

Call for evidence: An inspection of the Immigration Enforcement Competent Authority

The Taskforce on Survivors of Trafficking in Immigration Detention (Detention Taskforce) submission

## **Who we are:**

Established in 2019, The Taskforce on Survivors of Trafficking in Immigration Detention (Detention Taskforce) is comprised of 13 expert organisations working with, or for, victims of trafficking. The Detention Taskforce works to ensure no victim of trafficking is treated as an immigration offender and locked in immigration detention.

Detention Taskforce members: Helen Bamber Foundation (Chair); Focus on Labour Exploitation (Coordinator); After Exploitation; Anti-Trafficking & Labour Exploitation Unit (ATLEU); Anti-Slavery International; Association of Visitors to Immigration Detainees (AVID); Bail for Immigration Detainees (BID), Detention Action; Duncan Lewis Solicitors; ECPAT UK; Jesuit Refugee Service; Medical Justice; Unseen.

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*This submission will primarily focus on the impact of survivors of trafficking who are, or have been in, immigration detention, in line with the remit of the coalition, however we consider that many of the issues raised will apply to survivors of trafficking who receive IECA decisions more broadly.*

## **Introduction**

On the 8th of November 2021 the Home Office created a new decision-making body (Competent Authority) for the stated purpose of identifying victims of modern slavery. However, the priorities of this decision-making body are clear from its title: the Immigration Enforcement Competent Authority (IECA).

The Detention Taskforce, and its members, has been highlighting our deep concern regarding the IECA, in terms of its impacts on victims and survivors of trafficking and the manner in which it was established, since it was announced.<sup>1</sup> The creation of the IECA marked a regressive step back to a two-tier system, as we saw with the two-designated Competent Authorities when the NRM was first set up in 2009.

In 2014, the Government's own review of the National Referral Mechanism (NRM) found serious issues with having two separate decision making bodies (such as the conflation of asylum and trafficking matters), and in response set up the Single Competent Authority (SCA), a single, expert unit completely separate from the immigration system<sup>2</sup>. In 2021, after two years of this SCA, the Government established the IECA suddenly and without stakeholder consultation. The Detention Taskforce warned that this move could mean that immigration status could influence decision making, endangering victims and survivors of trafficking<sup>3</sup>. The IECA has faced considerable national and international opprobrium and concern,<sup>4</sup> and has been rolled out at a time when the Government has been implementing legislation and policies which erode protections for survivors of trafficking and consider them first and foremost as an 'immigration offender'. Since our initial briefing on the IECA, we have seen these concerns materialise.

### *Failure to consult*

The IECA was introduced without consultation, and we believe it is a retrograde step returning us to a discriminatory two-tier system, in which many victims of modern slavery in the UK who lack secure immigration status may not be appropriately identified, protected, or supported, and will therefore fear coming forward to the authorities to seek help. As we know from our collective decades of working in this field, the establishment of the IECA risks eroding vital trust and driving victims underground and back into the hands of human traffickers.

This has taken place in a context where the Home Office has continually failed to meaningfully engage with civil society. Such concerns were highlighted in the US State Department's Trafficking in Person review of the UK.<sup>5</sup> For instance, the Modern Slavery Strategy and Implementation Groups (MSSIG) were disbanded, and replaced by the Modern Slavery

<sup>1</sup> Taskforce on Survivors of Trafficking in Immigration Detention (Detention Taskforce), 2021. *Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime*. Available at: [Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime](#).

<sup>2</sup> Home Office, 2014. *Review of the National Referral Mechanism for victims of human trafficking*. Available at: [Review of the National Referral Mechanism for victims of human trafficking](#).

<sup>3</sup> Detention Taskforce, 2021. *ibid*, note 1.

<sup>4</sup> Bulman, M., 2021. New Home Office policy risks 'driving human trafficking victims underground', experts warn, the Independent 12 November 2021. Available at: [New Home Office policy risks 'driving human trafficking victims underground', experts warn](#); OSCE, 2023. Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, para.42. Available at: [Organization for Security and Co-operation in Europe - Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings](#).

