

**Joint shadow submission to the Group of Experts on Action Against Trafficking in Human Beings**

*Update on the progress made by the UK Government in the implementation of GRETA's 3 round evaluation recommendations*

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**20 December 2023**

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(GRETA)**

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evaluation recommendations*

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## 1. Introduction

This shadow report to the Group of Experts on Action Against trafficking in Human Beings (GRETA) is submitted by the Anti-Trafficking Monitoring Group (ATMG), a coalition of 17 Anti-Trafficking Organisations<sup>1</sup>, and by the following UK based anti-trafficking organisations: the Anti Trafficking and Labour Exploitation Unit (ATLEU), the Human Trafficking Foundation and the International Organisation for Migration Country Office for the United Kingdom and Northern Ireland (IOM UK).

This report analyses the progress made by the UK Government on the implementation of GRETA's recommendations made as a result of the 3rd round evaluation and published in October 2021.<sup>2</sup>

Given the short timeframe to produce the shadow report, it has not been possible to include all the relevant UK anti-trafficking organisations. Therefore, important voices, including survivor organisations, are missing from this submission. We will coordinate a wider coalition response for the 4th round evaluation submission.

Over the course of this document, we use the term 'survivor' unless specific reference is being made to Home Office policy/statutory guidance, where the language is mirrored and 'victim' is used.

## 2. Executive summary

Since GRETA's third evaluation round in 2020, the UK has seen a progressive erosion of the rights of survivors of trafficking and modern slavery, which hindered their access to justice and remedies.

Survivors' safety, recovery and integration has been undermined by the Government and media's anti-migrant rhetoric and "abuse of the system" claims, which have led to the introduction of two significant pieces of legislation, namely the Nationality and Border Act ("NABA") 2022 and the Illegal Migration Act ("IMA") 2023. These, wrongly and dangerously, conflate modern slavery with immigration issues.

The recent Home Affairs Committee report following their inquiry into human trafficking expressed deep concerns in relation to the UK Government's de-prioritisation of human trafficking in favor of a focus on irregular migration.<sup>3</sup>

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<sup>1</sup> The ATMG is comprised of seventeen leading UK-based anti-trafficking organisations: Anti-Slavery International, Ashiana Sheffield, Bawso, Children's Law Centre (CLC), East European Resource Centre (EERC), ECPAT UK, Flourish Northern Ireland, Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, Hope for Justice, JustRight Scotland, Kalayaan, Law Centre (NI), Scottish Refugee Council, TARA service, The Snowdrop Project, UNICEF UK.

<sup>2</sup> GRETA, (20 October 2021), *Evaluation report United Kingdom, Third round evaluation*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>

<sup>3</sup> House of Commons, (8 December 2023), *Human Trafficking. First Report of session 2023-2024*. Available at: <https://committees.parliament.uk/publications/42482/documents/211207/default/>

We are also concerned about the little to no scrutiny and the speed at which the new pieces of legislation were introduced and passed through Parliament. Just over a month after the commencement of Part 5 of the Nationality and Borders Act,<sup>4</sup> the Illegal Migration Bill was introduced in Parliament<sup>5</sup>.

The failure to consult the trafficking and modern slavery sector at very crucial times is even more concerning given the post of Independent Anti-Slavery Commissioner has been vacant since April 2022. This post has only recently been filled by Eleanor Lyons, who started her role on the 11th of December 2023.

In addition to the above, we have particular concerns about:

- Failures in the application of the non-punishment principle, which is leading to many survivors being criminalised for acts they were forced to commit as part of their exploitation and as a result they are being disqualified from the National Referral Mechanism (“NRM”) and its support (see paragraphs 139-149 and section 5);
- Immigration enforcement conditions and detention of survivors which prevents or hinders their identification and access to appropriate support while re-traumatising them and exposing them to further exploitation (see paragraphs 150-154, 175-179 and 215-219);
- Failures in survivors’ identification with an increased number of negative Reasonable Ground Decisions resulting in individuals being locked out of the NRM (see section 4.1);
- Collapse of the legal aid system and lack of specialist trafficking legal advice, which limits survivors’ understanding of the NRM process and their ability to give informed consent to be referred (see paragraphs 19-22 and section 3.2);
- Multiple child’s safeguarding failures, which have resulted in many children going missing and being trafficked and exploited (see section 6);
- Increased reliance on seasonal worker’s visas and lack of a Single Enforcement Body, which is leaving migrant workers are heightened risk of exploitation (see section 7).

This shadow report found that most of GRETA’s recommendations have not been or have only been partially implemented. Civil society organisations have experienced a regression in the progress made over the last few years and a marked deterioration of the National Referral Mechanism (“NRM”) identification and support functions.

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<sup>4</sup> Part 5 of the Nationality and Border Act contains the Modern Slavery sections - [https://www.legislation.gov.uk/ukpga/2022/36/part/5/enacted#:~:text=69Part%205%3A%20interpretation&text=%E2%80%9Cconclusive%20grounds%20decision%E2%80%9D%20means%20a,by%20section%2061\(1\)%3B](https://www.legislation.gov.uk/ukpga/2022/36/part/5/enacted#:~:text=69Part%205%3A%20interpretation&text=%E2%80%9Cconclusive%20grounds%20decision%E2%80%9D%20means%20a,by%20section%2061(1)%3B)

<sup>5</sup> The Illegal Migration Bill was introduced in Parliament on the 7th of March 2023 and received Royal Assent, becoming an Act of Law on the 20th of July 2023

Through this report, we hope to provide a useful overview of how Government policy has impacted survivors of modern slavery, utilising the experience of frontline and advocacy organisations.

We continue to remain available to work with the Government to provide evidence and recommendations on how to improve the identification, recovery and integration system for survivors and develop a more strategic and systematic response to modern slavery.

### **3. Access to justice and effective remedies for survivors of Human Trafficking**

#### **3.1 Right to information**

1. The right to information is a crucial part of the support to survivors of trafficking and modern slavery and it is an essential prerequisite to exercise their rights and entitlements. Despite some improvements, this remains a significant area of concern. The quality of information shared is inconsistent and varies across statutory and non-statutory First Responders.
2. This occurs as a result of the lack of a UK-wide standardised practice and training offer for First Responders, which forces organisations to create in-house resources and training or to rely on external organisations' offer, where available. This, and the lack of mandatory training requirements, creates information gaps and inconsistent support across the UK.
3. Section 49 Modern Slavery Statutory Guidance for England and Wales has a section on Informed Consent (paragraphs 5.23 to 5.26), which clearly states that First responders should inform the victims of the support that they may be able to receive by entering the NRM.<sup>6</sup>
4. Additionally, paragraph 2.2 of the National Referral Mechanism Guidance for adults (England and Wales) clearly states that for an adult to provide informed consent, the First responder should explain what the NRM is, what support is available through it and the possible outcomes for an individual being referred.<sup>7</sup>
5. Section 48 of the Modern Slavery Act,<sup>8</sup> makes provisions for the institution of Independent Child Trafficking Advocates, now called Independent Child Trafficking Guardians (ICTGs). However, as of today this service has not been fully rolled out across England and Wales, leaving many children survivors of trafficking and modern slavery without specialist and independent support.

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<sup>6</sup> Home Office, (last updated 9 October 2023), *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*. 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-northe#NRM>

<sup>7</sup> Home Office, (last updates 21 September 2023), *National Referral Mechanism Guidance: Adult*. Available at: <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

<sup>8</sup> Modern Slavery Act 2015. Available at: [Modern Slavery Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/31/contents)

6. Issues continue to be recorded in relation to interpretation. Information should be shared in a language that can be clearly understood by survivors and although this is usually accessed through the MSVCC contractors, the use of interpreters amongst First responders is qualitatively inconsistent.
7. In the next sections we will comment on the implementation of GRETA's recommendation at paragraphs 72, 73, 74 (page 26).

