspection of the Home Office’s approach to Illegal Working (August – December 2018)*, May 2019, p.48. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

“

People experiencing exploitation are often unaware of how and where to report cases of exploitation.”

tion, fear punishment from authorities, and are unlikely to self-identify as victims. All these barriers are recognised by the Home Office’s guidance for frontline staff, [60] and yet identification of victims of human trafficking prior to and in immigration detention remains poor.

CASEWORKERS MAY NEVER MEET THE PEOPLE ABOUT WHOM THEY ARE MAKING DECISIONS

Additionally, the Home Office caseworkers who are responsible for detainees’ cases and are required to complete the e-learning training have very limited contact with detainees.

> “The caseworker should’ve received training but then they might never have met the detainee. They don’t usually come to detention. They get sent data from the Immigration Enforcement team that picked someone up, for example, but they won’t necessarily have ever met the person whose case they are handling.”
>
> **Bail for Immigration Detainees**

“

Former Home Secretary, Amber Rudd, admitted: ‘I am concerned that the Home Office has become too concerned with policy and strategy and sometimes loses sight of the individual.’”

The caseworker holds the most information about an individual’s case, including information on previous immigration applications and encounters with the Home Office. They should also have received online training to identify indicators of human trafficking. Yet, the fact that they have very limited interaction with detainees means they may not have the opportunity to follow up on certain events detailed in an individual’s files to uncover human trafficking indicators or to ask the individual questions which may serve to foreground experiences indicating human trafficking, therefore missing the opportunity to identify potential victims. In April 2018, during her time as Home Secretary, Amber Rudd, admitted: “I am concerned that the Home Office has become too concerned with policy and strategy and sometimes loses sight of the individual”.[61]

IMMIGRATION REMOVAL CENTRE STAFF DO NOT RECEIVE MANDATORY TRAINING ON HUMAN TRAFFICKING

While UKVI staff are required to undertake the afore-mentioned 90 minutes of online training on identifying victims of modern slavery, the staff working daily in Immigration Removal Centres do not have the same requirements.[62] This is because they are not employed by UKVI but by private companies that run UK detention centres. All but one Immigration Removal Centre in the UK are run by private companies that operate government contracts to run the centres and, in some cases, provide medical care for detainees under healthcare contracts with the NHS.[63]

All staff in these Immigration Removal Centres receive a two hour training, but identification and support of vulnerable adults is not part of this train-

60 LEAG, *Labour compliance to exploitation and the abuses in-between*, 2016, p.7-8. Available at: https://www.labourexploitation.org/publications/labour-exploitation-advisory-group-leag-position-paper-labour-compliance-exploitation; Home Office, *Victims of modern slavery – frontline staff guidance*, version 3.0, 18 March 2016, p.20. Available at: https://www.antislaverycommissioner.co.uk/media/1057/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf

61 Amelia Gentleman, *Amber Rudd ‘sorry’ for appalling treatment of Windrush-era citizens*, The Guardian, 16 April 2018, https://www.theguardian.com/uk-news/2018/apr/16/theresa-may-caribbean-representatives-windrush-immigration

62 UK Parliament, Detention Centres: Training: Written Question – 235300, 26 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-21/235300/

63 Corporate Watch, *NHS gives G4S £23M to ‘care’ for migrants*, 06 October 2014, https://corporatewatch.org/nhs-gives-g4s-23m-to-care-for-migrants/

ing despite it being "strongly encouraged" by the Home Office.[64] This means that the people who spend the most amount of time with detainees may not have received any training to support the identification of potential victims.

"The people who spend the most amount of time with detainees may not have received any training to support the identification of potential victims."

GOVERNMENT AUTHORITIES SEEM TO EXPECT VICTIMS TO SELF-IDENTIFY

LEAG members have also noted there seems to be an expectation that victims of human trafficking will voluntarily disclose their experience to relevant authorities either before or during their time in detention. They have mentioned situations where victims' cases showed signs of exploitation and yet they had not been identified or supported because the authorities are not taking a proactive approach.

> "We are seeing people who are not being identified and we are thinking 'how can alarm bells not have been ringing that something is wrong?' The Home Office shouldn't just wait for people to come forward. There has to be proactive steps, especially with victims of human trafficking who are likely to disclose things late and have often been told not to tell anything."
>
> **Bail for Immigration Detainees**

This concern is also shared 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 "the detection of victims of human trafficking appears to rely essentially on self-identification by the victims".[65]

"GRETA stated that "the detection of victims of human trafficking appears to rely essentially on self-identification by the victims."

LEAG has been told by different government agencies that their high turnover of staff means that even if frontline staff would receive adequate training, it would not be enough to ensure identification. The high number of victims being identified by LEAG members and other charities working in detention suggests the need for an 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.

64 UK Parliament, Detention Centres: Training: Written Question – 235300, 26 March 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-03-21/235300/

65 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. Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064abcdc

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- Fund an independent support provider to have presence in all Immigration Removal Centres to act as a first point of contact for people who have experienced trauma, abuse and exploitation. This independent support provider should also serve as a first responder under the NRM in detention.
- All UKVI and Immigration Removal Centre staff should receive training on identification of victims of human trafficking. The training should include real cases which fail to fit simplistic understandings of indicators of these abuses to ensure a 'one size fits all' approach is not perpetuated. All potential victims should be referred to the independent support provider in detention.

TO THE HOME OFFICE:

- Adopt recommendation 29 of the 2018 Shaw report, which states that "all caseworkers involved in detention decisions should visit an Immigration Removal Centre either on secondment or as part of their mandatory training".[66]
- All detainees should be allowed to contact their Home Office caseworkers during their time in immigration detention, either directly or through an independent support provider.

2.3 RULE 35 IS NOT ADEQUATE TO IDENTIFY VICTIMS OF HUMAN TRAFFICKING

The management of individuals detained in Immigration Removal Centres is guided by the 'Detention Centre Rules', which came into force in April 2001.[67] These rules are secondary legislation governing immigration removal centres including healthcare, access to welfare, security, privileges etc. In the context of identification of vulnerable adults in detention, Rule 35 in particularly important.