<sup>5</sup> US Department of State, 2023. 2023 Trafficking in Persons Report: United Kingdom. Available at: <https://www.state.gov/reports/2023-trafficking-in-persons-report/united-kingdom/>.

Engagement Forum (MSEF) in 2023. The MSEF operates in a much more limited and controlled manner, with fewer opportunities for civil society organisations to input and shape conversation. Further, the role of Independent Anti-Slavery Commissioner, a position tasked with working with civil society,<sup>6</sup> had been left vacant for 18 months, and has recently had a significant cut in funding.<sup>7</sup> The Home Office has failed to demonstrate any real willingness to engage with civil society or subject itself to meaningful scrutiny in good faith.

### *Detention of survivors of trafficking*

We see similar issues in the quality of decision making between the IECA and the SCA, as detailed below. However, the recent statistics indicate that there has been a decrease in the proportion of positive decisions recently. Due to the nature of the cohort of survivors who fall under the decision making remit of the IECA, when considering the quality and timeliness of the decision making, it is important to look at this through the lens of why the number of survivors of trafficking in detention is increasing at such a great rate and the additional hurdles that survivors in immigration detention face within the NRM. The issues outlined below are likely to result in a higher number of decisions being made by the IECA.

### **Background to the increased number of survivors of trafficking being held in immigration detention**

**Referrals of potential victims to the National Referral Mechanism (NRM) from immigration detention have tripled from 501 in 2017 to 1,611 in 2021. In 2022, at least 2,516 people were referred into the NRM from detention (25% increase from 2021).<sup>8</sup>**

### Decisions to detain

In the experience of Taskforce members the detention gatekeeper (DGK), who assesses whether detention decisions are ‘proportionate’ and should identify instances where individuals may be at risk of harm in detention due to any vulnerabilities, frequently fails to identify indicators of trafficking when deciding whether to detain a person. This is evidenced by the large numbers eventually identified within detention. The screening process on arrival is also insufficient to identify survivors of trafficking, as previously highlighted by the Independent Chief Inspector of Borders and Immigration.<sup>9</sup> As a result there are likely to be a large number of survivors of trafficking whose NRM decisions are made by the IECA, whilst they are in

<sup>6</sup> Home Office, 2023. Role details: Independent Anti-Slavery Commissioner. Available at: [Role details – Independent Anti-Slavery Commissioner](#).

<sup>7</sup> Bancroft, H., 2023. Modern slavery ‘less of a priority for Sunak’s government’ as watchdog budget cut by £100,000, *the Independent*. 8 February 2024. Available at: [Modern slavery ‘less of a priority for Sunak’s government’ as watchdog budget cut by £100,000 | The Independent](#).

<sup>8</sup> Freedom of Information Request reference: 78080

<sup>9</sup> Independent Chief Inspector of Borders and Immigration (ICIBI), 2021. Second annual Inspection of Adults at Risk in Immigration Detention - July 2020-March 2021, para. 7.23, 7.30. Available at: [Second annual inspection of ‘Adults at risk in immigration detention.’ July 2020 – March 2021 - GOV.UK](#).

immigration detention, who should arguably be receiving their decisions and MSVCC support in the community.

## Decisions to maintain detention

Once a survivor of trafficking enters immigration detention, there are various safeguards which identify and protect individuals at risk in detention, including victims of trafficking. However, these safeguards (including healthcare screening, Rule 34 and Rule 35 appointments), have repeatedly been found to be dysfunctional and inadequate.<sup>10</sup> People are not always released, and some endure lengthy stays in immigration detention, something which has been shown to have a detrimental impact on a persons mental health<sup>11</sup>.

Home Office policy in 2019 stated that people with positive reasonable grounds decisions should be released unless there was a 'public order' reason not to release them. However, in 2021, trafficking survivors were brought entirely under the scope of the 'Adults at Risk' (AAR) policy.<sup>12</sup> Under this policy, being a potential and confirmed victim of trafficking is only an 'indicator' that someone is an adult at risk who is more vulnerable to suffering harm in detention.

