

## Illegal Migration Bill – Committee Stage

### Amendments to protect survivors of trafficking

24 May 2023

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### Introduction

The Illegal Migration Bill as a whole is entirely unworkable and will be deeply damaging for everyone that it impacts, including survivors of modern slavery and trafficking. Far from its stated aim of "*breaking the business model of the people smugglers*" and "detering illegal entry into the UK", the Bill will instead deny refugees and survivors of trafficking the legal right to seek protection and rebuild their lives in safety.

Victims of trafficking will continue to come to the UK by irregular routes – including but not limited to people who have arrived crossing the English channel. Aspects of human trafficking can be the movement of people and the use of threat, force or fraud and the abuse of vulnerability to do this,<sup>1</sup> other trafficked people will continue to travel to seek safety and may be trafficked during, or following their journey. Preventing victims of trafficking from obtaining support and leaving them in fear of removal plays into the hands of traffickers, who will use this as a way to trap those already in exploitation or cause further exploitation.

**Clause 2** of the Bill places a new duty on the Home Secretary to take steps to remove anyone who entered the UK by means the Home Office deems irregular on or after 7 March 2023; did

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<sup>1</sup> This briefing refers to adult victims of trafficking. The definition of child trafficking differs slightly from that of adults, which requires an extra stage for trafficking to be present – that of the means, of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. The Means stage is not required for the definition of child trafficking.

not travel directly from a country in which their life and liberty was threatened for a Refugee Convention reason; and requires leave to remain in the UK but do not have it. Their asylum claims will be deemed 'inadmissible' - effectively introducing an 'asylum ban'.<sup>2</sup>

The above criteria will capture a large proportion of survivors of human slavery and trafficking, who frequently arrive 'irregularly'. The modus operandi of human traffickers is to recruit people from a position of vulnerability and/or by deception and coercion, and as such, the decision on the mode of entry is often entirely outside of their control - not just for those arriving by boat.

**Clause 21** removes almost all protections and support for survivors of trafficking who have received a positive reasonable grounds decision<sup>3</sup> and are subject to removal under Clause 2, which directs that:

1. There is no obligation to grant such potential victims leave to remain; and
2. They can be removed from the UK during their reflection and recovery period and before they receive a conclusive grounds decision<sup>4</sup>

Survivors of trafficking targeted by Clause 2 and 21 will receive no support for their recovery or protection in the UK; conversely, they are more likely to be detained and kept in a state of limbo while they face removal to unknown third countries, eradicating the safety and stability that they are supposed to receive under the National Referral Mechanism. There is a narrow exception outlined in Clause 21(3) for some individuals whose stay in the UK is deemed necessary by the Home Secretary for investigations or criminal proceedings relating to their exploitation. This is likely to apply to an extraordinarily limited number of people. The Government has also added a presumption that it is not necessary for a person to be in the UK in order to cooperate with an investigation and/or prosecution unless there are '*compelling circumstances*', to be determined with regard to new statutory guidance

These provisions would be in direct breach of the UK's international legal obligations. The prohibition on removal linked to the 'Reflection and Recovery' period, as well as the requirement to provide support all fall within the scope of Article 4 ECHR (Prohibition of slavery and forced labour).<sup>5</sup> No exceptions can be made to these requirements.

### ***Our ask***

There are many important amendments tabled, seeking to mitigate the harms of the 'Illegal Migration' Bill. Among others, we urge Peers to support four probing amendments at the Lords Committee stage of the bill, covering the following areas:

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<sup>2</sup> <https://www.unhcr.org/uk/news/statement-uk-asylum-bill>

<sup>3</sup> A 'reasonable grounds' decision is the first stage decision, made by the competent authority on the threshold of 'suspect but cannot prove'. This decision is made following a referral to the National Referral Mechanism (NRM)

<sup>4</sup> A 'conclusive grounds' decision is the final stage decision, made by a competent authority on whether someone is deemed to be a victim of modern slavery.

<sup>5</sup> See *VCL & AN v The United Kingdom* (Applications nos. 77587/12 and 74603/12); *Chowdhury & Ors v. Greece* (Application No. 21884/15, 30 March 2017).

- Access to protection and support for victims of trafficking. Amendments 87 and 89 tabled by Lord Coaker, supported by the Bishop of Bristol.
- International Compliance with the UK's international obligations under the European Convention on Human Rights (ECHR), the Anti-trafficking Directive and the Council of Europe Convention for Action Against Trafficking in Human Beings (ECAT). Amendment 84 tabled by Lord Alton, supported by Baroness Hamwee.
- Creation of secure reporting pathways to encourage the reporting of crimes including trafficking, ensuring that perpetrators can't act with autonomy. Amendment number 139A, tabled by Lord Alton.
- Access to early legal aid, to inform consent, facilitate access to justice and to support disclosure. Amendment 92A tabled by Lord Alton.