RULE 35: A MISSED OPPORTUNITY TO IDENTIFY VICTIMS

Rule 35 of the Detention Centre Rules pre-dates the 'Adults at Risk' policy, which has incorporated its 'ongoing assessment' of risk factors emerging after the point of detention. These 'ongoing assessments' are meant to ensure that risk factors emerging after the point of detention and changes to existing risk factors are identified, triggering a formal review of the case, with a fresh consideration of the balance of risk factors against immigration factors, explained in Section 2.1.[68]

Under Rule 35 doctors are required to disclose to the Home Office any person (1) whose health is likely to be injuriously affected by continued detention; (2) who is suspected of having suicidal intentions; (3) who may

66 Stephen Shaw, *Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office*, July 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf

67 UK Government, *The Detention Centre Rules 2001*, April 2001. Available at: http://www.legislation.gov.uk/uksi/2001/238/pdfs/uksi_20010238_en.pdf

68 Home Office, *Detention services order 09/2016 Detention centre rule 35 and Short-term holding facility rule 32,* version 7.0, 05 March 2019, p.5. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783642/Detention_rule_35_process.pdf

have been a victim of torture. Rule 35 describes torture as "any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation which:

- the perpetrator has control (whether mental or physical) over the victim, and
- as a result of that control, the victim is powerless to resist."[69]

Rule 35 reports, which are completed by medical practitioners working in detention centres, provide independent evidence of someone's vulnerability and may serve to highlight physical and mental health issues that have been missed in previous Home Office assessments. The experiences described by some victims of human trafficking may fit within the Detention Centre Rules' definition of 'torture' but the definition is not comprehensive enough to identify all cases. BID has pointed out that human trafficking and torture are two distinct issues, and that this narrow definition of torture is not enough to help identify victims of human trafficking in detention.[70] This limitation is leading medical practitioners to miss human trafficking indicators that would help to quickly identify victims.

> "Human trafficking and torture are two distinct issues, and this narrow definition of torture is not enough to help identify victims of human trafficking in detention."

Additionally, while doctors may receive training on completing Rule 35 reports for victims of torture, a medical practitioner has told a LEAG member they do not receive compulsory training specific to completing these forms for victims of human trafficking, which creates a series of negative consequences to NRM referrals, which are explored in Section 3.

HOME OFFICE FAILS TO ACT UPON REPORTS OF VULNERABILITY

Even when doctors complete a Rule 35 report, this does not necessarily result in victims of human trafficking being quickly identified. BID has come across cases where a detainee has had a Rule 35 report submitted on the basis that they are a torture victim, only to be recognised as a victim of human trafficking much later.

> "Even when doctors complete a Rule 35 report, this does not necessarily result in victims of human trafficking being quickly identified."

Immigration Removal Centre doctors or healthcare professionals are required to alert the Home Office of detainees they suspect to be vulnerable. They do so by submitting a completed Rule 35 report to the Home Office contracted management teams in the detention centre, to the officer responsible for managing and/or reviewing the person's detention. The Home Office caseworker responsible for the detainee's case then makes a decision on whether continued detention is appropriate or whether the detainee should be released. Therefore, while Rule 35 sets a requirement for doctors to alert the Home Office of detainees they suspect to be vulnerable, it does not place a responsibility on the Home Office to release a detainee based on this concern.

> "While Rule 35 sets a requirement for doctors to alert the Home Office of detainees they suspect to be vulnerable, it does not place a responsibility on the Home Office to release a detainee based on this concern."

Li's case described in Section 1 demonstrates these shortcomings. Li was detained despite receiving medication and psychiatric support for depression and having a history of self-harm with suicidal intention. While in detention, her doctor submitted a Rule 35 report which mentioned her experiences with torture related to unpaid debts, as well as other indicators of human trafficking. Despite concern from the medical staff, the Home Office maintained her detention. After six months in detention, Li was identified as a potential victim of human trafficking by BID and later referred to

69 Ibid p.9.

70 The Detention Centre Rules definition of torture is currently subject to legal challenge. See https://bhatt-murphy.co.uk/files/documents/Briefing%20Note%20Medical%20Justice.pdf

the NRM. She was released from immigration detention upon receipt of a positive reasonable grounds decision.

ONLY
22.6%
OF PEOPLE RECEIVING RULE 35 REPORTS IN 2018 WERE SUBSEQUENTLY RELEASED

As seen in Li's case, receiving a Rule 35 report confirming someone's vulnerability within detention does not lead to an immediate release. Home Office data shows that from the 2,194 people receiving Rule 35 reports in 2018, only 497 – 22.6% – were subsequently released.[71] In some cases, detainees had more than one Rule 35 report indicating torture allegations completed by the medical staff.

PEOPLE IN PRISON UNDER IMMIGRATION POWERS ARE NOT PROTECTED BY RULE 35 OR EQUIVALENT

While most detainees are held in immigration detention centres, some detainees are held in prison under immigration powers upon completion of a custodial sentence. As with immigration detention in Immigration Removal Centres, there is no time limit to how long someone can be detained for.

> "A lot of people think they'll be released on their criminal release date, but when the time comes, sometimes just a day or so before, they find out that they'll continue to be held in prison under immigration powers."
>
> **Bail for Immigration Detainees**

"There is no mechanism for vulnerable immigration detainees held in prisons to have their suitability for detention reviewed as a result of their vulnerability."

Immigration detainees held in prisons face multiple and compounding disadvantages. The Detention Centre Rules do not apply to those held in prisons and there is no equivalent to the Rule 35 process. There is no mechanism for vulnerable immigration detainees held in prisons to be brought to the attention of the Home Office and to have their suitability for detention reviewed as a result. [72]

Immigration detainees held in prisons are also denied access to free legal advice surgeries which are provided in Immigration Removal Centres and, in BID's experience, are very unlikely to find a legal aid lawyer to help them apply for bail.[73] Data collected by BID shows that, between 2016 and 2018, only 29 out of 285 immigration detainees in prison received independent advice about their immigration case.[74] Solicitors in detention can be key to identifying potential victims of human trafficking because, when explaining their immigration history, victims may disclose cases of abuse and exploitation that can flag indicators of human trafficking. The charity Jesuits Refugee Service UK reported that some victims of human trafficking in detention that they support were only referred to the NRM after receiving advice from a solicitor.[75] The lack of mechanisms to identify and support victims of human trafficking in prison under immigration powers is highly likely to mean some victims are not identified at all and are therefore denied support, remedies and recovery to which they are entitled under the NRM.

ONLY
29
OUT OF
285
DETAINEES IN PRISON RECEIVED INDEPENDENT ADVICE ABOUT THEIR CASE

71 Home Office, *Immigration Enforcement Data*, November 2018 and February 2019, DT_03, https://www.gov.uk/government/collections/migration-transparency-data

72 Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the 'Adults at Risk' policy in practice*, July 2018, p.13. Available at: http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf

73 Ibid, p.14.

74 Bail for Immigration Detainees, Legal Advice Survey – Spring and Autumn 2018, https://www.biduk.org/pages/106-bid-legal-advice-surveys

75 Jesuits Refugee Service UK, *Survivors of Trafficking in Immigration Detention*, October 2018, p.3. Available at: https://www.jrsuk.net/wp-content/uploads/2018/10/Topical-Briefing-Survivors-of-Trafficking-in-Immigration-Detention-13.10.18.pdf

RECOMMENDATIONS

TO THE HOME OFFICE:

- The Home Office 'Adults at Risk' policy and 'The Detention Centre Rules' should be amended to include human trafficking as a new category, and anyone suspected to be a potential victim should receive prompt specialised advice and support to help them prepare for their NRM referral interview. Anyone referred to the NRM should be immediately released from immigration detention.
- Medical staff in detention centres should be required to complete compulsory training on identifying indicators of human trafficking. If medical staff suspects a detainee is a potential victim, they should be required to immediately contact the independent support provider in detention.