AAR replaced a policy of only detaining vulnerable people under 'exceptional circumstances', and was ostensibly intended to strengthen the presumption against the detention of vulnerable people. However, being recognised under AAR at levels 1 and 2 rarely leads to release.<sup>13</sup> Bringing trafficking under the AAR policy has increased the detention of trafficking victims who now face increased evidential requirements to show that detention is harming them.<sup>14</sup> This change was brought in despite the government recognising it would result in more trafficking survivors being detained.<sup>15</sup>

The continued encroachment of immigration enforcement and detention into anti-trafficking policy and practice has put survivors of trafficking at increased risk, curbing their access to the protections and support that they are entitled to in domestic and international law. These policies, as well as the legislation changes resulting from the Nationality and Borders Act and Illegal Migration Act create a real risk that victims and survivors of trafficking will not be identified, and that they will be detained and removed from the UK without having had meaningful access to justice.<sup>16</sup> This in-turn creates a real risk of re-trafficking, where

<sup>10</sup> Most recently by the Brook House Inquiry: Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II](#), HC 1789-II.

<sup>11</sup> Helen Bamber Foundation, 2022. The impact of immigration detention on mental health – research summary. Available at: [The impact of immigration detention on mental health](#).

<sup>12</sup> Home Office, 2023. Adults at risk in immigration detention - Version 9.0. Available at: [Adults at risk in immigration detention - GOV.UK](#).

<sup>13</sup> Joint Committee on Human Rights (JCHR), 2019. Immigration detention Sixteenth Report of Session 2017–19, 81. Available at: [Immigration detention - Joint Committee on Human Rights - House of Commons](#).

<sup>14</sup> Helen Bamber Foundation, 2022. Abuse by the System: Survivors of trafficking in immigration detention. Available at: [Abuse by the system: Survivors of trafficking in immigration detention | Helen Bamber](#).

<sup>15</sup> Bulman, M., 2021. Home Office admits new immigration plans may see more trafficking victims locked up, *the Independent*. 24 March 2021. Available at: <https://www.independent.co.uk/news/uk/home-news/modern-slavery-traffickingdetention-home-office-b1820549.html>.

<sup>16</sup> Helen Bamber Foundation, 2022. *Ibid* note 14. at p.9.

perpetrators may target individuals who may be vulnerable as a result of recent legislative and policy changes (including insecure migration status) or where they are returned to the control of their original trafficker.

As outlined above, the IECA has coincided with there being an increase of people with trafficking histories in immigration detention.

## *Decision making*

### *a. Increase in negative decisions*

The Government has indicated its intention of limiting access to the NRM. In July 2023, the Government released a fact sheet suggesting that the success of the Modern Slavery Act (namely the increase in the number of people receiving support and protection) was a key reason for limiting access to the NRM via the Illegal Migration Act and that ‘the system was not designed for this volume of referrals’.<sup>17</sup>

The IECA was set up in 2021 to make NRM identification decisions for adults who are subject to forms of immigration control, including any adults in respect of whom deportation is being pursued and those who are held in administrative immigration detention. The IECA has vastly increased its negative decisions at the reasonable grounds and conclusive grounds stage of the NRM process.

Following its introduction in late in 2021, 92% (1,420) of all referrals to the IECA received a positive reasonable grounds (first stage) decision. In 2022, the Immigration Enforcement Competent Authority made positive reasonable grounds decisions for adults in 93% of cases, and positive ‘conclusive grounds’ (final stage) decisions for adults in 79.4% of these cases. In the first three quarters of 2023, the IECA made positive reasonable grounds decisions for adults in 79.4% of cases, and positive conclusive grounds decisions in 31.7% of cases, marking a significant drop in the number of positive decisions.<sup>18</sup>

There seems to be a particular turning point around the introduction of the provisions under the Nationality and Borders Act 2022 (NABA). The IECA made a positive conclusive grounds decision in 35% of cases of quarter 2 of 2023 and 29.2% in quarter 3, compared to 60.5% in quarter 4 of 2022 prior to the introduction of the part 5 Nationality and Borders Act 2022 provisions (detailed further below).