## Access to long term protection and support

The disapplication of Modern Slavery Provisions within the Bill is a huge step backwards from the progress made following the introduction of the Modern Slavery Act 2015 and accompanying Statutory Guidance. By restricting access to the UK's National Referral Mechanism (NRM) and the asylum system, the Bill is placing power in the hands of the traffickers and is likely to lead to people either remaining in exploitation or at increased risk of further exploitation. The Bill will mean that people who entered the UK irregularly after 7 March will not have any way of regularising their status in the UK whatever their circumstances. This will create a situation of limbo for many people who will be left with the uncertainty of not knowing what will happen, without adequate support, which only compounds their risk of being re-trafficked or exploited further and will lead to a deterioration in their mental health.

The stated rationale behind these provisions is that the system is being 'gamed'. There is no evidence for this<sup>6</sup>. A very low proportion of the estimated number of victims in the UK are ever referred into the NRM. The Global Slavery Index estimates that there are currently over 122,000 people living in modern slavery in the UK, or 1.8 people in slavery per 1,000 people.<sup>7</sup> This is higher than the Centre for Social Justice's 2020 figure of at least 100,000 victims in the UK.<sup>8</sup> However in 2022 fewer than 17,000 people were referred into the UK's NRM as potential victims.<sup>9</sup> This means that, in contrast to government claims of misuse and abuse of the UK's slavery systems, we are seeing far fewer people entering the NRM than should be, due to the Government's refusal to ensure the system provides meaningful protection and long-term support to victims and survivors of modern slavery and trafficking. This lack of a victim centered approach means that it is no surprise that an increasing number of individuals are actively refusing to give their consent to enter the NRM,<sup>10</sup> as they do not see that the identification system works in their best interests. While the identification decisions are intended to be made 'as soon as possible'<sup>11</sup> following the 30 days 'Reflection and Recovery'

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<sup>6</sup> The government's un evidenced claims and inflammatory rhetoric have been roundly criticised by a number of United Nations Special Rapporteurs; the former Independent Anti-Slavery Commissioner Dame Sara Thornton; the Office for Statistics Regulation, the Gangmasters and Labour Abuse Authority and by the anti-trafficking sector.

<sup>7</sup> <https://www.walkfree.org/global-slavery-index/country-studies/united-kingdom/>

<sup>8</sup> It still happens here: fighting UK slavery in the 2020s. (2020) Centre for Social Justice, Justice and Care.

<sup>9</sup>

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022#:~:text=In%202022%2C%20the%20NRM%20received,the%20NRM%20began%20in%202009.>

<sup>10</sup> Public authorities have a statutory duty to notify the Home Office when they come across potential victims of modern slavery. When individuals refuse to be entered into the NRM, public authorities record this in a Duty to Notify report (DtN). 2022 marked a 43.57% increase from 2021 in the number of people actively refusing their consent to enter the NRM - this was the highest annual number since the NRM began in 2009. 63% of these refusals were recorded by the Home Office.

<sup>11</sup>

[https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#Referring\\_potential\\_victims](https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northern-ireland#Referring_potential_victims) para 7.9

period it is not unusual for people to be waiting in the system, in limbo, for years<sup>12</sup>. People in the NRM are expected to have disclosed enough of their trauma and secured evidence of this in order to support a ‘conclusive grounds’ decision within 30 days only then, in the majority of cases, to wait for years before a decision is made. Those who do not already have the appropriate immigration status are not given permission to work while in the NRM. This means the system expects people who may be in debt bondage or who have been pushed into exploitation due to poverty to put their lives on hold indefinitely, compounding the impact of their trafficking and their trauma and indeed resulting in some being left with no option but to return to exploitative situations.

Even when survivors do receive a positive ‘conclusive grounds’ decision confirming they are a victim of trafficking, very few are subsequently granted leave to remain.<sup>13</sup> The circumstances where leave will be granted are increasingly narrow. Between 2020 and 2022, 5,578 adults were confirmed as victims of trafficking<sup>14</sup>. However, only 364 adults subject to immigration control were granted discretionary leave as a result – under 6%<sup>15</sup>. Across the whole NRM system, Home Office data shows that 63% of adult victims who were granted leave in 2022 were granted leave of just 6-12 months, while 25% were granted leave for less than 6 months.<sup>16</sup> It is impossible for survivors to recover and rebuild their lives while living with the insecurity that comes with having no leave, or very short-term leave. Recognising the harmful impact that immigration insecurity has on survivors, research by organisations including the British Red Cross has called for people with positive conclusive grounds decisions to be automatically awarded leave to remain as a survivor of modern slavery for a minimum of 30 months.<sup>17</sup>