2.4 LACK OF TRANSPARENCY AROUND DATA ON VICTIMS OF HUMAN TRAFFICKING IN DETENTION

"The Home Office does not record data on how many victims of human trafficking have been detained after being referred to the NRM or removed following decision-making on their NRM case overall."

LEAG members have sought to gather information on the number of victims of human trafficking in immigration detention at different times throughout 2018 and 2019. In response to a parliamentary question from 05 April 2019, the Home Office stated it does not record data on how many victims of human trafficking have been detained after being referred to the NRM or removed following decision-making on their NRM case overall, as NRM decisions are considered separately from immigration enforcement action.[76] Similarly, responding to a Freedom of Information request made by BID in November 2018, the Home Office stated that while it may hold information on the number of immigration detainees referred to the NRM and on how many detainees have received positive reasonable grounds decisions, it does not store or collate it in an accessible way.[77]

However, a series of Freedom of Information requests submitted by the After Exploitation Project between April and July 2019 uncovered that the Home Office does record this information, and that they are able to process it in an accessible way, although they do not guarantee the data is up to the standard of Official Statistics. Findings show that in 2018, 507 victims of human trafficking had received positive reasonable grounds decisions either before or while in detention.[78] It also showed that from January 2016 to December 2018, the Home Office has enforced the removal of 30 victims of human trafficking with positive conclusive grounds decisions.[79]

The lack of transparency resultant from the failure to collect and publish important information, even when requested, obstructs the development of proper evidence-based policy, and reduces Home Office accountability towards victims of human trafficking. To promote accountability, the Home

76 UK Parliament, Slavery: Written Question – HL14852, 05 April 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2019-03-27/HL14852/

77 Information acquired through a Freedom of Information request (50679) made by BID and answered in 01 November 2018.

78 Freedom of Information request submitted by After Exploitation (53957) and answered in 28 June 2019, https://www.whatdotheyknow.com/request/580496/response/1389690/attach/2/53957%20Reply.pdf?cookie_passthrough=1

79 Freedom of Information request submitted by After Exploitation (53957) and answered in 30 May 2019, https://www.whatdotheyknow.com/request/571035/response/1374409/attach/2/FOI%2053448%20reply.pdf?cookie_passthrough=1

Office should regularly publish data on the number of victims in detention as well as the outcome of their cases.

Access to detailed Home Office data on the impact of its policies on detainees would allow for a comprehensive evaluation of the immigration detention system which can be used to improve Home Office policy and practice.

RECOMMENDATION

TO THE UK GOVERNMENT:

- The UK Government should collect and publish data on:
    a. how many NRM referrals were made within detention and the outcome of these referrals;
    b. the length of time it takes for reasonable grounds decisions to be made for people in detention;
    c. the number of detainees with positive reasonable grounds that are denied bail;
    d. how many potential victims are being detained after having received positive reasonable grounds decisions; and
    e. how many victims with positive conclusive grounds are being detained and subsequently removed from the UK.

  This data should be made available quarterly in the National Crime Agency 'Modern Slavery Human Trafficking National Referral Mechanism Statistics'.

SECTION 3. THE NATIONAL REFERRAL MECHANISM AND VICTIMS OF HUMAN TRAFFICKING IN IMMIGRATION DETENTION

The NRM is the UK's framework for identifying and supporting victims of human trafficking. If they consent, potential victims are referred to the NRM by a 'first responder' who completes a referral form containing details about the potential victim, alongside a description of their exploitation. The quality of this information is vital as it is on the basis of this referral form that the Competent Authorities[80] make decisions about whether someone is identified as a potential victim of human trafficking. For victims in detention, the UKVI is responsible for both their referral to the NRM and the assessment of whether they are considered a victim of human trafficking.

The NRM operates a two-stage decision-making process to identify and support potential victims. Once someone is referred to the NRM, the decision-making team has five working days to decide whether there are 'reasonable grounds' to believe that person is a potential victim, even if there is no proof at that stage. Those who receive positive reasonable grounds decisions are generally released into supported accommodation.

After granting a positive reasonable grounds decision, the Competent Authority, in this case the UKVI, has 45 days to gather further information on a potential victim's case in order to make a conclusive grounds decision on whether, on the balance of probabilities, there is reason to believe that the individual is a victim of modern slavery. If the person receives a 'positive conclusive grounds' decision, they may have various options going forward, including choosing to co-operate with the police in prosecution of their exploiters, returning to their country of origin, applying for asylum, etc.

3.1 ISSUES WITH THE NRM FOR VICTIMS IN IMMIGRATION DETENTION

> "In some cases, first responders have even written down people's names or nationality wrong, showing a clear disregard for how important the referral form is for NRM decision-making."

LEAG members are deeply concerned about the UKVI's ability to provide accurate and timely accounts of people's experience when making NRM referrals, after witnessing many cases of poor practice. Issues include a lack of detailed information about someone's experience, including timelines and details of the types of abuse and exploitation. In some cases, first responders have even written down people's names or nationality wrong, showing a clear disregard for how important the referral form is for NRM decision-making and victim's access to support.

UKVI staff have previously disclosed to LEAG members that they are under a great amount of pressure and that they have unrealistic workloads, which could also explain why instances of poor practice appear to be common both inside and outside detention. To overcome this problem, when possible, LEAG members have chosen to contact a different first responder to increase the chances of a well-informed referral form.

80 The two UK Competent Authorities are the National Crime Agency's Modern Slavery and Human Trafficking Unit; and the Home Office UK Visas and Immigration. For more information on the role of Competent Authorities see UK Home Office, *Victims of modern slavery – Competent Authority guidance,* 21 March 2016 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772198/Victims-modern-slavery-Competent-Auth-v5.0ext.pdf; In 29 April 2019 this dual system was substituted by a Single Competent Authority within the Home Office who is responsible for making reasonable and conclusive grounds decisions in the NRM. See p.16, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797903/victims-modern-slavery-competent-auth-v7.0-ext.pdf

CASE STUDY: VICTIM OF HUMAN TRAFFICKING SPENDS 18 MONTHS IN DETENTION WITHOUT BEING REFERRED TO THE NRM[81]

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

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

HOME OFFICE REFUSES TO PROVIDE CRUCIAL INFORMATION TO POTENTIAL VICTIMS AND SUPPORT SERVICES

> "The UKVI replied that the completed NRM referral form was property of the Home Office and therefore, would not be shared with the victim."