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<sup>17</sup> Home Office, 2023. *Policy paper - Tackling myths factsheet: Illegal Migration Bill*. Available at: [Tackling myths factsheet: Illegal Migration Bill - GOV.UK](#).

<sup>18</sup> Home Office, 2023. *Official Statistics - Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2023 – July to September*. Available at: [Modern slavery national referral mechanism and duty to notify statistics uk quarter 3 2023 july to september](#)

In the period from April to June 2023, there was a decrease in the number of positive reasonable grounds NRM decisions made by the IECA. In contrast with the 88.9% of positive reasonable grounds decisions made by the IECA in October to December 2022, before the updated Modern Slavery Statutory Guidance was updated after the NABA, this rate decreased massively to 6.7% of positive reasonable grounds decisions made by the IECA in April to June 2023. While the Government's retreat on the unrealistic 'objective evidence' threshold and the adverse ruling against the Home Office regarding 'Public Order' disqualifications should have significantly mitigated against some of the concerning trends we have seen, the IECA made positive reasonable grounds decisions in 35.2% of cases in the third quarter of 2023. This is above the low of quarter 2, but remains well below the figures for the October to December 2022.

It is the experience of Detention Taskforce members that individuals who have previously received negative reasonable grounds decisions, subsequently receive positive reasonable grounds decisions in light of medical evidence. This is the experience of Medical Justice who find that their medico-legal reports result in positive reasonable grounds decisions upon reconsideration. This suggests that the initial decision making is of poor quality and that the link between the IECA and first responder to request more information is lacking. This is all the more concerning following the announcement of 12 February 2024 that the reconsiderations policy had been updated to mean that:

*"Individuals will only be allowed one reconsideration request of either a Reasonable Grounds decision or Conclusive Grounds decision. An individual must also make the request within one month – 30 calendar days – of the decision, to enable the reconsideration request to be processed and reconsidered by the Competent Authority.*

*If the Competent Authority upholds a previous negative Reasonable Grounds or Conclusive Grounds decision, an individual will likely have no recourse to submitting another reconsideration request. This will only be considered in exceptional circumstances and if good reasons are provided to the Competent Authorities in a request.<sup>19</sup>*

This change will particularly impact those in immigration detention who are likely to have less access to the resources required to support a reconsideration request. Their health is likely to also deteriorate whilst in detention, which may further impact their ability to challenge decisions.

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<sup>19</sup> Home Office, 2024. Statutory guidance - 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, sections 14.212-14.230. Available at: <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>.

## *b) Issues with decision making*

A key concern around decision making for those in immigration detention is the fact that the only first responder responsible for referring a person into the NRM is the Home Office. This is problematic for a number of reasons but primarily because it means that a person is required to disclose their trafficking experience to a Home Office official in sufficient detail for them to warrant an NRM referral. This is despite it being widely acknowledged that survivors of trafficking are known to fear and be distrustful of national authorities,<sup>20</sup> something that will be further amplified in a detention setting, where abuse and inhuman and degrading treatment has been found<sup>21</sup>, and where the primary function of the Home Office staff is to effect removal or deportation of detained people.

If a person has not been able to provide sufficient information for the NRM referral to be made, they are then arguably at increased risk of receiving a negative first or second stage decision, solely by the virtue of having the Home Office as their first responder. This is the case for a number of reasons.

Firstly, due to the increased evidential threshold, discussed in further detail below, it is inherently more difficult for those in immigration detention to access evidence in support of their case, due to the very nature of the detention setting. However the IECA are failing to recognise this and are holding people to the same evidential threshold as those in the community, which is linked to the second point below.

Secondly, if the IECA requires further information to make a decision they sometimes go back to the first responder to see if this information is available. This is an opportunity to either get further information from the individual or failing that an explanation as to why that information is not available. However, in the experience of several taskforce members it is rarely the case that the Home Office will make efforts to get any further information and simply respond stating that no further information is available. In some instances they do not respond at all, and negative decisions are made, frequently with the individual being entirely unaware that any further information was required.

We have seen a few cases of the IECA writing to individuals requesting more information, but this is not always the case.