Granting leave to survivors to allow them to move on from exploitation and begin to rebuild lives also makes economic sense. As well as decreasing risks of re-exploitation, including re-trafficking. A Cost Benefit Analysis shows significant financial benefits from victims being enabled to move on and rebuild lives as well as a great number of unquantifiable benefits.<sup>18</sup>

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<sup>12</sup> The average (median) time taken from referral to conclusive grounds decisions made in January to March 2023 across the competent authorities was 566 days -

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-january-to-march-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2023-january-to-march>

<sup>13</sup> Now known as ‘temporary permission to stay’

<sup>14</sup> Table 19 of *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022: data tables* at

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>

<sup>15</sup> Freedom of Information Request reference: 71848, answered by the Home Office on 5th December 2022; and Freedom of Information Request reference: 73773, answered by the Home Office on 12th May 2023.

<sup>16</sup> Freedom of Information Request reference: 71848, answered by the Home Office on 5th December 2022; and Freedom of Information Request reference: 73773, answered by the Home Office on 12th May 2023.

<sup>17</sup> See, for example,

<https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/human-trafficking-and-slavery/after-the-national-referral-mechanism-report>

<sup>18</sup> The Modern Slavery (Victim Support) Bill. A cost benefit Analysis. (2019) University of Nottingham Rights Lab

National Referral Mechanisms are a vital part of any country's efforts to address the problem of trafficking and modern slavery. There are a number of simple changes that would ensure that the UK's NRM system meets people's needs rather than prolonging the harmful impact of trafficking. However, at present anyone currently within the NRM system is at least protected from immediate removal from the UK, except in narrow circumstances. The Bill seeks to change this so that a person can be removed before receiving a conclusive grounds decision, if they fall under clause 2.

Should the Illegal Migration Bill come into force, what limited protections are available will be so severely stripped back that a large proportion of victims and survivors of trafficking will be entirely prevented from accessing protection and rebuilding their lives in safety.

In order to get long-term protection in the UK, for those who fear returning to their country of origin, as well as being referred into the NRM many will also claim asylum. The trafficking experience of survivors, and risk of being re-trafficked if returned to their country of origin, can form part or all of the grounds for their asylum claim. There is no published data on how many people seeking asylum are survivors of trafficking nor on how many are in both the asylum system and NRM, but 93% of Helen Bamber Foundation clients who are survivors of trafficking are in both systems which is indicative of the arguments that the NRM is not providing the long-term support that survivors require.

In order to actually break the business model of the traffickers, it is imperative that the Government puts forward a positive solution, something they are worlds away from doing with the Bill. Protection and support measures must be put in place that allow people to come forward about their exploitation without fear of repercussion and in the knowledge that they will receive meaningful protection and help to recover from their trafficking experience. The provisions contained within this Bill risk the very real re-traumatisation of survivors of trafficking, and actively embolden exploiters who will use the threat of removal to trap their victims in exploitation.

**Amendments number 87 and 89** would enable victims of trafficking to access meaningful long-term support and recovery, to rebuild their lives, access justice and to break the cycle of trafficking and re-trafficking. It would enable those who receive a positive reasonable grounds decision to no longer be subject to the Clause 2 duty of removal and would enable access to the asylum system and other long-term support for those that require it.

**Amendment number 87**

**Amendments that allows an adult VoT to enter the NRM and get access to long-term support (either asylum or alternative visa for eg T-Visa)**

Clause 21, page 26, line 10

leave out paragraphs (a) to (c) and insert—

“(a) a decision has been made by a competent authority that there are reasonable grounds to believe that an adult is a victim of slavery or human trafficking (a “positive reasonable grounds decision”), and

(b) a decision is subsequently made by a competent authority that an adult is a victim of slavery or human trafficking (a “conclusive grounds decision”).”

**Member's explanatory statement**

This amendment is part of a package which seeks to probe how victims of modern slavery can enter the national referral mechanism and receive appropriate support.

**Amendment number 89**

Clause 21, page 26, line 19

leave out subsection (4) and insert—

“(4) Where subsection (3)(b) applies, an adult must be granted—

(a) a residence permit lasting for a period of at least 30 months, and

(b) access to support services.”

**Member's explanatory statement**

This amendment is part of a package which seeks to probe how victims of modern slavery can enter the national referral mechanism and receive appropriate support.

**Case study on the need for long-term support<sup>19</sup>**

SM is a survivor of trafficking who arrived in the UK on a small boat after escaping his home. Over his journey to the UK, he was transported through Turkey and various countries in

<sup>19</sup> Case study supplied by Helen Bamber Foundation

Europe. During this time, SM was sexually abused, exploited for forced domestic work, and suffered other forms of inhuman treatment. Upon arrival in the UK, SM was detained immediately and claimed asylum on the same day.