Poor NRM referrals are further complicated by the fact that first responders are not required to provide a copy of the NRM referral form, meaning that some people are referred to the NRM without knowing what was included as evidence. LEAG members have described struggling to gain access to their clients' NRM referral forms. In one case the UKVI replied that the completed NRM referral form was property of the Home Office and therefore, would not be shared with the victim or their support provider. LEAG considers this inappropriate, as the information on the case should belong to the person who has experienced abuse and exploitation.

Article 5 of the EU Victim's Rights Directive[82] states that victims should receive written acknowledgement of their formal complaint stating the basic elements of the offence described by them, if they so request, in a language that they understand. The Human Trafficking Foundation's updated Trafficking Survivor Care Standards guidance echoes this concern, recommending that all victims of trafficking "should be provided with a copy of the NRM form at the point it is submitted and know they can request copies in the future".[83] LEAG hopes that the UK government will continue its commitment to adopt the Trafficking Survivor Care Standards, adopting its updated version in future NRM victim care contracts as a minimum standard for victim support.[84]

81 Case study provided by Bail for Immigration Detainees.

82 Directive 2012/29/EU of the European Parliament and the Council of Europe of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2011/220/JHA, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF

83 Human Trafficking Foundation, *Trafficking Survivor Care Standards*, October 2018, p.39. Available at: https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf

84 UK Parliament, House of Commons, Modern Slavery Act 2015, 26 October 2017, Volume 630, https://hansard.parliament.uk/commons/2017-10-26/debates/D9B8BD1A-F0D6-42D5-9490-7419508008 59/ModernSlaveryAct2015

DELAYED NRM DECISION-MAKING FOR VICTIMS IN IMMIGRATION DETENTION

The NRM guidelines state that there should be no more than five working days between a referral to the NRM and a reasonable grounds decision. However, BID has noted that people are sometimes detained for months while waiting for this decision to be made.

CASE STUDY: LONG NRM DELAYS KEEP VICTIMS OF HUMAN TRAFFICKING IN DETENTION[85]

David was referred into the NRM from within prison shortly before his criminal release date, at which point he was immediately detained under immigration powers. He has been waiting for over three months for a reasonable grounds decision.

DETAINEES APPEAR LESS LIKELY TO RECEIVE VICTIM STATUS THAN POTENTIAL VICTIMS OUTSIDE IMMIGRATION DETENTION

> "The UKVI decision-making system is 'quite pedantic' and seems to use 'any excuse' to refuse someone's reasonable grounds decision."

LEAG members have noticed a disproportionately large number of negative reasonable grounds decisions from their clients who had been referred from within immigration detention in comparison with clients who have been referred outside detention. While poor NRM referrals may be one reason for this, members have also stated that the UKVI decision-making system is "quite pedantic" and seems to use "any excuse" to refuse someone's reasonable grounds decision.

Among the inconsistencies mentioned by the UKVI as reasons to refuse someone's reasonable grounds decision are very specific recollections about the time when events took place, including mentions of inconsistencies around dates or even hours related to an event described or the description of the number of people who have witnessed a specific situation.

While the 'Home Office guidance for frontline staff working with victims of trafficking and modern slavery' acknowledges that victims' early accounts of their experience may be affected by trauma, including difficulty in recalling details or entire episodes,[86] this does not seem to be happening in practice. In addition, there is growing evidence of the adverse mental health impact of being held in detention, particularly for highly vulnerable individuals, who are also thought to be "less effective self-advocates and therefore more likely to be detained".[87] The UKVI's focus on specific details in someone's case is especially concerning for people who have given many accounts of their experience at different times.

> "When someone who was in detention is referred to the NRM they might have already been through the asylum process, have spoken to the police because they have been picked up [for irregularities in their immigration status], seen a medical staff, they may have had a Rule 35 report and then finally had an NRM referral. If this was not all consistent – which it never is because how can someone who has experienced severe trauma recount all this information exactly the same every single time? – then they'll just receive a negative reason-

85 Case study provided by Bail for Immigration Detainees.

86 UK Home Office, *Victims of modern slavery – frontline staff guidance*, version 3.0, 18 March 2016, p.17. Available at: https://www.antislaverycommissioner.co.uk/media/1057/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf

87 M. von Werthen, et al., *The impact of immigration detention on mental health: a systemic review*, 2018, p.15. Available at: http://www.helenbamber.org/wp-content/uploads/2019/01/2018.12-von-Werthen-et-al.-Detention-systematic-review.pdf

able grounds decision, which seems to be much higher for people in detention than outside."

LEAG member

"Information held within the immigration database is considered alongside information provided in the NRM referral form as part of the NRM decision making process."

The government has confirmed through a parliamentary answer that information held within the immigration database is considered alongside information provided in the NRM referral form as part of the NRM decision making process.[88] This puts victims in detention at a disadvantage, as they are more likely than victims outside detention to have multiple recorded accounts of their experiences, increasing the chances of receiving negative grounds due to inconsistencies. The large amount of data held in immigration records may also explain why reasonable grounds decisions for potential victims in detention seem to take longer than those referred from outside detention, as noted by LEAG members.

BIASED INTERPRETERS HAMPER IDENTIFICATION

Issues with interpreters also play a part in creating inconsistencies between victims' accounts of their experiences. LEAG members mentioned cases of interpreters failing to act impartially and giving their own opinions about someone's recollection instead. A LEAG member witnessed an interpreter mention to a first responder that "I think [the victim] is lying. This kind of issue doesn't happen in our country", showing a complete disregard for the impact their role has in someone's access to support and justice. In another case the interpreter was struggling to understand what was being said in English but continued to persevere even though the questions and answers simply did not match.

LEAG members have also described issues with translation accuracy, including interpreters misunderstanding or changing the language used by victims to explain what they have experienced. This sometimes creates inaccuracies that negatively affect NRM decision-making. One LEAG member stated that finding a good interpreter is a hit-and-miss process and in around one third of cases they need to contact a new interpreter.

LACK OF TIME LIMIT ON DETENTION CREATES STRESS AND AFFECTS VICTIMS' RECOLLECTION OF THEIR EXPERIENCES

There is no limit on the amount of time for which a person can be detained under immigration powers in the UK. This policy has been the subject of extensive campaigning and advocacy from many stakeholders over a long period due to the harm it causes to detainees. This harm is also present for potential victims of human trafficking.