The concern is that the IECA has a lack of curiosity or willingness/ability to get more information when making decisions and will defer to making a negative decision. This links to the general issues with the Home Office being a first responder as well as having the primary role of immigration control.

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<sup>20</sup> Home Office, 2024. *Ibid* note 18, para 3.10.

<sup>21</sup> Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II.

In addition to this we are concerned that the IECA is failing to take into consideration information that would be pertinent to decision making. A clear example of this is that there appears to be inconsistencies around whether or not decisions take Rule 35 reports into account. Despite the flaws in the Rule 35 process, as identified in the third annual inspection of Adults at risk in immigration detention<sup>22</sup>, they still frequently contain information that would clearly be relevant to a decision on whether someone is a survivor of trafficking.

We see that sometimes individuals are referred to the NRM upon entering detention, so the reasonable grounds decision happens before any Rule 35 report has been produced. Where Rule 35 reports are available, there are cases where NRM decisions do not refer to the Rule 35 report, as well as cases where the decision states that the information in the Rule 35 report does not provide evidence of the likelihood of trafficking. It is unclear whether Rule 35 reports, where available, are automatically disclosed to the IECA upon referral.

This raises concerns about the quality of decision-making and the disconnect between the first responder (most often the Home Office in detention) and the IECA. It should be the responsibility of the Home Office, as the first responder to keep individual cases under review and holistically support them. As such, the first responder should request reconsideration where new evidence (such as a Rule 35 report) comes to light, where particular evidence has not been considered or proactively gather the necessary evidence. However, we often see that this only happens where individuals have legal representation, and they are able to fill this gap.

## Case study 1

Hanaid\* is an Albanian male survivor of labour exploitation, who was held in immigration detention for several months, following a raid on his place of exploitation. Hanaid did not have a legal representative during his time in detention.

After Hanaid was released he was able to secure an immigration solicitor to assist with his asylum case, who discovered that Hanaid had received a negative reasonable grounds decision. Hanaid had been unaware that he had even been referred to the NRM.

Hanaid had been referred to the NRM by the Home Office, acting as first responder, on the basis of information he had given during his screening interview that was conducted in detention.

<sup>22</sup> ICIBI, 2022. Third annual inspection of 'Adults at risk in immigration detention' June – September 2022. Available at: [Third annual inspection of 'Adults at risk in immigration detention' - June – September 2022 - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108443/third-annual-inspection-of-adults-at-risk-in-immigration-detention-june-september-2022.pdf).



The negative reasonable grounds decision stated that the only evidence that Hainaid had provided was his own account and no expert reports or travel records were provided as part of the referral. As a result the original first responder had been asked for further information. The decision letter confirmed that the Home Office had confirmed they did not hold any further information and as a result a negative decision was made. The IECA made no efforts to contact Hanaid directly to obtain the further information required despite him being held in detention at the time. Hanaid does not recall the Home Office ever asking him for any further information.

Hanaid's legal representative has now obtained further evidence in his case, including a witness statement and medico-legal report, and his decision has been reconsidered and he has received a positive conclusive grounds decision.

## Case Study 2

Ali\* is a male survivor of labour exploitation who spent several months in immigration detention. He self-referred to the NRM by Speaking to the Home Office immigration enforcement team at the IRC. He told Detention Action that he hadn't realised that what happened to him was modern slavery until very recently, when he called an NGO first responder for advice. During his NRM interview, Ali was told that some of his claims would be investigated by verifying the business he worked for and establishing if the persons mentioned could still be connected to that business, and that they would get back to him. However, Ali did not hear from anyone until being issued with a negative decision.

Ali told Detention Action that he had evidence showing his connection to the business and interactions with the people that exploited him on his smart phone, but he wasn't able to access that whilst he was detained.

According to the decision letter, the first responder was contacted and asked to provide further information, but they responded the next day saying there was nothing further to add. There were spelling mistakes in the name of the business he mentioned, but this was not verified and checked with him and so the business was wrongly identified in his Negative Reasonable Grounds letter.