Given that his asylum claim was under consideration, SM was released from detention within 2 days. However, he was detained again five months later due to his scheduled removal to a 'safe' third country. This 'safe' country was where SM had been tortured. While the Home Office recognised his vulnerability in its assessment, it decided to keep him in immigration detention.

SM's mental health continued to deteriorate while he remained in detention and was diagnosed by a psychiatrist with PTSD, depression, and anxiety. His lawyer's urgent request led the Home Office Immigration Enforcement to refer him into the NRM. Within four days, the Home Office assessed that there were reasonable grounds to conclude SM to be a victim of modern slavery.

Months after his release from detention, SM was referred to the Helen Bamber Foundation (HBF) and he began to receive multidisciplinary care for his recovery. HBF provided clinical evidence to support his NRM and asylum claims.

Over 21 months after his NRM referral, SM received a positive conclusion grounds decision. Another 12 months passed before he was finally granted discretionary leave to remain in the UK but he only received six months leave. HBF had to provide further evidence setting out why 6 months leave was insufficient for him to be able to access and complete the therapeutic support that he required to aid his recovery. In the interim SM was granted refugee status on the basis that he was at risk of being re-trafficked and he has now been able to start rebuilding his life.



## International Law Obligations on Human Trafficking

It is inarguably clear that the clauses of the Illegal Migration Bill dealing with modern slavery and trafficking breach the UK's obligations to victims of trafficking under Article 4 ECHR, the Anti-trafficking Directive and ECAT. Article 4 ECHR and ECAT both prohibit slavery and trafficking and place positive obligations on the UK to protect victims of trafficking, to prevent their exploitation and to prosecute perpetrators. Article 4 ECHR is not a right from which the UK can derogate in times of emergency.<sup>20</sup> States are obliged to set up a *'spectrum of safeguards [which] must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking'*.<sup>21</sup> The positive 'protection' duty has *'two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery'*.<sup>22</sup>

The ECHR Memorandum<sup>23</sup> published with the Bill states that the Government believes its provisions can be applied compatibly with Article 4 ECHR and ECAT. This is plainly incorrect:

1. The Government has attempted to justify the denial of support and protection for victims and survivors of trafficking by using the public order exemption under Article 13 of ECAT.<sup>24</sup> The compliance with ECAT is 'premised' on deeming all victims of trafficking who fall within these measures as a 'threat to public order',<sup>25</sup> which they are not. There is no basis in law for such a wide use of that provision. This seemingly blanket policy of saying that someone's arrival through an irregular route means that they present a threat to public order is in breach of the non-punishment principle contained within ECAT.<sup>26</sup> The Article 13 exemption cannot be applied to convictions for activity the person was compelled to do as a victim of slavery or human trafficking, and moreover, an individual risk assessment should be conducted. It cannot simply be said that individuals present such an ongoing risk to public order as to come under this exemption by the mere fact that they arrived in the UK through an irregular route.
2. Victims targeted by Clause 2 will receive no support for their recovery or protection in the UK; conversely, they will be detained and face removal to unknown third countries. The prohibition on removal linked to the 'Reflection and Recovery' period, as well as the requirement to provide support all fall within the scope of Article 4 ECHR (Prohibition of

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<sup>20</sup> Article 15(2) ECHR.

<sup>21</sup> *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1 [284].

<sup>22</sup> *VCL and AN v UK* (App. Nos. 74603/12 and 77587/12) [159].

<sup>23</sup> Home Office, 'Illegal Migration Bill: European Convention on Human Rights Memorandum' (7 March 2023) accessed 10 March 2023.

<sup>24</sup> Illegal Migration Bill Explanatory Notes (7 March 2023), para 135.

<sup>25</sup> Home Office, 'Illegal Migration Bill: European Convention on Human Rights Memorandum' (7 March 2023) at [45] <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/ECHR%20memo%20Illegal%20Migration%20Bill%20FINAL.pdf>

<sup>26</sup> ECAT, Article 26 'Non-punishment provision'.

slavery and forced labour).<sup>27</sup> No exceptions can be made to these requirements. Moreover, it should be noted that Article 4 is non-derogable under Article 15 ECHR (Derogation in time of emergency). Ultimately, this places survivors at a real risk of re-trafficking.

3. The only exception to these measures for a person who falls within them is to make a claim that they would face a real risk of serious and irreversible harm on removal; this is much more restrictive than the standards to be applied under the ECHR and ECAT.