### **3.1a Inconsistent and fragmented information sharing amongst First Responders**

*While welcoming the steps taken to provide information to victims of THB, GRETA considers that the UK authorities should strengthen the systematic provision of information to potential victims of trafficking (adults and children) regarding their rights, the services available and how to access them, as well as the implications of being identified as a victim of trafficking. First Responders, law enforcement officers, social workers and local authorities should be trained and instructed on how to properly explain to victims of THB their rights, taking into account their cognitive skills and psychological state, and apply the NRM to systematically refer them to specialised services which enable victims to exercise their rights.<sup>9</sup>*

The experience of civil society organisations is that **the above recommendations have only been partially implemented.**

#### *i. Information sharing*

8. We note the Government's improved efforts in raising awareness of modern slavery and trafficking through "spot the signs" campaigns. For a number of years, the UK Government has conducted these campaigns for both the public and professionals, including but not limited to healthcare professionals, religious institutions and law enforcement. They have done this by sharing briefings and leaflets, including at ports, airports, stations, bus stops and big cities. This has resulted in a consistent increase in NRM referrals year on year.
9. We also note discrete improvements in providing written information to survivors of trafficking and modern slavery. The Competent Authorities include two leaflets explaining the NRM and the Reasonable Ground decision ("RG") when issuing survivors with a positive Reasonable Ground Decision letter.<sup>10</sup>
10. However, even though the leaflets are translated, and the information is written using simple language and images, survivors may still be confused about what it means for them and their individual situation. Written information alone does not constitute a satisfactory way of informing survivors about their rights because it assumes literacy and does not accommodate

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<sup>9</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 72, p.26

<sup>10</sup> [Welcome-to-the-NRM-Support-Leaflet-NHS-Futures-2022.pdf \(redbridgesab.org.uk\)](https://www.redbridgesab.org.uk/Welcomes-to-the-NRM-Support-Leaflet-NHS-Futures-2022.pdf)

individuals with disabilities and special needs. Furthermore, direct translation often fails to take into account particular cultural nuances which means that even if translated the information may not be understood in a person's cultural context. It is also unclear how consistently these resources reach survivors and if and how these are explained to them.

11. Some referrers do not usually include the survivor's direct contact details or address on the form because they understand that NRM referral forms are automatically sent to police due to their duty to investigate. There are concerns around re-traumatisation if police directly contact the survivor using their contact details on the form. Survivors themselves may not wish, or feel able, to give their address at this stage, with additional concerns in relation to the lack of a firewall between the police and immigration authorities.
12. This can become an issue because First Responders reported that Competent Authorities do not automatically issue RG decision letters to the referrer even though the NRM referral form includes an option for survivors to give consent to release all relevant paperwork to them. In Hope for Justice's experience, many survivors do not have a copy of the reasonable or conclusive grounds ("CG") decision as this is not always shared with them.
13. First Responders and other organisations often have to request the RG decision letter separately and they are usually asked to fill in a separate form to obtain this. This leads to significant delays in the survivor receiving the letter from the Competent Authority. Importantly, only this letter contains information about Right to Remain in the UK whilst the survivor is in the NRM and Right to Work whilst waiting for a decision (if relevant). So this letter is the only written proof of this.
14. In addition to the leaflet provided by Competent Authorities, non-Statutory First Responders also seem to develop their own processes around resources for individuals they are supporting. Kalayaan, for example, hands out a client care letter that explains the NRM process and their own fact sheets on different aspects of the NRM. They also have some leaflets that are translated but have to source their own funding for translating written resources.
15. Overall, organisations have noted inconsistencies in the quality and type of information shared by First Responders. This is evidenced by many survivors reporting they don't know what the NRM is and what rights and entitlements they have access to when entering the NRM. Sometimes their only understanding is that the NRM will allow them to get accommodation and some financial support.
16. This issue is compounded by the lack of standardised training amongst statutory and non-statutory First responders impacting on how survivors understand the NRM, the related rights and entitlements and how to access that support.
17. An improvement has been noted where police forces have created a dedicated modern slavery team, which makes a substantial difference in the expertise and approach to this issue. However, these are usually small and under-resourced teams compared to the demand.



Recently these teams have started to merge with Organised Immigration Crime teams, reducing their capacity to respond to modern slavery and creating uncertainty for survivors with insecure immigration status.

18. In Scotland, victim care is a devolved matter, therefore it is the Scottish Government's responsibility to provide survivor's support and accommodation. The power to provide this is in section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015.<sup>11</sup> The Right to information is incorporated into section 9(4), but, in practice, it can be challenging to ensure survivors truly understand the lengthy Privacy Notice produced by the Home Office (which is available only in English) in order to provide informed consent to enter into the NRM. It is unclear if it is common practice for First Responders organisations to explain this. It can also be challenging for Scottish First Responders Organisations and support providers to keep up with the changes to the Statutory Guidance given the lack of consultation and notice of important changes.

*ii. Pre-NRM information sharing and consent*

19. Issues with information sharing also arise prior to potential victims being referred to the NRM. Most potential victims are informed of their rights and entitlements once they enter the NRM, either because, as a child, they are referred into the Independent Child Trafficking Guardianship ("ICTG") service offered by Barnardo's (where present) or because, as an adult, they consent to access the MSVCC support.
20. In Scotland the pre-NRM support is different because the Scottish Government funds JustRight Scotland to provide free and confidential pre-NRM advice which both TARA and Migrant Help utilise, but it is not clear if other First Responders in Scotland, especially Police Scotland and Home Office Departments, provide access to pre-NRM legal advice prior to submission. TARA common practice ensures they will not submit an NRM without pre-NRM legal advice being provided by a solicitor.
21. It is also important to acknowledge that the process of consenting to enter the NRM is not trauma informed as it requires survivors to immediately consent to being referred into the NRM at point of identification before they can access support. The NRM process is a complex system and it requires time to be understood, especially considering the psychological status of survivors at the point of exiting their exploitation/trafficking experience as well as when they first arrive into the UK.
22. Information should be shared at a pace consistent with the individual's circumstances to better facilitate their understanding. This requires multiple sessions and ongoing information sharing to ensure survivors are aware of the process they are going through, of their rights and entitlements, while updating them on any progress.

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<sup>11</sup> Human Trafficking and Exploitation (Scotland) Act 2015. Available at: <https://www.legislation.gov.uk/asp/2015/12/contents/enacted>

23. The difficulties in understanding and processing information about the NRM system are also heightened by the fact that many survivors may be going through multiple processes (i.e immigration and criminal justice), making it even more difficult to distinguish one process from the other, which are often inevitably interconnected. It is also unclear whether survivors are informed of their right to withdraw from the NRM if they choose to do so.
24. This is compounded by the fact that in England and Wales, there is no access to legal aid pre-NRM, so many survivors don't receive legal advice until they are referred into the NRM, but, more often, after months from entering the process.
25. Those individuals who are already represented for other immigration procedures may be able to receive advice in relation to the NRM, prior to being referred to the NRM, if they disclose potential trafficking/exploitation indicators with their solicitor but this also depends on whether the solicitor has the specialist knowledge required to advise on these issues.
26. However, the current legal aid crisis is preventing timely access to legal advice and representation,<sup>12</sup> so an appropriate legal explanation of the process and how this may interact with other legal proceedings, often arrives at a very late stage, affecting survivor's understanding of the system and often rendering the consent meaningless and not fully informed.
27. This issue is even more concerning following the Government's recent announcement that they will not be pursuing the implementation of their 2017 Places of Safety Commitment in England and Wales.
28. In Scotland, legal aid is available pre-NRM, where it is funded by the Scottish Government and administered by the Scottish Legal Aid Board (SLAB). However, issues around access to adequate legal advice have been noted because of the solicitor's specialist knowledge and the survivors' geographical location. Solicitors practicing in immigration matters are concentrated in the Central Belt, and particularly Glasgow (as Glasgow has been the dispersal town for asylum seekers in Scotland under asylum support contract). Even then, solicitors practicing confidently in anti-trafficking law are very limited, therefore specialist legal advice is not accessible to all victims even if they can access legal aid.