The refusal letter penalised him for not raising his exploitation with the Home Office at an earlier stage. The letter also stated that he has not submitted any expert reports, travel records, or expert medical reports. He self-reported mental health concerns and the type of medication he is on, but the report stated that this was not sufficient for there to be added levels of vulnerability in the case. The first responder reported there being indicators of modern slavery - however they did not reply to the request from the IECA as to what these indicators were.

Ali said he was told he could challenge the decision with the help of a lawyer, but he did not have one. He had had three appointments at the legal surgery in the IRC but no one had taken his case.

Since being granted bail Ali has been getting statements from people he knew during that time, who witnessed his exploitation, as well as getting evidence from his smart phone and oyster card history. He was not able to do any of this whilst he was detained. He plans to request a reconsideration of the decision.

### *b. Delays in decision making*

Despite the Government claiming the need to streamline decision-making as a reason for the creation of the IECA, there was a significant increase in the time for a decision to be made during a crucial period in the NRM process. Between Q1 2023<sup>23</sup> and Q3 2023<sup>24</sup> the median wait time for a reasonable grounds decision from the IECA increased from 7 to 24 days. For conclusive grounds decisions made by the IECA, this number increased from 354 days in Q1 2023 to 510 days in Q3, leaving survivors of trafficking in limbo. Home Office guidance states that these decisions should be made within five days where possible.

It is well established that lengthy delays and the instability that comes with them has a detrimental impact on a person's mental health and their ability to recover from their traumatic experiences.

### *c. Albanian nationals*

In contrast, as well as significant delays, Taskforce members are seeing expedited decision making for certain groups, most notably Albanian nationals. Despite these being made quickly there are significant concerns about the quality of these decisions. There has been a large decrease in positive decisions for Albanian nationals in recent years, which has correlated with hostile press and Government messaging around Albanian nationals 'abuse' of the NRM, which to date has been unevidenced, the only basis being the increase in Albanian arrivals and subsequent referrals into the NRM.

In the first three quarters of 2022, 94% of Albanian nationals received a positive conclusive grounds decision compared to only 48% positive decision rate in Q4 2022<sup>25</sup>. The number of positive decisions have continued to fall. There are concerns that the increase in negative NRM decisions is connected with the increased number of Albanian charter flights following the introduction of 'Operation Bridora' which aimed to fast track asylum decisions and in turn

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<sup>23</sup> Home Office, 2023. Official Statistics - Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March. Available at: [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March - GOV.UK](#). Accessed 13 Feb 2024.

<sup>24</sup> Home Office, 2023. *ibid* note 17.

<sup>25</sup> IOM, 2022. UK National Referral Mechanism - Data Analysis Briefing No. 6. Available at: [https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-09/iom\\_uk\\_nrm\\_briefing\\_annual\\_review\\_2022.pdf](https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-09/iom_uk_nrm_briefing_annual_review_2022.pdf).

increase the number of removals<sup>26</sup>. The speed at which decisions are made and people are removed reduces the opportunity for scrutiny, particularly for those who are held in immigration detention, many of whom do not have a legal representative to support them.

### ***Impact of legislation changes***

The commencement of Part 5 of the Nationality and Borders Act 2022 in January 2023 introduced a number of changes which have had a detrimental impact on survivors of trafficking.

### ***Changes to the reasonable grounds threshold***

Following the updated Modern Slavery Statutory Guidance published on 30 January 2023, the threshold for first stage reasonable grounds decisions was amended leading to survivors bearing the burden of producing a credible account of being trafficked such that "the decision maker must agree there are reasonable grounds to believe, *based on objective factors*, that a person is a victim of modern slavery". Subsequent to the new higher threshold for making 'reasonable grounds' decisions more survivors received negative decisions and therefore being denied vital support under the NRM. In the first quarter of 2023 there was a significant drop of 40% in positive reasonable grounds decisions made.

At the end of June 2023, following a legal challenge, the Home Office agreed to withdraw, review and revise its new policy. The revised policy made clear that decision makers should consider 'whether it is reasonable in all the circumstances' to expect supporting evidence or corroborating information. The guidance now makes specific reference to the reasons why victims' early accounts may be impacted by trauma and they may be distrustful of authorities and states that "a decision maker is entitled to consider all forms of evidence in reaching their conclusion – this is not restricted to objective evidence to prove or disprove an account".