LEAG members have described that the lack of a time limit often makes people who have self-identified as victims of human trafficking feel like they must tell someone immediately about what they have experienced in order to be released from detention as quickly as possible. This puts them under considerable pressure to disclose experiences of abuse and leads to mistakes in recalling memories, which can have severe implications to their NRM referral. As noted earlier in this section, inconsistencies in NRM referral forms which may be caused by such rushed descriptions can significantly hamper a person's likelihood of receiving a positive reasonable grounds decision.

88 UK Parliament, Slavery: Written Question: HL14849, 05 April 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2019-03-27/HL14849/

RECOMMENDATIONS

TO THE UK GOVERNMENT:

- NRM referrals should follow the Trafficking Survivor Care Standards[89], which include ensuring that every referred person receives a copy of their NRM referral form.
- NRM referrals for people in detention should be made by an independent first responder instead of Home Office staff to avoid the current conflict of interest with the Home Office's responsibility for immigration enforcement. The independent first responder should have unrestricted access to immigration detention and prisons under immigration powers.
- NRM decision-makers should take into account that victims of trauma are likely to have some inconsistencies when recollecting their experiences, and focus on the likelihood that the person has experienced the events described rather than the specific details of the events. They should also ensure that reasonable grounds decisions are based on a suspicion that a person is a potential victim, even if there is no proof at that stage.
- The Home Office should introduce a limit to the cumulative amount of time someone can spend in immigration detention. Upon entering detention, detainees should have immediate access to legal advice to be able to challenge their removal and to create opportunity for them to disclose cases of abuse and exploitation.

3.2 CONTINUED DETENTION FOLLOWING NRM REFERRAL

> "LEAG members are concerned that the Home Office is maintaining detention of victims of human trafficking despite them having received positive reasonable grounds."

LEAG members are concerned that the Home Office is maintaining detention of victims of human trafficking despite them having received positive reasonable grounds. In fact, members have identified cases of victims being detained *after* being referred to the NRM. LEAG believes this to be in conflict with the Home Office's basic limits on the power to detain, which establish that someone can only be detained for the purpose of removal or while their claim to be in the UK is assessed.[90]

POTENTIAL VICTIMS WITH POSITIVE NRM DECISIONS ARE NOT ALWAYS RELEASED FROM DETENTION

While in most cases a positive reasonable grounds decision leads to release from detention, LEAG members have identified cases where the Home Office has maintained the detention of people who receive positive reasonable grounds decisions. The reasons the Home Office denies release are usually the same: risk of absconding or harm to the public based on a previous criminal conviction.

A recent UK court case is serving to further undermine the well-being of potential victims of human trafficking in detention by making it acceptable to deny them bail following a positive reasonable grounds decision.

89 Human Trafficking Foundation, *Trafficking Survivor Care Standards*, October 2018, p.39. Available at: https://www.antislaverycommissioner.co.uk/media/1235/slavery-and-trafficking-survivor-care-standards.pdf

90 R (Hardial Singh) v Governor of Durham Prison [1983] EWHC 1 (QB).

CASE STUDY: HOME OFFICE REFUSES TO RELEASE POTENTIAL VICTIM OF HUMAN TRAFFICKING FROM DETENTION[91]

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

The Court of Appeal decision on *EM v SSHD*[92] ruled that potential victims of trafficking can have their needs met under articles 11(2) and (5) of the EU Anti-Trafficking Directive while in immigration detention, despite evidence of the long-term negative impact of detention on vulnerable adults.[93] LEAG is concerned that cases like Peter's will become more common following this ruling.

> "This is really concerning. Potential victims who aren't released from detention following positive reasonable grounds decisions don't have access to specialist support to help them develop a greater understanding of what happened to them, which is essential for them to be better able to provide a truthful and accurate account of their experience, including details that are essential to NRM decision-making."
>
> **Ashiana Sheffield**

Dr Chisholm, a clinical psychologist with expertise in treating victims of trauma, who provided evidence during *EM v SSDH*, stated that Home Office staff in detention do not "attempt to build trust beyond general forms, and [do not] attempt to assist in creating a coherent autobiographical memory"[94], demonstrating how treatment of victims in detention differs from those who have access to specialist support outside. He also stated that support services provided in detention are not adequate for potential victims of human trafficking as "the staff appears to have no experience and awareness of the specific issues associated with trafficking and had no formal professional qualifications."[95]

> "Support services provided in detention are not adequate for potential victims of human trafficking."

The EU Anti-Trafficking Directive provides binding legislation that sets European standards to prevent human trafficking, prosecute criminals and better protect victims.[96] While the Anti-Trafficking Directive does not demand that potential victims receive specialist support, LEAG sees this as essential to ensure a fair NRM decision-making process and to provide victims with the support they need to recover from the traumatic events they have experienced. The EU Victim's Rights Directive shares this belief stating that "persons who are particularly vulnerable [...] should be provided with

91 Case study provided by Ashiana Sheffield.

92 EM v SSHD [2018] CEWCA Civ 1070.

93 See Mary Bosworth, *Appendix 5: the Mental Health Literature Survey Sub-Review* in Stephen Shaw, Review into the welfare in detention of vulnerable persons, January, 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf; Guy Coffey *et al.*, *The meaning and mental health consequences of long-term immigration detention for people seeking asylum*, Social Science & Medicine, 2010, 70, p.2070-2079; Katy Robjant *et al.*, *Mental health implications of detaining asylum seekers: systematic review*, The British Journal of Psychiatry, 2009, 194, p.306–312; *Medical Justice, Mental Health in Immigration Detention Action Group: Initial Report 2013*, 2013. Available at: http://www.medicaljustice.org.uk/wp-content/uploads/2016/03/Mental-Health-in-Immigration-Detention-Working-Group.pdf

94 EM v SSHD [2018] CEWCA Civ 1070 p.50.

95 Ibid.

96 European Commission, The EU Anti-trafficking Directive 2011/36/EU, https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en

> “In order to avoid further harm and trauma from having their freedom of movement restricted, potential victims should be released from detention immediately after being referred to the NRM.”

> “The Home Office has detained people *after* they have been referred to the NRM and are awaiting a reasonable grounds decision.”

specialist support and legal protection.”[97] Among the specialised services the EU Victim’s Rights Directive suggests are short and long-term psychological counselling, trauma care and advocacy none of which are accessible to potential victims in immigration detention.

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].”[98] 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, potential victims should be released from detention immediately after being referred to the NRM.