*iii. First responders' capacity affecting access to timely information*

29. The outlined issues are compounded by a limited First Responders' capacity, which is leaving many victims in limbo for weeks, sometimes months, while trying to find an available First

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<sup>12</sup> ATLEU, (2022), 'It has destroyed me'. Available at: <https://atleu.org.uk/news/2022/10/17/it-has-destroyed-me-new-report>

Responder.<sup>13</sup> Leaving survivors in a state of limbo for this prolonged period of time leaves them open to further exploitation and vulnerable to a hindrance in recovery.

30. The capacity issues affect mainly non-statutory organisations due to the reliance on their existing funding and resources to carry out their First Responder duty. The Home Office doesn't provide funding to cover the role of First Responders. It is well evidenced that third sector First Responders provide an invaluable service to survivors who may not be willing to access statutory organisations for support due to fear of authorities and threats made by traffickers and exploiters.
31. Kalayaan approached the Modern Slavery Unit with concerns in relation to First Responders capacity, but there was no concrete timeframe given for reviewing the process for applying to become a First Responder and no firm commitment to increasing the number of First Responder organisations in line with the increase in potential victims of modern slavery entering the NRM. This was reiterated during the GRETA roundtable on the 12th of October 2023, when the Modern Slavery Unit confirmed this is not a current priority of the unit. The Guidance to allow NGOs to apply for First responder status has been outstanding for over 6 years.
32. There is no way of monitoring how many individuals are slipping through the cracks as a result of not being able to access a First Responder at first point of contact. The Salvation Army and Kalayaan have both had to stop new referrals during the course of 2023 due to capacity.

#### *Case study 1*

*C approached Non-Statutory First Responder 1, Kalayaan, in late March 2023 by walk-in. Kalayaan advised their Waiting List was closed due to lack of capacity and signposted C to call Non-Statutory First Responder 2 for assessment and advice as they believed C needed support sooner than Kalayaan could give.*

*C called Non-Statutory First Responder 2. C asked for an interpreter but they were unable to find one in C's language so C said they would try in English. C was then directed by Non-Statutory First Responder 2 to Non-Statutory First Responder 3. They told C that this was for an NRM referral, but C did not know what the NRM was or what this meant.*

*C called Non-Statutory First Responder 3, as instructed. Non-Statutory First Responder 3 then directed C to call Non-Statutory First Responder 4. They did not give a reason for this, they just told C this was how C was going to get a referral.*

*C called Non-Statutory First Responder 4 who instructed C to call Non-Statutory First Responder 5.*

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<sup>13</sup> Kalayaan, (February 2023), *The National Referral Mechanism: near breaking point*. Available at: [http://www.kalayaan.org.uk/wp-content/uploads/2023/02/KALAYAAN\\_REPORT\\_UPDATED20FEB-2.0.pdf](http://www.kalayaan.org.uk/wp-content/uploads/2023/02/KALAYAAN_REPORT_UPDATED20FEB-2.0.pdf)

*C called Non-Statutory First Responder 5. Non-Statutory First Responder 5 gave C the number for the person who screens referral intakes. C rang this number but received no response, so C left a voicemail.*

*C did not receive a response to the voicemail so C rang Non-Statutory First Responder 3 again. Non-Statutory First Responder 3 told C that they would need to go to a local police station for an urgent NRM referral, but C was not comfortable with engaging with the police so did not.*

*Kalayaan checked in with C three days after C had first contacted Kalayaan to see if C had been able to access assessment from another First Responder. C said they had not been able to receive support but was unable to explain in English.*

*Despite lacking capacity to take new referrals, Kalayaan arranged an appointment with C and interpreter to find out the above. C did not know the names of all of the different organisations they had been signposted to but had written down in order each of the numbers they had been told to call in turn.*

*Kalayaan explained to C in detail what the NRM was and what support C could be entitled to, as it became clear C had been unable to access this pre-NRM advice elsewhere. C agreed for Kalayaan to support them to engage with the Local Authority for a referral as they needed accommodation and financial support as soon as possible. Kalayaan sought assurances from the Local Authority that they would not share information with the Home Office in order that C would feel comfortable speaking to a statutory First Responder about their experiences.*

*C was referred to the NRM by the Local Authority after several attempts to access a First Responder.*

**This case study is not an exceptional situation. Over the past year, multiple organisations have reported similar cases where survivors have encountered barriers to accessing First Responders. This case evidence how the lack of capacity amongst First Responder organisations can negatively impact a survivor's access to essential information before entering the NRM, delays with being referred to the NRM and to accessing appropriate and timely support (including to interpreters).**

### **3.1b Inconsistencies in the use and quality of interpreters**

*GRETA also considers that the UK authorities should take additional steps to ensure the availability in practice and at all stages of the identification and criminal proceedings of interpreters/translators, including by providing adequate funding to ensure adequate quality of interpreting and translation services.<sup>14</sup>*

- 33. The above recommendation has not been fully implemented.** Despite the availability of translating services amongst First Responders, Local Authorities and Law enforcement organisations, the use and quality of interpretation remains deeply insufficient and inconsistent.

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<sup>14</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 73, p.26

34. The information shared with survivors should be explained in a way that is trauma-informed and can be easily understood. The fact that many survivors are non-english speakers, requires First responders to utilise an interpreter. Particular attention should be given to the quality of interpreters and their expertise to work with highly traumatised individuals by following trauma-informed practices as well as having a good command of immigration and modern slavery terminology.
35. MSVCC contractors have access to interpreters in more than 100 languages, both face to face and over the phone. There is an understanding that these are used consistently in interactions with survivors. On the contrary, there are reports of an inconsistent use of interpreters amongst statutory bodies.
36. Hope for Justice has witnessed statutory First responders and organisations such as police using google translate to obtain initial information of a crime or to find out why a person was asking for help. As mentioned in the previous section, First Responders are not funded by the Home Office for their role and for providing interpreters in their function as referral agencies.
37. There is also a general lack of awareness in relation to individuals' language needs, which often leads to the use of interpreters who speak a different language/dialect which can be highly re-traumatising for survivors, as well as affect the quality of interpretation and cause irreparable trust issues.
38. Additionally, not all interpreters are specialised in translating specifically for NRM and immigration matters and may not be trained to work in a trauma-informed way. While there is a requirement that interpreters who work for the Home Office are trained and qualified, this does not always happen in practice, especially for telephone interpreters.
39. Telephone and face to face interpreters used by organisations across the UK, including Local Authorities, solicitors and third sector have different levels of understanding and expertise of the NRM and associated support. This often creates misunderstandings, wrongly recorded information and ultimately a lack of knowledge in relation to the process and rights and entitlements.
40. Organisations can make specific arrangements with interpreting companies to request trained interpreters with specific requirements. However, organisations often struggle to find interpreters of a specific gender or who speak rare languages/dialects where the offer is so limited that there is only one interpreter available in all of the UK. The scarcity of interpreters for specific languages means they may not be readily available in emergency situations where a survivor has just been rescued and needs immediate assistance and information.