However as can be seen by the statistics cited above the number of reasonable grounds decisions made by the IECA have continued to remain significantly lower than they were before the original change in guidance. Taskforce members are continuing to see negative decisions that rely on the fact that 'objective' or 'expert' evidence has not been provided. These decisions, particularly for survivors who are in immigration detention, fail to take into account the complexities and vulnerabilities that survivors of trafficking face and the unlikelihood that they will be in a position to provide objective information about the experiences at the time of being referred into the NRM or before a reasonable grounds decision is made. The reasons for this include but are not exhaustive to:

- The nature of trafficking is of isolation and control

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<sup>26</sup> Dearden, L., Government strips safeguards on asylum seeker applications in push to deport more Albanians, the Independent. 22 April 2023 . Available at: [Government strips safeguards on asylum seeker applications in push to deport more Albanians | The Independent.](#)

- The disclosure of trafficking and exploitation is extremely difficult for survivors
- Shame around experiences and fear of reprisals
- Lack of awareness around victim status
- Lack of access to quality legal representation and interpreters
- Significant amount of time and planning it takes to produce expert evidence
- Delay in sharing of information between relevant authorities and organisations

### *Access to legal advice*

It is of note that in the current legal aid crisis<sup>27</sup> an increasing number of people will go through the entire NRM process without access to a legal representative. The IECA does not appear to be taking into consideration whether or not a person has current legal representation when determining whether it is reasonable for someone to provide supporting or expert evidence. Detention Action have conducted an internal review of a range of decisions that they have seen over several months where the survivor of trafficking was not represented and in some instances they were clearly penalised in the decision for not having expert, medical or otherwise, reports to corroborate their account. In these cases the person had often submitted what they had, eg. information of what medication they were taking but this was not considered to be enough. There were other examples where people had more evidence but it just was not available to them in detention and they were not given the opportunity to obtain and submit this.

### *Public Order Disqualification*

The 'public order' threshold under section 63 of the Nationality and Border Act is low, applying to broad non-violent offences which carry a 12-month (or higher) sentence, including possession with intent to supply. It also acts to exclude those perceived by the authorities to have made a claim 'in bad faith', and resultantly that there will be no prohibition on forcibly removing that person from the UK and no requirement to grant them leave to remain in the UK, even if they are recognised as a victim of trafficking. This risks a person being at higher risk of re-trafficking or further exploitation.

The Detention Taskforce are keen to highlight the fact that victims of trafficking should never be refused the support necessary to exit their exploitation, and that victims of criminal exploitation will be severely impacted by this clause as their supposed criminal activity is often not recognised as coerced. Moreover, the systems necessary to implement this provision and verify criminal histories (including in third countries) may result in considerable delays to a system which is already severely backlogged. Additionally, the provisions within the Act that, criminalise arrival in the UK, risk denying individuals the support and protection that they are entitled to under international law.

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<sup>27</sup> ATLEU, 2022. 'It has destroyed me': A legal advice system on the brink. Available at: ['It has destroyed me'. New report by ATLEU reveals how a legal advice system on the brink is failing survivors of modern slavery.](#)

Following a legal challenge,<sup>28</sup> the Home Office withdrew the public order disqualification policy in its Modern Slavery Guidance. The legal challenge was in part on the basis that the policy contained no obligation on decision-makers to consider whether the person to be disqualified was at any risk of re-trafficking. After the challenge, the Home Office published a new version of the Statutory Guidance, which makes clear that the decision-maker must conduct a re-trafficking risk assessment and if there is an immediate and real risk of re-trafficking the potential victim will not be disqualified. There are concerns about how this risk assessment is conducted and by whom.

### ***Limited leave to remain (VTS leave<sup>29</sup>)***

On 30th January 2023, the statutory guidance was updated to reflect section 65 of the Nationality and Borders Act 2022. Now 'Temporary Permission to Stay' will be only granted to confirmed victims of trafficking in order to:

- Assist the person in their recovery from any physical or psychological harm arising from their exploitation.
- Enable the person to seek compensation if they are unable to pursue this remotely.
- Enable the person to co-operate with authorities in connection with an investigation or criminal proceedings.