POTENTIAL VICTIMS BEING DETAINED DESPITE REFERRAL TO THE NRM

In addition to maintaining detention of 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.”[99] Their detention, therefore, contradicts the principle[100] that the Home Office can only use detention for the purpose of removal or for assessing someone’s claim to be in the UK.[101]

This also implies some confusion within some state agencies regarding policy on the NRM and immigration concerns: as noted in Section 1.3, LEAG members have witnessed police using the threat of immigration detention to encourage potential victims to enter the NRM, implying that the latter is a method of avoiding immigration detention. Based on LEAG’s experience, it appears that people can still be arrested and detained after being referred to the NRM.

CASE STUDY: DETAINED WHILE WAITING FOR A REASONABLE GROUNDS DECISION[102]

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

97 Directive 2012/29/EU of the European Parliament and the Council of Europe of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2011/220/JHA, L 315/61(38), https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF

98 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. Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abcdc

99 UK Parliament, Slavery: Written Question: HL14851, 09 April 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2019-03-27/HL14851/

100 R (Hardial Singh) v Governor of Durham Prison [1983] EWHC 1 (QB).

101 Bail for Immigration Detainees, *Adults at Risk: the on-going struggle for vulnerable adults in detention: an evaluation of the ‘Adults at Risk’ policy in practice*, July 2018, p.6. Available at: http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf

102 Case study provided by Bail for Immigration Detainees.

RECOMMENDATIONS

TO THE HOME OFFICE:

- Potential victims should be immediately released from detention after being referred into the NRM, and provided with key entitlements including: appropriate and secure accommodation, psychological assistance and legal information and support. Immigration control factors should not be accepted as reasons to refuse bail for potential victims of human trafficking.

TO THE UK GOVERNMENT:

- The UK government should commission an independent review on whether its policies and practice related to victims of human trafficking in immigration detention are in line with its responsibilities under the EU Human-Trafficking Directive 2011/36/EU and the Council of Europe Convention on Action against Trafficking in Human Beings.

IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING IN DETENTION: PATHWAY TO THE NRM

The below diagram describes the pathway LEAG believes is needed for potential victims of human trafficking identified within detention to be protected from further harm.

Once in detention if an individual is identified as a potential victim of human trafficking, the independent support provider in detention should be immediately notified in order to initiate support provision. The independent support provider should also act as a first responder in immigration detention.

↓

After being provided with information on the NRM and exercised informed consent, individual is referred into the NRM by the independent support provider in detention.

↓

Individual is immediately released from immigration detention and provided with key entitlements, including appropriate and secure accommodation, psychological assistance, legal information and support.

Individual should not be required to report to Home Office as a condition of their bail.

SECTION 4. THE IMPACT OF DETENTION ON VICTIMS' MENTAL AND PHYSICAL HEALTH

This section builds on Section 2, which examined the limitations of the 'Adults at Risk' policy and the Rule 35 process, by looking into the impact of detention on victims' mental and physical well-being. Despite these safeguards, the medical needs of victims of human trafficking are often unmet leading to long-term health consequences that extend well beyond their time in detention.

4.1 HEALTH CONSEQUENCES OF DETENTION ON POTENTIAL VICTIMS

"The medical needs of victims of human trafficking are often unmet leading to long-term health consequences that extend well beyond their time in detention."

The finding in *EM v SSHD*[103] , described in Section 3.1, which asserted that victims' needs can be met within detention is especially concerning given the number of reports describing the negative impact of immigration detention on detainee's mental health, as well as cases of poor care of detainees physical health.

THE IMPACT OF DETENTION ON VICTIMS' MENTAL HEALTH

The impact of immigration detention on detainees' mental health is well documented. The Mental Health and Immigration Detention Working Group (MHIDWG), a voluntary membership group comprised of lawyers, health professionals, former detainees and NGO workers, has found that "high proportions of immigration detainees display clinically significant levels of depression, post-traumatic stress disorder (PTSD), anxiety, intense fear, sleep disturbance, profound hopelessness, self-harm and suicidal ideation."[104] These findings are echoed by the British Medical Association, which stated that "even if it does not reach a clinical threshold, all immigration detainees will face challenges to their well-being during their time in detention".[105]

"People who have previously experienced trauma are at greater risk of developing trauma-related mental health problems while in immigration detention, including PTSD."

A 2009 study monitoring immigration detainees over a nine month period found that 85% reported chronic depressive symptoms, 65% reported suicidal ideation, 39% experienced paranoid delusions and 21% showed signs of psychosis.[106] Another study estimated that the likelihood of self-harm in Immigration Removal Centres is of 12.79%, compared with between 5 and 10% in the prison community in the UK.[107] People who have previously experienced trauma are at greater risk of developing trauma-related mental health problems while in immigration detention, including PTSD.[108]

103 EM v SSHD [2018] CEWCA Civ 1070.

104 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/2016/06/14.03.21-MHIDGW-Immigration-detention-of-persons-with-mental-health-problems-consultation-response.pdf

105 British Medical Association, *Locked up, locked out: health and human rights in immigration detention*, 2017. Available at: https://www.bma.org.uk/collective-voice/policy-and-research/ethics/health-and-human-rights-in-immigration-detention

106 Katy Robjant *et al.*, *Mental health implications of detaining asylum seekers: systematic review*, British Journal of Psychiatry 2009, p.307.

107 Julie Cohen, *Safe in our hands? A study of suicide and self-harm in asylum seekers*, Forensic and Legal Medicine, 2008, p.237.

108 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/2016/06/14.03.21-MHIDGW-Immigration-detention-of-persons-with-mental-health-problems-consultation-response.pdf

Suicidal ideation is another significant issue in immigration detention. A Freedom of Information request submitted by Freedom from Torture uncovered that the number of detainees on suicide watch reached 541 in September 2018, a 5% increase compared to the previous 12-months. The same period saw an average of 41 incidents of self-harm recorded every month in Immigration Removal Centres, totalling 489 cases of self-harm.[109] This reflects the Royal College of Psychiatrists' belief that "[immigration] detention centres are likely to precipitate a significant deterioration of mental health in the majority of cases, greatly increasing both the suffering of the individual and the risk of suicide and self-harm".[110]

"Pre-existing mental health or physical trauma are seen to cause poor mental health in detention, and 'retraumatisation' is common."

Findings from the Shaw Review show that the severity of immigration detention's negative impact on the mental health increases the longer detention continues.[111] The report also states that pre-existing mental health or physical trauma are seen to cause poor mental health in detention, and that "retraumatisation" is common among this group.[112] The British Medical Association has reported that retraumatisation "can be triggered by something as innocuous as the sounds of keys jangling, or shouting from another room".[113] It is, therefore, extremely concerning that victims of human trafficking, many of whom have experienced severe mental and physical trauma on the hands of their traffickers, are being placed in immigration detention.