41. There are also issues with providing face to face interpreters in specific regions, creating inconsistent support across the UK and often requiring interpreters to travel for hours to attend appointments, taking up more of their capacity.
42. While telephone interpreters are generally available, there are common practical issues such as poor signal causing interferences or interpreters being in public spaces. This creates issues of confidentiality and negatively affects the quality of the meeting, preventing individuals from understanding the system they are consenting to enter and therefore from giving a fully informed consent.
43. Survivors have reported multiple issues with interpreting when being rescued or arriving into the UK:
- *I could not understand the telephone interpreter and when I told him, he warned me that if I said something, this will be bad for me;*
  - *The interpreter made a few mistakes. I told the officer, but they didn't correct the information and they continued asking me questions;*
  - *I asked for an Arabic interpreter and they gave me a Kurdish interpreter who was speaking Arabic, but I could not understand him. I was too scared to tell them this during the interview and now they have got wrong information about me;*
  - *I speak a very rare language and I can speak just a little Arabic. When I was rescued, they could not find an interpreter and I could not understand what the officer was telling me. I was very scared and I didn't know what would happen to me.*
44. In relation to the availability of written material, multiple organisations, including the Home Office, have produced translated resources to inform survivors about the NRM process and their rights and entitlements, but there are no checks in relation to how consistently these materials are distributed. The Home Office briefings and posters produced as part of their spot the signs campaigns have been translated in multiple languages. However, they have not been updated since 2017.<sup>15</sup>
45. Some children's charities produced translated resources to inform children about the role of professionals supporting them and what is trafficking and modern slavery.<sup>16</sup> The Barnardo's ICTG service also provides leaflets explaining modern slavery, the NRM and their role and these are translated in many languages.

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<sup>15</sup> See:

- <https://www.gov.uk/government/publications/modern-slavery-closer-than-you-think>;
- <https://www.gov.uk/government/publications/modern-slavery-industry-factsheets>

<sup>16</sup> See:

- NSPCC, (last updated 12 July 2023), *Protecting children from trafficking and modern slavery*. Available at: <https://learning.nspcc.org.uk/child-abuse-and-neglect/child-trafficking-and-modern-slavery>
- MiCLU, *Who is who*. Available at: <https://miclu.org/who-is-who>

### 3.1c The specific case of children

*As regards child victims, GRETA considers that the legal guardianship system should continue to be rolled out across England and Wales in order to ensure that trafficked children are systematically and adequately informed of their rights (see also paragraph 300).<sup>17</sup>*

46. Section 48 of The Modern Slavery Act 2015 makes provisions for the role of the Independent Child Trafficking Guardian (“ICTG”). This service has been rolled out over the years to cover 2/3 of England and Wales. However, despite multiple evaluations of the service and its proven benefits to children, it is yet to be fully rolled out. The Home Office has promised to roll out the service by 2025. Therefore, **this recommendation has not been fulfilled.**
47. The ICTG service, where present, has been recognised as a positive model of support for children survivors of trafficking and modern slavery by offering holistic support and strong advocacy to meet children’s NRM, immigration and welfare needs. The service is also of great support for families and statutory organisations involved in the children’s care by providing specialist support with navigating all the processes linked to modern slavery and trafficking, such as the NRM, criminal justice, immigration and so on.
48. The ICTG service has been crucial in supporting children’s understanding of how trafficking and modern slavery work, their rights and entitlements and how to access services to support their recovery needs and prevent further exploitation.
49. Children can be referred to the ICTG service even before being referred to the NRM if there are concerns that they may have been trafficked or are being exploited. This allows the guardian to work with the child to explore their situation and better understand the NRM over the course of multiple sessions. In many cases, children are referred to the ICTG service upon completion of an NRM and therefore they receive information only after a referral to the NRM has been completed.
50. First Responders who refer children to the NRM must also complete a referral to the ICTG service at the same time. This allows the service to make contact with those caring for the child quite swiftly to start building a safety plan and make sure the child is receiving adequate support.
51. Some children under the care of a social worker may receive information on the NRM and modern slavery/trafficking before having contact with the ICTG service, but often the information shared is inconsistent and fragmented due to the lack of training, high turnover and limited funding within the Children's services team.
52. The ICTG service also produced child-friendly leaflets, which are translated in multiple languages to explain what modern slavery and trafficking is, the NRM process and the role of ICTGs.

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<sup>17</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 74, p.26

53. In Scotland, the ICTG service commenced on 1 April 2023, under s11 of the Human Trafficking and Exploitation (Scotland) Act 2015. This statutory service is now delivered by Guardianship Scotland (run by NGOs Scottish Refugee Council & Aberlour),<sup>18</sup> which previously supported UASCs on a non-statutory basis. However, the service seems very limited including no provision to support child survivors who are age disputed.
54. JustRight Scotland reported that there is an increase in age dispute cases resulting in adult services for survivors having to support and accommodate them. There needs to be clear guidance provided by the Scottish Government on ICTGs remit and responsibilities and statutory duties - and ensure it has a wide scope to support children who need it, rather than limiting to those already getting local authority support etc. Additionally, there needs to be clear information to stakeholder organisations regarding the remit of the ICTGs to ensure they are able to fulfill their roles effectively.

### 3.2 Legal Assistance and Free Legal Aid

*Noting that access to legal assistance and free legal aid is essential for victims' access to justice, GRETA urges the UK authorities to take further steps to ensure that:*

- *victims, and in particular children, receive legal assistance during the identification process and are properly informed of their rights and options before entering the NRM;*
- *access to free legal aid is ensured across the UK and is granted in a timely manner;*
- *The assistance of a lawyer is ensured for state compensation proceedings, by making the Exceptional Case Funding scheme accessible in practice to victims seeking compensation before the Criminal Injuries Compensation Authority.<sup>19</sup>*

55. **This recommendation has not been implemented:** survivors of trafficking and modern slavery are unable to access timely and specialist legally aided advice when they need it; advice prior to an NRM referral is still out of scope for legal aid for the vast majority of survivors in England and Wales; and legal advice on compensation matters remains the most difficult area for survivors to access.

#### *i. A legal advice crisis*

56. There is a legal advice crisis for survivors of trafficking and modern slavery. Survivors are not able to access timely and quality legally aided advice and representation when they need it. There is a huge gulf between demand for legal advice and available supply. An October 2022 report by the Anti Trafficking and Labour Exploitation Unit (ATLEU) found that a staggering 90% of support workers had struggled to find a legal aid immigration lawyer for a survivor in the past

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<sup>18</sup> More information about ICTG service Scotland: <https://scottishrefugeecouncil.org.uk/direct-support/children-and-young-people/>

<sup>19</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 92, p.31



year. Survivors are facing lengthy delays just to get an initial appointment. 76% reported significant delays, of up to three months or longer, in finding an immigration legal aid lawyer for a potential or confirmed victim of trafficking or modern slavery. 43% of respondents reported serious delays of up to six months or longer.<sup>20</sup> Queries to ATLEU's advice service suggests that this problem has continued to worsen in 2023, with support workers routinely unable to secure a legal aid solicitor for a service user.

57. The lack of legal aid provision is an issue across all of England and Wales, with the north of England being especially poorly served. While lack of provision is considered to be most acute outside of London, demand still far outstrips supply in London. ATLEU has offices in both London and Sheffield, and across both, referrals are extremely high, far exceeding our capacity.
58. Survivors of trafficking and modern slavery have complex legal and support needs. They need a range of legal advice and representation, which includes (but is not limited to) the areas of community care law, welfare benefits, housing, debt advice, immigration and asylum, criminal law (non-prosecution), civil compensation, criminal injuries compensation, family law, as well as public law issues which arise.
59. Legal advice and representation is critically important for survivors of trafficking and modern slavery. It is the key to accessing formal identification, safe housing, support, and safety. 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.
60. Survivors of trafficking and modern slavery are a group for whom access to legal aid is vital. The vast majority of those 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.
61. ATLEU's 2022 report demonstrates starkly the devastating impact of the lack of timely access to legal advice on survivors of trafficking and modern slavery. 55% of respondents said it had left survivors they supported destitute or unable to access appropriate accommodation or support. An overwhelming 97% said it caused survivors stress, anxiety or contributed to poor mental health including suicidal thoughts. It led to survivors missing important deadlines which can have serious long-term consequences, such as deadlines with the Competent Authorities in their trafficking identification case or with the Home Office in an immigration or asylum case. 64% of support workers said it resulted in the survivor being unable to meet a deadline and 57% said it left survivors in a position where they were unable to claim asylum. 29% of respondents said the inability to access legal advice had left survivors in a situation of exploitation. Finally, survivors not able to access quality legal advice within a reasonable timeframe have been detained and put at risk of removal.<sup>21</sup>