These provisions would eradicate protections for victims of trafficking and modern slavery in the UK for non-UK nationals who enter the UK irregularly, enabling trafficking gangs and undermining the UK's anti-slavery efforts. It is a flagrant breach of international and domestic law. On 29 March 2023, the Group of Experts on Action against Trafficking in Human Beings (GRETA), who are responsible for monitoring the implementation of ECAT, stressed that, *'if adopted, the Bill would run contrary to the United Kingdom's obligations under the Anti-trafficking Convention, to prevent human trafficking, and to identify and protect victims of trafficking, without discrimination.'*<sup>28</sup>

When the UK Government applied to opt into the Anti-trafficking Directive in 2011 they advised Parliament that *'applying to opt in to the directive would continue to send a powerful message to traffickers that the UK is not a soft touch, and that we are supportive of international efforts to tackle this crime.'*<sup>29</sup> According to the Modern Slavery Strategy (2014) opting in demonstrated *'our commitment to working with other countries in Europe to drive up standards across the continent in tackling trafficking.'*<sup>30</sup>

Further, the 'no diminution of Rights, Safeguards and Equality of Opportunity' commitment in Article 2 of the Windsor Framework/Protocol, extends to the Anti-trafficking Directive.<sup>31</sup> The non-diminution principle explicitly applies to victims and survivors of trafficking in Northern Ireland.<sup>32</sup> Further, this Bill contravenes from The Human Trafficking and Exploitation (Criminal

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<sup>27</sup> See: *VCL & AN v The United Kingdom* (Applications nos. 77587/12 and 74603/12); *Chowdhury & Ors v. Greece* (Application No. 21884/15, 30 March 2017).

<sup>28</sup> Council of Europe, UK's Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention", says GRETA (29 March 2023) at <https://www.coe.int/en/web/portal/-/uk-s-illegal-migration-bill-should-be-reviewef...lure-it-complies-with-the-anti-trafficking-convention-says-greta>

<sup>29</sup> <https://www.gov.uk/government/speeches/eu-directive-on-human-trafficking>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97846/human-trafficking-legislation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97846/human-trafficking-legislation.pdf), p.3

<sup>31</sup> NIHRC-ECNI, Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol (December 2022), para 3.2.

<sup>32</sup> *Ibid*, para 3.4.

Justice and Support for Victims) Act (Northern Ireland) 2015.<sup>33</sup> It must be noted that modern slavery and human trafficking are a devolved matter across the nations within the UK.

The current Bill disapplies a number of provisions contained within Anti-trafficking Directive and subjects victims or potential victims of trafficking to detention and removal, in clear breach of the Directive. If enacted in its current form, this Bill would violate the UK's commitments under Article 2 of the Windsor Framework/Protocol.

**Amendment number 84**

**An amendment that requires compliance with ECAT, the Anti-Trafficking Directive and the ECHR**

Clause 21, page 25, line 31

at end insert—

“(A1) No provision of this Act is to be interpreted or applied in a manner which would result in incompatibility with or contravention of the UK’s obligations under the Council of Europe European Convention on Action against Trafficking, or the EU Anti Trafficking Directive, or the European Convention on Human Rights or is to be taken as authorising decisions or policies which would have this result.”

**Member's explanatory statement**

This amendment ensures compliance with relevant international anti-trafficking legislation.

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<sup>33</sup> *ibid*, para 4.1.

## Secure reporting

Where victims and survivors of trafficking do not have secure migration status, they will often feel unable to report instances of abuse and exploitation to the police (or other authorities, such as labour market enforcement) due to the fear that authorities will prioritise their immigration status over the crimes that they have faced or wellbeing. This acts to heighten their existing vulnerability, with abusers able to take advantage of this dynamic, and act with impunity. This will be compounded by the Bill despite the inclusion of Clause 21(3) which offers no guarantees to victims that they will be believed, be considered a victim, or that there will be any investigation of their case. This may be due to factors well outside of their control including if their exploiter is still in the UK, availability of supporting evidence and policing priorities. Nor does it offer any long-term security, including against being made dependent again on the very traffickers an individual has made disclosures about.

Ultimately, as victims are made too fearful to come forward, the police are unable to prevent and address serious crime, like modern slavery, without access to the intelligence needed to identify and prosecute perpetrators. Where immigration enforcement is prioritised, migrant victims of crime are unable to avail of safety and justice, and offenders are able to continue to drive others into exploitation. This undermines public safety as a whole. The extremely narrow and insufficient exception contained in Clause 21(3) (as outlined in greater detail below) remains wholly inadequate to address this concern. When a victim is arrested, detained or removed on the back of the police sharing their insecure migration status with immigration enforcement, the message that is being sent out to other migrants is that they are not safe to report their abuse, something that a trafficker will often threaten will happen.