THE IMPACT OF DETENTION ON VICTIMS' PHYSICAL HEALTH

Immigration detention is also seen to negatively impact detainees' physical health. LEAG's findings echo reports from different experts, including the charity Medical Justice that noted that the culture of disbelief from detention healthcare staff towards detainees often leads to inadequate healthcare, including detainees being denied medicines or treatment and receiving poor emergency care.[114]

"Many detainees are not believed by medical staff even when they present serious symptoms."

Dr Charmian Goldwyn, a retired general practitioner who has been volunteering in immigration detention for over six years, has stated that many detainees are not believed by medical staff even when they present serious symptoms and that they are later admitted to the hospital for meningitis, tuberculosis, asthma and diabetes. He also reported that "detainees fear that the medical staff are 'in league' with the UK Border Agency and determined to pronounce them 'fit to fly', despite being very sick or in the middle of treatment."[115]

"Some detainees are going without medication during periods when doctors are not available to prescribe them, such as during night shifts."

In a recent report on the humanitarian impact of the UK immigration detention system, the British Red Cross found that access to medication is an

109 Emily Dugan, *A torture survivor was kept in detention for more than 13 weeks despite several suicide attempts*, BuzzFeed, 19 April 2019, https://www.buzzfeed.com/emilydugan/suicide-watch-is-on-the-rise-in-uk-immigration-detention-as

110 Royal College of Psychiatrists, *Position Statement on detention of people with mental disorders in Immigration Removal Centres*, 2013. Available at: http://www.medicaljustice.org.uk/wp-content/uploads/2016/06/Appendix-A-The-Royal-College-of-Psychiatrists-Position-Statement-on-detention-of-people-with-mental-disorders-in-Immigration-Removal-Centres.pdf

111 Mary Bosworth, *The impact of immigration detention on mental health*, Appendix 5 of the Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw, January 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

112 Ibid.

113 British Medical Association, *Locked up, locked out: health and human rights in immigration detention*, 2017, p.28. Available at: https://www.bma.org.uk/collective-voice/policy-and-research/ethics/health-and-human-rights-in-immigration-detention

114 See http://www.medicaljustice.org.uk/healthcare-in-detention/provision-of-healthcare-in-detention/

115 Clare Sambrook and Phil Miller, *The national shame that is healthcare in the UK immigration detention*, openDemocracy, 11 October 2014. Available at: https://www.opendemocracy.net/en/shine-a-light/national-shame-that-is-healthcare-in-uk-immigration-detention/

issue in Immigration Removal Centres, including lack of availability of medication needed by detainees. Detainees are also required to report to the dispensary every time they need to take their medication, which creates frustration for those who need to queue as often as three times a day access vital medication. It also means that some detainees are going without medication during periods when doctors are not available to prescribe them, such as during night shifts.[116]

CASE STUDY: HOME OFFICE FAILS TO IDENTIFY VICTIM WITH SEVERE HEALTH CONDITION[117]

Ruby worked as a toilet attendant in a nightclub, selling sweets, perfumes and toiletries. She was paid well below the minimum wage. Ruby was arrested during an immigration raid and taken to a detention centre where she stayed until indicators of human trafficking were picked up and she was referred to the NRM. Ruby is now supported by Ashiana Sheffield. The raid and arrest had a great impact on Ruby's emotional and physical health, including a severe physical condition that was not given proper care in detention.

Cases of improper physical care can also lead to worsening of mental health conditions for detainees. The charity Women for Refugee Women has described the case of Elizabeth, who was trafficked to the UK into domestic servitude and later locked up in Yarl's Wood for three months: "A pre-existing knee problem limited her mobility and meant that she experienced constant, intense pain. While she was detained, the healthcare service regularly disbelieved or dismissed her pain, denying her essential medication and physiotherapy. Because of this, her condition rapidly deteriorated, and she had thoughts about killing herself."[118]

"Doctors who work in closed settings, such as Immigration Removal Centres, may be subjected to subtle pressures which can potentially conflict with their responsibility to ensure detainees receive adequate care."

The British Medical Association has raised concerns about the 'dual loyalties' of doctors working in immigration detention. 'Dual loyalty' arises when doctors who have direct obligations to their patients, also owe additional obligations to a third party, such as the Home Office or Immigration Removal Centre staff. Doctors who work in closed settings, such as Immigration Removal Centres, may be subjected to subtle pressures which can potentially conflict with their responsibility to ensure detainees receive adequate care. Doctors in Immigration Removal Centres may also face challenges to their clinical independence, as they are faced with concern around security and management of resources of those running immigration detention centres, as well as direct or indirect pressure from the Home Office to declare a detainee 'fit to travel', and therefore, able to be removed. The British Medical Association explained: "in a setting where the main focus and aims are on detention and security, and where the potential for rights to be undermined can be strong, the principle of clinical independence can bring genuine benefits to detained individuals".[119]

116 British Red Cross, *Never truly free: the humanitarian impact of the UK immigration detention system*, 2018, p.24. Available at: http://blogs.redcross.org.uk/wp-content/uploads/2018/07/Never-Truly-Free-2018.pdf

117 Case study provided by Ashiana Sheffield.

118 Sarah Graham, *Detained, disbelieved, dismissed and denied essential medical treatment: healthcare in Yarl's Wood*, 05 December 2018, https://hystericalwomen.co.uk/2018/12/05/detained-disbelieved-dismissed-and-denied-essential-medical-treatment-healthcare-in-yarls-wood/

119 British Medical Association, *Locked up, locked out: health and human rights in immigration detention*, 2017, p.30. Available at: https://www.bma.org.uk/collective-voice/policy-and-research/ethics/health-and-human-rights-in-immigration-detention

RECOMMENDATION

TO THE UK GOVERNMENT:

- The UK government should commission an independent review on the impact of immigration detention on victims of human trafficking, including access to services to recover from trauma and exploitation, rates of mental and physical health issues among victims in detention, and long-term impact of confinement on their mental and physical health.

4.2 THE LONG-TERM IMPACT OF DETENTION ON VICTIMS OF HUMAN TRAFFICKING

> “Detention may replicate many of the experiences victims of human trafficking have had while being exploited.”

Detention may replicate many of the experiences victims of human trafficking have had while being exploited, including having their freedom restricted, limited private time, designated time and place to sleep and a regimented meal schedule, all of which are further intensified by the uncertainty around how long they will remain in this situation.

> “It is well documented that detention can be retraumatising for people who’ve experienced trauma. It is really hard to see how detention can be bearable to anyone but when it is [detention] of people who may have already experienced false imprisonment or been forced to work, undergone debt bondage, it is quite hard to see how you can deprive them of liberty in a way that would allow them to recover. Everything starts with taking care of that person in a non-restrictive environment.”
>
> **Bail for Immigration Detainees**

> “Victims who have spent time in immigration detention still experience a worsening in their mental health condition, spikes in suicidal ideation and feelings of panic that are triggered by contact with the Home Office.”