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<sup>20</sup> ATLEU, (October 2022), *'It has destroyed me'*. Available at: <https://atleu.org.uk/news/2022/10/17/it-has-destroyed-me-new-report>

<sup>21</sup> *Ibid*

62. Hope for Justice, which has frontline experience in providing long term independent advocacy to survivors, indicates where survivors do not get holistic early advice this can lead to homelessness, destitution, risks of deportation and risks of re-exploitation at some point in their journey of recovery.
63. The hours of time spent on trying to find a solicitor with capacity is detracting from the ability of frontline workers to focus on core support services and promoting the recovery of survivors. 94% of support workers responding to ATLEU's survey said that it was causing them additional work.
64. The inability to find a legal aid solicitor with capacity is leading some support workers to try to help with a task that should be undertaken by an accredited adviser or lawyer, with 68% in ATLEU's 2022 report saying that they had done this. This is an ongoing trend. From calls to ATLEU's advice line and from emails to our referrals portal this year, we are aware that increasingly support workers are feeling they need to perform legal tasks such as complete witness statements for survivors in the NRM, even though those people may be eligible for legal aid and the support worker has no legal training or immigration accreditation. This can have negative outcomes for survivors if mistakes are made, despite the best of intentions.

*ii. The causes of the legal advice crisis*

65. The legal advice crisis for survivors of trafficking and modern slavery occurs in the context of a broader crisis of the legal aid sector in the UK. The impact of Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"),<sup>22</sup> together with other legal aid cuts, the year on year depreciation in fees, and the impact of austerity, has had a catastrophic impact on the legal aid sector. Since LASPO's introduction, half of all law centres and not-for-profit legal advice services in England and Wales have closed, according to government figures. In 2013-14 there were 94 local areas with law centres or agencies offering free legal services. By 2019-20, the number had fallen to just 47.
66. Data published by Dr Jo Wilding in June 2023,<sup>23</sup> which combined publicly available data with legal aid provision figures from the Legal Aid Agency, covering September 2021 to August 2022, demonstrates that the legal aid sector is collapsing. There was a 20% reduction in the number of housing legal aid providers in the 18 months to March 2023. The same period saw a 21% loss of legal aid providers for mental health, and a 27% loss in welfare benefits. In immigration and asylum, over 30% of the providers given contracts in September 2018 had stopped doing legal aid work by March 2023. The Law Society regularly updates their heat map on the legal aid desert, confirming these concerning trends for England and Wales.<sup>24</sup>

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<sup>22</sup> Available at: <https://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

<sup>23</sup> The Conversation, (7 June 2023), *The legal aid sector is collapsing and millions more may soon be without access to justice - new data*. Available at: <https://theconversation.com/the-legal-aid-sector-is-collapsing-and-millions-more-may-soon-be-without-access-to-justice-new-data-207045>

<sup>24</sup> The Law Society, (Last updated 29 August 2023), *Legal Aid desert*. Available at: <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

67. This broader crisis in the legal aid sector has inevitably reduced the availability and quality of legal advice for survivors. **However, the primary cause of the legal advice crisis for trafficking and modern slavery survivors is the way in which these cases are funded.** Trafficking and modern slavery cases are uniquely complex, long-running and costly, and as such 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. It means that taking on cases involving victims of trafficking and modern slavery is not viable or sustainable for many legal aid providers. The fixed fee structure also deters the development of specialist expertise, and actively encourages legal aid advisors to restrict the level of work they carry out on a case, which often leads to poor quality advice and representation. Trafficking and modern slavery cases are too complicated to be operated on a fixed fee basis and it is leading to legal aid droughts and deserts for survivors. Additionally, the legal aid billing process for immigration cases is the most complex in civil legal aid at controlled work level.
68. Following public consultations there has been some small steps to improve access to legal aid including increases to the minimum earnings threshold levels. However, the **Legal Aid Means Test** continues to exclude many survivors from accessing advice across all civil categories of law despite their inability to afford it otherwise. The income test does not reflect the complex, diverse and often fluctuating financial reality of many survivors. Those who work as part of their recovery are effectively penalised for doing so. The new discretionary disregard of Modern Slavery Victim Care Contract (MSVCC) financial support payments from the income assessment does little to address this situation, particularly given it is discretionary rather than mandatory. The capital test remains excessively burdensome for this group, such as the requirement to provide evidence that assets abroad should not be considered.
69. Contrarily to Scotland (despite the issues highlighted in the previous section), in England and Wales, **three important areas of advice are excluded from the scope of legal aid:** pre-NRM immigration advice (apart from for a very limited group of survivors who are already accessing advice on certain in scope immigration matters or about judicial review under the Nationality and Borders Act); advice about trafficking identification; and advice on the Criminal Injuries Compensation Scheme.
70. The picture in the UK therefore, for survivors of trafficking and modern slavery, and for civil legal aid more broadly, is one of legal aid 'deserts' (areas where there are no legal aid providers) and 'droughts' (areas where there appears to be a supply of providers but they have no capacity to take on new cases). The government is aware of the crisis in civil legal aid and has announced a review intended to 'improve the sustainability of the system'. Yet, the legal aid sector is collapsing now, and the consequences are that many individuals with legal issues are unable to find a legal aid lawyer with capacity to advise and represent them, regardless of whether the advice issue is in scope or not. This situation is urgent; any further decline in the number and quality of legal aid providers will have a catastrophic impact on the UK's ability to meet its obligations under law and will leave an ever-growing number of survivors of trafficking and modern slavery without access to support, safety, justice and remedy.

*iii. Access to legal advice on compensation matters: a particular challenge*

71. For survivors of trafficking and modern slavery, the most challenging area to get legal advice and representation on is compensation. Some of the issues are:

Lack of information available on compensation

72. Many survivors are unaware of their entitlement to compensation and the avenues through which they can pursue it. Knowledge of compensation routes and support for survivors to access them varies widely and is often dependent on factors including the geographical location of the individual, the level of training their case worker has received on compensation, and whether or not they have access to a legal practitioner experienced in compensation matters.

Lack of genuine access to legal aid for this type of case

73. Trafficking compensation complaints are complex and often raise novel areas of law. Yet despite their considerable complexity, compensation claims on legal help files fall in the ‘miscellaneous’ category. This attracts the lowest rate of remuneration, a fixed fee of just £79 in comparison to a fixed fee of £157 in housing or £259 in public law. Low rates of pay mean there is little business case for a provider to undertake trafficking compensation claims.

Particular challenges and obstacles with Trafficking and Modern Slavery Compensation Claims (TMSCCs)

74. While LASPO also purportedly makes legal aid available for them, very few providers are taking these cases. In June 2019, ATLEU contacted 250 legal aid providers who appeared on a list of the Trafficking and Modern Slavery Compensation Claims (“TMSCC”) providers published by the Legal Aid Agency, and only 27 confirmed that they could advise and assist with a trafficking or modern slavery compensation claim. The Employment Tribunal also relies on survivors to get pro bono representation for advocacy in the tribunal or to apply for Exceptional Case Funding (“ECF”), which poses an additional barrier for survivors.

Advice for Criminal Injuries Compensation Scheme applications is expressly out of scope for legal aid and Exceptional Case Funding does not offer a viable alternative

75. The Legal Aid Agency (“LAA”) does not accept that an application to the Criminal Injuries Compensation Authority (“CICA”) involves the determination of Convention or EU rights and so routinely refuses applications. ATLEU conducted a survey on ECF in 2020 which demonstrated that 93% of applications made to the LAA for ECF funding to prepare and submit an application were refused. Between April 2014 and April 2018, ATLEU made 30 applications for Exceptional Case Funding in relation to CICA matters. All 30 were refused following the initial ECF application on the basis that the clients did not require legal advice and assistance to successfully access compensation through the CICA scheme.<sup>25</sup>
76. The Criminal Injuries Compensation Scheme is genuinely not accessible by an unrepresented survivor of trafficking. The application process often requires detailed legal submissions which survivors of trafficking, particularly those who may not speak English or may have had more limited formal education, are likely to find it challenging or impossible. Support workers are also unlikely to have the specialist knowledge required or the capacity to undertake this role for clients.