***“I would raise a complaint if I was protected in some way against deportation.”***

**Renata (Brazilian survivor of labour exploitation in the UK)<sup>34</sup>**

This Bill will act to empower traffickers, who will have an additional weapon in their arsenal to coerce victims. It enables them to act with impunity with little chance of victims being able to either escape their situation or also engage with criminal investigations. We have seen this in relation to the children who were coerced into exploitation directly through reference to the removal schemes that the Government is seeking to extend through this Bill. Speaking in relation to the children who went missing from Home Office run accommodation earlier this year, one source stated that *“traffickers tell them they’ll be sent to Rwanda if they stay in the hotel.”*<sup>35</sup>

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<sup>34</sup> [https://labourexploitation.org/app/uploads/2022/02/Preventing\\_and\\_addressing\\_abuse\\_and\\_exploitation\\_FINAL-2.pdf](https://labourexploitation.org/app/uploads/2022/02/Preventing_and_addressing_abuse_and_exploitation_FINAL-2.pdf), p.9

<sup>35</sup>

<https://www.theguardian.com/uk-news/2023/jan/21/they-just-vanish-whistleblowers-met-by-wall-of-complacency-over-missing-migrant-children>

Secure reporting pathways<sup>36</sup> are necessary to ensure that victims of modern slavery with insecure immigration status can come forward to labour market or law enforcement without fear of their information being shared with immigration enforcement.<sup>37</sup> The government must adopt a victim-centred approach to address and identify human trafficking and modern slavery, and ensure that immigration enforcement is separated from trafficking and exploitation responses through the creation of secure reporting procedures and processes in law enforcement and labour market enforcement.

### **Amendment number 139A**

#### **An amendment on secure reporting**

After Clause 60 insert the following new Clause—

“(1) The Secretary of State must, by regulations, make provisions for the prohibition of automatic sharing of personal data of a victim or witness of crime for the purposes of section 2(1).

(2) In section 20 of the Immigration and Asylum Act 1999, after subsection (2B) insert—

“(2C) For the purposes of section 2(1) of the Illegal Migration Act 2023, this section does not apply to information held about a person as a result of the person reporting criminal behaviour which they are a victim of or a witness to.””

#### **Member's explanatory statement**

This new Clause would prevent immigration data being shared for the purposes of section 2(1) about a victim or witness of crime who reports an offence. This is to ensure victims are able to approach the authorities for assistance without fear of removal under section 2(1) as a result of that contact or resultant data sharing with immigration enforcement.

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<sup>36</sup> Organisations working in the immigration, women and labour rights sectors use both safe reporting and secure reporting to describe a mechanism to ensure that victims and workers with insecure immigration status can report crime without facing negative consequences in regards to their legal status. This is relevant for all parties involved in the protection of vulnerable victims and workers, such as police and labour inspectorates.

<sup>37</sup> For more information, please see:

[https://labourexploitation.org/app/uploads/2022/02/Preventing\\_and\\_addressing\\_abuse\\_and\\_exploitation\\_FINAL-2.pdf](https://labourexploitation.org/app/uploads/2022/02/Preventing_and_addressing_abuse_and_exploitation_FINAL-2.pdf);

<https://labourexploitation.org/publications/opportunity-knocks-improving-responses-to-labour-exploitation-with-secure-reporting/>.

## Legal Aid

Provision of legal aid to individuals who seek redress is not simply a matter of compassion; it is a key component in ensuring the constitutional right of access to justice, itself inherent in the rule of law.<sup>38</sup> The courts have repeatedly upheld the principle that a failure to provide legal aid can amount to a breach of fundamental rights.<sup>39</sup> Legal aid is essential in ensuring that people without means can secure effective access to justice and redress.

### **The importance of access to legal advice for survivors of trafficking and modern slavery**

Legal advice and representation is critically important for survivors of trafficking and modern slavery. It is a fundamental part of the support that survivors need to recover and rebuild their lives. It is the key to being formally recognised as a victim, accessing safe housing and support, upholding rights, and accessing justice and remedy. For non-UK citizens who have experienced trafficking and modern slavery, one of the most pressing legal problems faced is frequently the need to gain a secure immigration status, which is the basis for these survivors to be able to access broader support and entitlements and make progress towards recovery without the risk of being removed to harm. Access to support, safety, and secure status allows survivors the breathing space to make choices, seek mental health support, and to consider engaging with criminal prosecutions.

### **Crucial but unavailable: Key areas of advice out of scope of legal aid**

Despite its critical importance, victims and survivors of trafficking and modern slavery are not able to access timely and quality, legally aided advice and representation when they need it.