The guidance was updated to reflect that VTS leave will only be granted if it is necessary for the person to be physically present in the UK for the above reasons, making the threshold much narrower than in the pre-2023 guidance, which stated that leave could be granted where "necessary owing to personal circumstances". The impact of this change has been stark as proven by a recent freedom of information request which showed that the number of people granted leave to remain between February-July 2023 was only 36<sup>30</sup>, this is around a third (proportionately) of the number granted in 2022<sup>31</sup>. There are concerns that this approach fails to address the comprehensive needs of survivors when assessing whether to grant leave, including looking at risks of re-trafficking if returned to their country of origin, safety and protection and all the needs of the survivor. The updated requirement to consider whether a person can pursue treatment, compensation or engage with an investigation whilst not living in the UK is creating yet another hurdle for survivors of trafficking, who will now have to provide further supporting evidence, which will cause difficulties for the reasons set out above. In addition to contributing to fear of return, this has the effect of making the process even more burdensome and potentially creating further delays. For example, a Helen Bamber Foundation (HBF) client recently received a decision refusing VTS leave, despite receiving therapeutic and other support from HBF, because it was determined that they could receive this treatment in

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<sup>28</sup> Matrix Law, 2024. Secretary of State for the Home Department withdraws Public Order Disqualification Policy. Available at: [Secretary of State for the Home Department withdraws Public Order Disqualification policy - Matrix Chambers](#).

<sup>29</sup> VTS decisions are made by both the SCA and IECA

<sup>30</sup> This includes both SCA and IECA decisions

<sup>31</sup> [Leave in limbo: Survivors of trafficking with uncertain immigration status | Helen Bamber](#)

their home country. This was despite the client having an outstanding asylum claim and their country of origin having one of the highest asylum grant rates. As well as disregarding a well-founded fear of persecution and ill-treatment on return, this decision failed entirely to take into account the obstacles and difficulties the survivors may face in trying to engage with therapeutic services in their home country. In the view of clinicians at the Helen Bamber Foundation, while it may be possible in extreme circumstances to undergo therapy in situations of ongoing threat, this is only advisable when there is no current possibility of escape from such situations. It is ethically unconscionable to deliberately put traumatised individuals in situations of ongoing threat that would at worst create renewed risk of persecution and/or re-trafficking and at best either maintain their traumatised state or cause it to deteriorate.

### ***Increase in detention powers under the Illegal Migration Act 2023***

The Illegal Migration Act 2023 expands the powers to detain that the Home Secretary has and reduces judicial oversight. Section 12 of the Illegal Migration Act 2023 replaces the second and third Hardial Singh principles, which respectively held that detention could only be for a reasonable period in all the circumstances, and that if removal could not take place within a reasonable period then detention powers should not be exercised. The decision on what is a reasonable period of detention is now made by the Home Secretary. Other provisions, such as those under Section 13, which prevents a person from applying to the Tribunal for bail in their first 28 days of detention, are not yet in force but will inevitably lead to an increased number of people being held under immigration powers.

The expansion of powers inevitably leads to an increase in the number of individuals who will come under the remit of the IECA. This, in turn, leads to a need for scrutiny of the resulting decisions.

#### ***Recommended areas for consideration***

As part of their inspection, we recommend that the ICIBI considers and makes recommendations with regard to the following issues:

- The quality assurance processes for decision making by the IECA
- The provision of resources and training afforded to decision makers to enable both timely and good quality decisions.
- How decision making differs across demographic variables, such as nationality of the potential victim and gender. In particular we encourage the ICIBI to inspect how IECA decision-making operates in relation to Albanian nationals.
- The processes the IECA follow when they require additional information in order to make a reasonable or conclusive grounds decision, with particular reference to when

the Home Office is the first responder, to ensure they have provided individuals with an appropriate opportunity to respond.

- What steps the IECA are taking ahead of the expected increased number of referrals from detention following the provisions under the Illegal Migration Act 2023