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<sup>25</sup> Anti Trafficking and Labour Exploitation Unit (ATLEU), (17 November 2020), *Survivors of trafficking and the Criminal Injuries Compensation Scheme*. Available at: <https://atleu.org.uk/news/2020/11/16/survivors-of-slavery-die-waiting-for-their-compensation-claims-to-be-awarded>

77. The vast majority of legal practitioners surveyed by ATLEU said that difficulties in obtaining legal aid funding meant that it was not feasible for them to advise survivors on CICA matters. Although the LAA purports to have simplified the application form, in practice it has merely altered how the questions are phrased. The same detailed legal submissions are still required which cannot be done without legal advice.

Poor decision making by the Legal Aid Agency

78. LAA decisions on cases involving survivors of trafficking and modern slavery are poor and inconsistent. Refusals of applications are frequent, often due to a failure to understand the applicable law or apply lawfully the legal aid regulations. The need for satellite litigation frequently protracts proceedings, sometimes for several years, during which time survivors are unable to access compensation and move on from their trafficking experiences. Survivors report feeling that they are left in limbo during this time.

There are very few legal practitioners taking compensation cases

79. Given the immense funding challenges outlined, alongside the complexity of the different avenues technically available for compensation, there are extremely few legal practitioners supporting survivors to make compensation claims. ATLEU's advice referral portal statistics demonstrate just how few providers are taking compensation cases. Since the portal was launched in September 2020, there have been 54 referrals for compensation advice but only six were matched with a legal provider prepared to take on the case, one of which was from ATLEU.

*iv. The ECF regime: Not a viable substitute for in scope legal advice*

80. ATLEU has substantial experience in applying for ECF for survivors of trafficking and modern slavery on some of the issues they face which fall outside of the scope of legal aid, including immigration advice, pre-NRM advice, or Criminal Injuries Compensation Scheme ("CICS") advice. We have found the scheme ineffective, time consuming, and frustrating. Applications for ECF in cases of trafficking and modern slavery are very slow and communication is poor and there is no emergency application process for ECF. Crucially, ECF applications in trafficking and modern slavery cases are frequently refused by the Legal Aid Agency and they are administratively burdensome and complex. For these reasons, ECF applications for trafficking and modern slavery cases are viewed as an unacceptable risk by most legal aid providers.

81. The Nationality and Borders Act 2022 also introduced a presumption that ECF would be granted for advice on referral into the NRM in relation to a claim that removing them would be unlawful under the Human Rights Act 1998. ATLEU has experience of two applications for ECF for pre-NRM immigration advice, one initially made in August 2020 and one in January 2021. These finally received grants in October 2022 (22 months later) and September 2022 (18 months later) respectively after making representations in relation to the changes coming in with the Nationality and Borders Act to assist the decision making process.

82. In practice survivors of trafficking and modern slavery are unable to access ECF without assistance and this falls outside most support workers' competence. If an individual applies by

themselves or without a lawyer, even if they use a legal aid form, they will still have to go to a legal aid lawyer to get a new means assessment done. Furthermore, even if an individual gets ECF, they will struggle to find a lawyer to take on the case, which reduces its utility enormously.

83. Based on the low grant rate of ECF, the delays, the unnecessary time and cost to process cases, and the need to conduct satellite litigation in order to get decisions and funding, ATLEU firmly believes that areas of work should be brought back into the scope of legal aid instead. This includes pre-NRM advice, advice on trafficking identification and advice on all matters related to applications to the Criminal Injuries Compensation Scheme.
84. There are also wider matters such as welfare benefits which is often highly complex law particularly as relates to foreign nationals but is out of scope below Upper Tribunal Level.

*v. Legal advice - more crucial than ever due to legislative regression*

85. The need for survivors of trafficking and modern slavery to have access to early and specialist legal advice and representation has become even more critical since the passage of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, which has drastically and negatively changed the legal and policy landscape for survivors of trafficking and modern slavery in the UK.
100. The Illegal Migration Act is complex, with drastic harmful consequences for those within its scope. When it enters into force, access to specialist legal advice will be more critical than ever for those who are trafficked and exploited. It will be necessary in order to help individuals understand what protection may be available to them under the NRM, which may include challenging their removal to their home country or an alleged 'safe country' due to the risk of serious and irreversible harm and risk of re-trafficking that this could cause. Early legal advice could counteract the disincentive to come forwards to the authorities and might encourage cooperation which will ultimately assist investigations and prosecutions. The Act will create fear amongst survivors, including those who would not be subject to removal but would reasonably believe that they are. Access to legal advice is essential to enable those survivors of trafficking, who are still entitled to NRM support and protection, to access this.

### **3.3 Compensation**

*GRETA urges the UK authorities to make additional efforts to guarantee effective access to compensation for victims of trafficking, in line with Article 15 of the Convention, including by:*

- *enabling all victims of trafficking, including undocumented migrants, to exercise their right to compensation, and carrying out a review of the "illegality defence", aimed at enabling victims of trafficking who are irregular migrants to seek unpaid salaries before employment tribunals;*
- *ensuring that the Family Worker Exemption and the "live in domestic workers exemption" do not prevent domestic workers who are victims of trafficking from accessing compensation;*
- *ensuring that victims of labour exploitation have accessible remedies for obtaining more than two years owed in National Minimum Wage;*

- *making full use of the legislation on the freezing and forfeiture of assets and international co-operation to secure compensation to victims of THB;*
- *improving training programmes on compensation for legal practitioners, prosecutors and the judiciary, and encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB;*
- *enabling victims of trafficking to effectively exercise their right to state compensation within reasonable time, by ensuring their access to legal aid when submitting applications to the CICS as well as to experts who can assess psychological injuries, and providing appropriate guidance to CICA;*
- *ensuring that the amount of compensation from the Northern Ireland Criminal Injuries Compensation Authority is not made dependent on the victim's co-operation with the authorities or prior convictions.*<sup>26</sup>

86. In September 2023, the Government finally laid legislation to remove the 'Family Worker Exemption' from National Minimum Wage regulations, having committed to do so in March 2022. The draft National Minimum Wage (Amendment) (No. 2) Regulations 2023, which will remove the Exemption from 1 April 2024, need to be debated and approved by both Houses of Parliament before becoming law.

87. We welcome this progress towards the removal of an Exemption that had long served as a loophole for the exploitation of live-in domestic and childcare workers. The announcement of the long-awaited draft Regulations being laid followed sustained coalition campaigning, and also a further legal success by ATLEU at the Employment Appeal Tribunal in April 2023 which confirmed the unlawfulness of the Exemption.

88. **However, with this one notable exception, the UK has failed to make any progress in guaranteeing effective access to compensation for survivors of trafficking.** While there are different mechanisms in place to compensate survivors: some to obtain compensation from a trafficker, and some to obtain compensation from the State, all are failing survivors in practice. Few survivors are able to obtain compensation for the abuses committed against them. Compensation is a rare exception, and not the norm.