There are three areas of important legal advice and representation that are out of scope for legal aid in England and Wales. Legal aid is not available for early advice prior to a referral in the National Referral Mechanism, apart from for a very limited group of survivors who are already accessing advice on certain in scope immigration matters or advice about judicial review<sup>40</sup>. It is also not available for advice about trafficking identification or the Criminal Injuries Compensation Scheme.

The Exceptional Case Funding (ECF) regime is in place to provide legal aid to those who would otherwise suffer a breach of a Convention right. In theory, survivors could apply for Exceptional Case Funding (pursuant to section 10 of LASPO) for legal advice on some of the issues they face including immigration advice and pre-NRM advice. However, in practice, applications for ECF are very slow and take months, are frequently refused by the Legal Aid Agency, and are therefore viewed as an unacceptable risk by most legal aid providers. For example, a survey by ATLEU in

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<sup>38</sup> Echoing the words of Lord Reed in *R (Unison) v Lord Chancellor* [2017] UKSC 51 at §66.

<sup>39</sup> *R (oao Gudunaviciene & Others) v Director of Legal Aid Casework and Lord Chancellor* [2014] EWCA Civ

<sup>40</sup> The Nationality and Borders Act 2022 provides legal aid for advice prior to referral into the NRM and receipt of a Reasonable Grounds decision where a survivor is already accessing advice on certain in scope immigration matters or advice about judicial review (ie. advice that falls within Part 1 Schedule 1 of LASPO).

2020 demonstrated that 93% of applications made to the LAA for ECF funding to prepare and submit a CICA application were refused.

The vast majority of survivors who are unable to get legal aid will be forced to go without legal advice and representation as they cannot otherwise afford to pay for it, while others will borrow large sums to do so, ending up in debt, which drives vulnerability to further exploitation.

### **Early legal advice - more important than ever under the Illegal Migration Bill**

Changes to the Reasonable Grounds threshold and the standard of proof required to reach this under the Nationality and Borders Act have made the need for tailored and specialist advice prior to entry into the NRM more important than ever for survivors. The Illegal Migration Bill, with its devastating proposed impact on the ability of victims and survivors of trafficking and modern slavery to access safety, support and recovery makes this all the more urgent. Access to early legal advice would also encourage victims and survivors to come forwards, seek assistance, and report this crime. It would therefore help to counter the very damaging impact of the Bill which is that it will deter victims from seeking support and reporting the crime against them, driving trafficking and modern slavery underground and playing into the hands of traffickers.

Despite this, the Bill does not secure or ensure the right of individuals to free legal advice and representation for all affected by it. On introduction, it contained no specific provisions on legal aid in England, Wales, or in the other devolved nations. At Report Stage in the House of Commons, Clause 54 was introduced to the Bill. However, it only ensures that provision of civil legal services to a person in receipt of a removal notice is in scope of legal aid. Prior to receipt of a removal notice, the provision does not confirm or secure access to free legal advice in relation to making an asylum or human rights claim. Furthermore, the Bill does not ensure such provision in Scotland and Northern Ireland. The Bill makes no provision for access to legal aided advice and representation prior to referral into the NRM or for advice on trafficking identification.

### **The importance of access to early legal advice**

Since the inception of the NRM, the anti-trafficking sector has called for legal advice before entering the NRM to be in scope for legal aid for all survivors.

It is a requirement that adults who are considered to be potential victims of trafficking and modern slavery provide informed consent to their referral into the NRM. Informed consent is widely acknowledged as a critical component in empowering survivors.<sup>141</sup>

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<sup>41</sup>Principles that underpin early support provision for survivors of trafficking, produced jointly by the British Red Cross, the Human Trafficking Foundation, the Anti-Trafficking Monitoring Group, and Anti Trafficking and Labour Exploitation Unit (2018) at:

Yet, there are concerns about the extent to which survivors are genuinely given the opportunity to give informed consent at present. NRM referrals are often done in stressful and overwhelming contexts, such as Home Office asylum interviews or following police raids, and have the potential to re-traumatise survivors. Without the First Responder adequately explaining the NRM or adopting a trauma informed approach, the risk of survivors being unable to give complete and accurate statements, or the transcripts of this information containing errors, is high.

Legal advice prior to entering the NRM is therefore crucial for survivors to make a genuinely informed decision about whether or not to do so. A lack of advice at the pre-NRM stage may leave victims unwilling to enter the NRM if they are not clear about its impact on immigration status and the support they are entitled to. In 2021, the Home Office received 3,190 reports of potential adults victims of trafficking and modern slavery that had not given consent to be referred into an NRM, a 47% increase from 2020.<sup>42</sup> The identification of victims and their access to support and recovery is also a crucial component to achieving successful prosecution of perpetrators.