As part of their bail conditions, some victims of human trafficking are required to report regularly to the Home Office.[120] LEAG members stated that many victims who have spent time in immigration detention still experience a worsening in their mental health condition, spikes in suicidal ideation and feelings of panic that are triggered by contact with the Home Office**.** These issues extend beyond detention and can affect someone for years.

> “I have worked with vulnerable people whose mental health deteriorates when they are going to report to the Home Office because they are petrified of being detained. One of our clients who is now in the NRM was detained many, many years ago. He calls me every time he has to go to report [to the Home Office as part of his asylum application] because he is petrified of being detained again, and then, as a result, being removed. He is convinced that being in the NRM isn’t enough [to stop him from being detained].”
>
> **LEAG member**

The Shaw Review found that the negative effects of immigration detention endure long after a person is released from confinement. Researchers have documented problems of PTSD and nightmares in adults who have been released from detention, with those who have spent longer periods in confinement usually being affected more and for longer. Studies looking into the impact of immigration detention on former detainees’ mental health

120 UK Parliament, Human Trafficking: Written Question – HL14850, 05 April 2019, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2019-03-27/HL14850/

have identified negative consequences of detention three years after someone being released.[121]

In its interviews with 26 service users who had experienced immigration detention, the British Red Cross found that former detainees face continuous struggle with their mental health after leaving detention.[122] Some require ongoing psychological support, medication to cope with anxiety and depression as well as to be able to sleep. Others mention being unable to overcome the trauma from their time in detention as they are retraumatised every time they go to the Home Office to report. The Royal College of Psychiatrists supports this evidence, stating that people require assurance of safety and freedom from harm in order to recover from most mental illnesses,[123] which is not achieved when former detainees who have experienced high levels of trauma, such as victims of human trafficking in detention, are required to report to the Home Office as part of their bail conditions.

RECOMMENDATION

TO THE HOME OFFICE:

- Potential victims of trafficking should not be required to report to the Home Office while awaiting a conclusive grounds decision on their case. This would help to reduce some of the on-going impact of detention on potential victims and allow them to start recovering from the trauma they have experienced while in exploitation and during their time in detention.

121 Mary Bosworth, *The impact of immigration detention on mental health*, Appendix 5 of the Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw, January 2016, p.324. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

122 British Red Cross, *Never truly free: the humanitarian impact of the UK immigration detention system*, 2018, p.33. Available at: http://blogs.redcross.org.uk/wp-content/uploads/2018/07/Never-Truly-Free-2018.pdf

123 Royal College of Psychiatrists, *Position Statement on detention of people with mental disorders in Immigration Removal Centres*, 2013. Available at: http://www.medicaljustice.org.uk/wp-content/uploads/2016/06/Appendix-A-The-Royal-College-of-Psychiatrists-Position-Statement-on-detention-of-people-with-mental-disorders-in-Immigration-Removal-Centres.pdf

CONCLUSION

> “
>
> Individuals who have been identified as vulnerable by the detention gatekeeper should not be detained.”

While the UK government has made high profile commitments to combat human trafficking, this research shows major failings of the UK in its duty to protect potential victims of human trafficking. LEAG members have found serious and substantive failures to identify, refer and support potential victims of human trafficking in the UK.

Section 1 of this report showed that there is a gap between what front-line staff *believe* exploitation looks like and what victims *actually experience*, which is causing victims of trafficking to go unidentified. Section 2 focused on the limitations of the Home Office's 'Adults at Risk' policy and Rule 35 in creating opportunities to identify victims of trafficking, as well as the Home Office's lack of data on victims in detention and its impact on evidence-based policy making. Section 3 covered the intersection between detention and the NRM. It discussed the delays in reasonable grounds decision-making for potential victims in detention, victims being detained *after* being referred to the NRM and cases where the Home Office refused to grant bail despite a victim having received a positive reasonable grounds decision. Finally, Section 4 described the immediate and long-term mental and physical health impact of detention on victims, as well as cases of negligence by detention medical staff.

Failures in identification of victims of exploitation without or with insecure immigration status are leading many to spend extended periods of time in immigration detention, adding to the serious trauma they have experienced while in exploitation and creating long lasting impact on their physical and mental health. This research found repeated lack of understanding of indicators of human trafficking by frontline officials, including the Home Office, police and GLAA; low institutional prioritisation of the identification of human trafficking victims within the immigration detention system; a strong resistance to allowing detainees to leave detention; and the absence of an appropriate duty of care towards highly vulnerable individuals in detention. It is LEAG's view that these findings are leading to many potential victims of human trafficking in detention being overlooked, unidentified, poorly supported through the NRM and, at the very worst, removed from the UK at risk of being re-trafficked.

> “
>
> Those who are referred to the NRM should be immediately released from detention and provided with accommodation, psychological assistance and legal support.”

Individuals who have been identified as vulnerable by the detention gatekeeper should not be detained. Everyone under consideration for detention who has not been identified as vulnerable by the detention gatekeeper should receive independent legal advice and have their case decided by an independent judge. This would allow victims to disclose any cases of abuse and exploitation, as well as ensure that detention is only being used as a last resort. Increase in identification of victims inside immigration detention could be improved by introducing a government funded independent support provider with access to all Immigration Removal Centres to act as a first responder and a first point of contact for people who have experienced trauma, abuse and exploitation. The independent support provider could also act as a bridge between victims and the Home Office by ensuring that the victim has access to support if they choose to engage with the Home Office.

To reduce the negative mental and physical impact of detention on detainees, those who are referred to the NRM should be immediately released

> “The Home Office should start compiling and publishing data on victims of human trafficking in immigration detention to guarantee a fair evaluation of its practices.”

from detention and provided with accommodation, psychological assistance and legal support. This should also apply to those who have committed crimes as a result of their exploitation. Once outside detention, potential victims should not be required to report to the Home Office while awaiting their reasonable or conclusive grounds decision, as this contact is seen to worsen victims' mental health and cause spikes in suicide ideation. Finally, the Home Office should regularly publish data on victims of human trafficking in immigration detention to guarantee a fair evaluation of its practices in order to improve its policies and ensure that victims are better safeguarded.

LEAG looks forward to engaging with the government to improve the standard of identification in detention in order that one day we can ensure that no victim of human trafficking will be held in immigration detention and instead all can be afforded the high standard of care to which the UK has committed at the international and national level.

LEAG | LABOUR EXPLOITATION ADVISORY GROUP