*i. Recovery of compensation from a trafficker*

89. The figures that are available for the recovery of compensation from a trafficker are shameful: In April 2022, the Independent Anti-Slavery Commissioner reported that only 41 compensation orders and 8 Slavery and Trafficking reparation orders had been made in the seven years since 2015.<sup>27</sup> Yet in the same period, 53,164 survivors were referred into the National Referral

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<sup>26</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 132, p.40

<sup>27</sup> Independent Anti-Slavery Commissioner, (2022), IASC policy paper: Access to compensation and reparation for survivors of trafficking. Available at: <https://www.antislaverycommissioner.co.uk/media/1771/iasc-policy-paper-access-to-compensation-and-reparation-for-survivors-of-trafficking-april-2022-final.pdf>

Mechanism (NRM).<sup>28</sup> The government is not collecting data on the numbers of survivors who obtain compensation from the other avenues. In addition, when compensation orders are made within criminal courts they are often for very low amounts.

90. The existing avenues to recover compensation from a trafficker are fraught with challenge, complexity and confusion. They were not drafted with trafficking and modern slavery in mind, and the decision makers for these often do not understand that the crimes fit.
91. This is the same for Scotland, where compensation has to be ordered by the Judge following a guilty verdict at trial; however, only one instance known of this being done.
92. There is no civil remedy for trafficking and modern slavery in UK law. Without such a civil remedy, survivors and their legal representatives are forced to try to access compensation through a multitude of existing laws, patching together several different claims which encompass the many wrongs done to them. It is complex, confusing, lengthy, and costly. This also adds to the challenges with accessing legal aid with applications for legal aid frequently rejected.
93. Slavery and Trafficking reparation orders under the Modern Slavery Act require a criminal conviction of the perpetrator under the Act and for a confiscation order to be made against them. As prosecution and conviction rates under the Act remain very low, this avenue is only available to a very limited number of victims who have seen their traffickers convicted. In 2020, just 89 defendants were proceeded against on a 'principal offence' basis, with just 10 convictions that year.<sup>29</sup>
94. The same issue has been identified in Scotland where there is very low rates of conviction of traffickers, with survivors more likely to be prosecuted when recovered in criminal exploitation (e.g cannabis cultivations). In 2022, the former Anti-Slavery Commissioner, Dame Sara Thornton expressed concerns about the low number of trafficking convictions in Scotland, reporting there were no convictions for three years.<sup>30</sup>
95. Compensation Orders under the Powers of Criminal Courts (Sentencing) Act 2000<sup>31</sup> again requires a criminal conviction of the perpetrator, which restricts access to this form of compensation significantly.  
Prosecutors are not required to request a compensation order, courts are not obligated to consider making a compensation order, but section 130 (2A) (3) states that *A court shall give reasons, on passing sentence, if it does not make a compensation order in a case where this section empowers it to do so.* However, these requests remain very rare.  
It is also not specific to the crime of trafficking and modern slavery, rather 'any personal injury, loss or damage arising from the offence'.

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<sup>28</sup> This is a calculation of NRM statistics in 2015 (3266 referrals), 2016 (3805 referrals), 2017 (5145 referrals), 2018 (6993 referrals), 2019 (10,627 referrals), 2020 (10,601 referrals) and 2021 (12,727) referrals. NRM data available at: <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

<sup>29</sup> Home Office, (25 November 2021), *2021 UK Annual report on Modern slavery*. Available at: <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery/2021-uk-annual-report-on-modern-slavery-accessible-version#fnref:7>, para 2.1.32

<sup>30</sup> Sunday Post, (31 July 2023), *No trafficking convictions in Scotland for three years as cases climb by 50% and former commissioner urges vigilance*. Available at: <https://www.sundaypost.com/fp/no-trafficking-convictions-in-scotland/>

<sup>31</sup> Available at: <https://www.legislation.gov.uk/ukpga/2000/6/contents/2020-02-26>



96. Even when compensation orders are made, they are often for very low amounts of money which does not reflect the gravity of the crime committed. Not only is it insufficient that it does not address the harm suffered from the whole trafficking or modern slavery experience, but there are also other significant limitations. Usually, compensation orders do not include unpaid wages during the period of exploitation. They are also reliant on good financial investigations and confiscation orders.
97. An Employment Tribunal claim for employment-related matters such as unfair dismissal or unlawful deduction of wages is a very lengthy process, often a minimum of 18 months. Survivors, particularly those with irregular immigration status, are in practice often excluded from bringing a claim. The strict deadline to lodge a complaint of 3 months less a day since the employment abuse occurred is entirely unrealistic for many survivors. Many will be suffering from trauma and too preoccupied with their recovery and the urgent need to address the precarity of their immigration status to consider pursuing a claim, even if they were able to access advice on how to pursue a claim in this short time frame. The Deduction from Wages (Limitation) Regulations 2014<sup>32</sup> significantly reduced the utility of this option as it is now not possible to claim more than two years of unpaid wages.
98. Additionally, some survivors only find out they have been exploited on return to their country of origin upon checking payments to their national bank accounts. Then it is too late to seek recompense and the employment tribunal has strict timescales and deadlines. Considering issues around accessing legal representation within the UK, let alone in their country of origin, these individuals receive no compensation or justice.
99. A civil remedy of trafficking and modern slavery would simplify the recovery of compensation from a trafficker. By being tailored specifically to the crime of trafficking and modern slavery, it would vastly cut down on the legal complexities and challenges currently experienced by victims and survivors and their legal representatives. It would create consistency and clarity for victims and survivors about their options to pursue compensation. Whereas at current, it is in effect a lottery as to whether a survivor accesses a support provider who has knowledge of the compensation avenues and can refer them to a legal practitioner who is willing to pursue such a complicated and lengthy claim.
100. A civil remedy would mean that a survivor could pursue a civil claim in addition or as an alternative to supporting a criminal prosecution case which could also include those who have been complicit by action or omission such as a business as well as a human trafficker. This also has the potential to serve as an empowering tool for people who have been the victim of a crime of coercion, control and removal of agency.
101. A civil remedy for trafficking and modern slavery would increase the numbers of survivors seeking and receiving compensation from their traffickers, which would act as a deterrent to traffickers. The UK must make trafficking and modern slavery a high risk and low profit crime. It must ensure that survivors are compensated for the abuses committed against them.

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<sup>32</sup> Available at: <https://www.legislation.gov.uk/uksi/2014/3322/contents/made>

*ii. Accessing compensation from the state*

102. Given the complex picture for recovery of compensation from a trafficker, it is currently easier for survivors to obtain compensation from the state than their trafficker. Yet, this too is fraught with challenge.
103. For many survivors of trafficking and modern slavery, the Criminal Injuries Compensation Scheme is one of last resort. Typically, these survivors are unable to identify their trafficker, or their trafficker will have no significant assets or have dissipated their assets. Often they are simply too vulnerable to face their trafficker in court or contemplate further legal proceedings. Yet, while the Criminal Injuries Compensation Scheme was amended in 2012 to explicitly include survivors of trafficking, few survivors are able to access it and fewer still are able to obtain an award.
104. The Independent Anti-Slavery Commissioner documented that between 1 January 2012 and 28 February 2020, in England and Wales only 54 out of 283 applications by victims of trafficking to the Criminal Injuries Compensation Authority were awarded compensation<sup>33</sup>
105. The Criminal Injuries Compensation Scheme at present is not fit for purpose for victims of trafficking and modern slavery and the vast majority are refused compensation in circumstances where it ought to be granted. This is because:
106. Trafficking and modern slavery are crimes of violence under section 6 of the Modern Slavery Act 2015.<sup>34</sup> Yet they are not defined as ‘crimes of violence’ under the Scheme rules. The definition of a ‘crime of violence’ is interpreted so narrowly by CICA that it does not encompass the experience of a victim of trafficking and slavery. The rules are currently interpreted by CICA to mean that a survivor of trafficking is not entitled to compensation unless they have suffered physical violence, have been threatened with violence or believed that they might be subjected to violence. Many survivors of trafficking and slavery are unable to demonstrate that they meet this requirement, with those trafficked for the purpose of forced labour and domestic servitude often facing the greatest difficulty.
107. There is an additional requirement under the Scheme that in order for a threat to amount to a crime of violence the threat must cause “fear of *immediate* violence in circumstances which would cause a person of reasonable firmness to be put in such fear”.<sup>35</sup> This means that if the individual is not in fear of violence which will happen to them immediately, but instead they fear violence at some point in the future, then the survivor will not be eligible for an award of compensation. This is common with survivors of trafficking and can mean many are unable to show they meet the definition.