A joint report from UNHCR and the British Red Cross<sup>43</sup> published in August 2022 recommended that the Ministry of Justice should 'seek amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 so that potential victims of modern slavery are eligible for legal advice funded by civil legal aid prior to entering the NRM.'

### **A legal advice crisis**

The Illegal Migration Bill comes at a time of a crisis in the legal aid sector. Survivors of trafficking and modern slavery are now significantly less able to access legal advice when they need it since LASPO came into force because many areas of legal advice that were previously covered by legal aid were removed. The result is that legal aid is now no longer available for most non-asylum immigration work. It is also no longer available for many social welfare matters, thus delaying access for many other issues until crisis point. Together with other legal aid cuts and the impact of austerity, the impact on the legal aid sector has been devastating.

There is a huge discrepancy between the demand for legal advice on trafficking and modern slavery cases, and available supply. An October 2022 report by the Anti Trafficking and Labour Exploitation Unit (ATLEU) reveals a staggering 90% of support workers surveyed struggled to find a legal aid immigration lawyer for a survivor of trafficking and modern slavery in the past year, with devastating impacts.<sup>44</sup> More than half of respondents (55%) said that the lack of

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<sup>42</sup>Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021.

<sup>43</sup> British Red Cross and UNHCR, *At Risk: Exploitation and the UK Asylum System*, (August 2022), para 4.4.

<sup>44</sup> Anti Trafficking & Labour Exploitation Unit (ATLEU) "'It has destroyed me": A legal advice system on the brink' (2022).



access to timely and quality legal advice and representation had left survivors they support unable to access appropriate accommodation or destitute. 97% said it caused survivors stress, anxiety or contributed to poor mental health. 64% said it resulted in the survivor being unable to meet a deadline in their case, for example with the Home Office. 57% said it left survivors in a position where they were unable to claim asylum, others shared experiences of survivors being detained or at risk of removal, and 29% of respondents said it had left survivors in a situation of exploitation. Significant capacity within the anti-trafficking support sector is spent on searching for legal representation, detracting from their ability to support the core needs of survivors.

The primary cause of this legal advice crisis for survivors of trafficking and modern slavery is the legal aid funding system. There are a number of interrelated issues with the legal aid scheme which mean that taking on cases involving victims of trafficking and modern slavery is not viable or sustainable for many legal aid providers. This is because they are uniquely complex, long-running and costly, and therefore are ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out. This also deters the development of specialist expertise, and encourages restricting the level of work carried out on a case, which can lead to poor quality advice and representation.

### **Amendment number 92A**

#### **An Amendment on early access to legal aid**

After Clause 21, insert the following new Clause—

“Early access to legal aid

(1) After paragraph 32A (victims of slavery, servitude or forced or compulsory labour) of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 insert—

“32B

(1) Civil legal services provided to an individual who is subject to removal to a third country under the Illegal Migration Act 2023, or who might reasonably suspect they are subject to removal under that Act, in relation to referral into the national referral mechanism and connected HL Bill 133—l(a) 58/3 immigration advice and representation, where there is no other provision for this within the scope of legal aid. General exclusions

(2) Sub-paragraph (1) is subject to the exclusions in Part 2 of this Schedule. Specific exclusions

(3) The civil legal services described in sub-paragraph (1) do not include—

(a) advocacy, or

(b) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of a reasonable grounds decision or a conclusive grounds decision.”

(2) In regulation 11(9) of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104) (qualifying for civil legal services: cases in which merits criteria do not apply), at end omit the full stop and insert—

“(e) or, for an individual who is, or might reasonably suspect they are, subject to removal to a third country under the Illegal Migration Act 2023, in relation to any matter described in paragraph 32B of Part 1 of Schedule 1 to the Act (civil legal services provided to an individual in relation to referral into the national referral mechanism).”

(3) In regulation 5(1) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480) (exceptions from requirement to make a determination in respect of an individual’s financial resources), after paragraph (r), omit the full stop and insert “and,

(s) for an individual who is, or might reasonably suspect they are, subject to removal to a third country under the Illegal Migration Act 2023, civil legal services described in paragraph 32B of Part 1 of Schedule 1 to the Act (civil legal services provided to an individual in relation to referral into the national referral mechanism).””

#### **Member's explanatory statement**

This new clause would give individuals subject to, or who might reasonably suspect they are subject to, removal to a third country under this Act access to early specialist legal advice, which is not means- or merits-tested, allowing for informed consent to a trafficking referral. The intention is that potential victims of modern slavery or human trafficking in that position will be able to understand what the NRM is and what it does, and provide informed consent to be referred into it. This expands the support available for advice on referral into the NRM, which is currently only available if you have a matter that falls within scope of certain types of legal aid.

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