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<sup>33</sup> IASC policy paper, (2022), *Access to compensation and reparation for survivors of trafficking*, [https://www.antislaverycommissioner.co.uk/media/1771/iasc-policy-paper\\_access-to-compensation-and-reparation-for-survivors-of-trafficking\\_april-2022-final.pdf](https://www.antislaverycommissioner.co.uk/media/1771/iasc-policy-paper_access-to-compensation-and-reparation-for-survivors-of-trafficking_april-2022-final.pdf)

<sup>34</sup> [Modern Slavery Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/31/section/6)

<sup>35</sup> Annex B , Crime of Violence, para 2.(c). Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf)

108. An application to CICA must be made within two years of the criminal injury suffered. Many survivors will make an application outside of this time limit. This is commonly due to trauma, a lack of knowledge about the scheme, the lack of assistance available to help submit an application, fear of repercussions from a trafficker, a fear of authorities, often they can be destitute for a period of time prior to identification and also a survivor's hierarchy of needs. In addition, there may be multiple trafficking incidents over a particular time frame which can make it difficult to clearly identify the limitation date.
109. CICA has the discretion to extend the time limit but there are conflicting experiences of this, with some organisations saying CICA will only grant this if substantial evidence is submitted, which places a significant burden on the survivor to produce documentation. Other organisations, instead, stated that upon request of extension, CICA will accept the application if they are given a reason other than not knowing about the scheme (e.g awaiting outcome of NRM/asylum claim, individual is too traumatised, lack of evidence etc).
110. The unspent conviction rule has a discriminatory and exclusionary impact on survivors of trafficking, many of whom are compelled to commit criminal offences as part of their exploitation. Further, many fall through the gaps of the UK's non-punishment framework and are criminalised for offences committed under coercion. There is currently no discretion for CICA to look at the circumstances of the conviction, for example, whether the conviction was as a result of acts that a survivor of trafficking and modern slavery was compelled to do in the course of their exploitation.
111. Under paragraph 23 of the scheme, CICA is able to withhold awards of compensation where an applicant has *'failed to cooperate so far as is reasonably practicable in bringing the assailant to justice.'* Despite the requirement to look at the individual applicants' circumstances, CICA does routinely refuse compensation on the grounds of non-cooperation, without consideration of the applicant's reasons or circumstances. This fails to reflect the impact of trauma on a survivor, fear of the authorities, for their safety or the safety of family members, amongst other factors.
112. The length of time from application to award of compensation is regularly lengthy for survivors and requires extensive correspondence and submissions being made. The lack of readily available legal assistance can mean that survivors become disillusioned and disengaged from the process. Sadly, the length of time needed to obtain funding and an initial decision from CICA has seen survivors die before the conclusion of their application.<sup>36</sup>

*iii. Barriers in access to legal advice on compensation matters*

113. As previously highlighted, there are only a handful of lawyers running trafficking and modern slavery compensation cases alongside ATLEU, due to the uncertainty, complexity and length of these cases. There is a lack of genuine access to legal aid for this type of case. Despite their considerable complexity, compensation claims on legal help files fall in the 'miscellaneous' category, which attracts the lowest rate of remuneration. The lack of a specific contract for providers to undertake trafficking compensation claims also makes the work less desirable. It should also be noted that where survivors do recover compensation, the Government recovers the

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<sup>36</sup> ATLEU, (2020), *Survivors of trafficking and the Criminal Injuries Compensation Scheme*. Available at: [Survivors of slavery die waiting for their compensation claims to be awarded — ATLEU](#); case studies on p19

cost of running their case on legal aid from the total award, in some cases almost entirely extinguishing their compensation. In addition, applications to the Criminal Injuries Compensation Scheme are out of scope for legal aid in England and Wales.

In Hope for Justice experience, many civil providers are not even aware that legal aid is available for cases involving human trafficking.

### **3.4 Access to work, vocational training and education**

*GRETA considers that the UK authorities should make further efforts to support victims of THB in their economic and social inclusion through the provision of education, vocational training and job placement. This should involve raising awareness amongst different employers and the promotion of micro-businesses, social enterprises and public-private partnerships, including through state supported employment programmes, with a view to creating appropriate work opportunities for victims of trafficking.<sup>37</sup>*

*GRETA also considers that the UK authorities should ensure that identified victims of trafficking who are also asylum seeker, are not discriminated against on account of their status, and can access to the labour market on the same conditions as other identified victims of trafficking.<sup>38</sup>*

114. **The above recommendations have not been fully implemented** because many survivors are still prevented from accessing employment.

115. Modern Slavery Statutory Guidance states that victims are entitled to access to the labour market, vocational training and education, providing they have the immigration status that allows them to.<sup>39</sup> Therefore, the right to work is based on an individual's immigration status and not their status as a recognised survivor. In fact, even when a survivor receives a positive Conclusive Ground Decision, there is no automatic grant of leave to remain and therefore some survivors may still not have access to employment.

116. The limits on the access to the UK labour market for those within the NRM and asylum system makes it difficult for support organisations to assist survivors of trafficking to prepare for work, enter the labour market and be supported while in work.<sup>40</sup>

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<sup>37</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at:

<https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 107, p.34

<sup>38</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at:

<https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 108, p.34

<sup>39</sup> Home Office, (last updated October 2023), *Modern Slavery: Statutory guidance for England and Wales and non-statutory Guidance for Scotland and Northern Ireland*. Available at:

[https://assets.publishing.service.gov.uk/media/651e9cf17309a1000db0a8af/Modern\\_Slavery\\_Statutory\\_Guidance\\_EW\\_and\\_Non-Statutory\\_Guidance\\_SNI\\_v3-5\\_.pdf](https://assets.publishing.service.gov.uk/media/651e9cf17309a1000db0a8af/Modern_Slavery_Statutory_Guidance_EW_and_Non-Statutory_Guidance_SNI_v3-5_.pdf) - paragraph 15.104 - 15.107, p.210

<sup>40</sup> IOM UK, (2022), *Skills Training and Reintegration (STAR) programme*. Available at:

<https://unitedkingdom.iom.int/skills-training-and-reintegration-star-project>

117. A joint report by leading anti-trafficking organisations found that denying access to work to survivors can have a significant impact on their mental health and prevents them from moving on with their lives.<sup>41</sup> Allowing survivors of modern slavery to work while going through the NRM process would not only benefit their recovery and integration, but also generate economic benefit to society.<sup>42</sup>

118. Many organisations offer employment and training programmes providing long term support to survivors and working towards durable reintegration. However, a 2021 University of Nottingham Rights Lab report<sup>43</sup> also found the existence of barriers preventing people from accessing support. Immigration status is one of them.

#### 4. Identification, assistance and protection

119. According to the Global Slavery Index 2023, the estimated number of people living in exploitation in the UK is 122,000.<sup>44</sup> The number of survivors referred to the NRM in 2022 was 16,938 with 2023 following a similar trend recording 12,882 survivors referred in the first 3 quarters.<sup>45</sup>

120. Over the past two years, the Government has introduced significant policy and legislative changes which have considerably impacted the identification, support and protection of survivors of trafficking and modern slavery.

121. The introduction of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, based on the unevicenced claims of people gaming the modern slavery system<sup>46</sup> and acting as an efficient deterrent for irregular entry, deteriorated the functioning of the NRM as an identification and support system for survivors.

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<sup>41</sup> Anti-Slavery International, ATLEU, ATMG, Coop, FLEX, Kalayaan, Sophie Hayes Foundation, Survivor Alliance, (March 2021), *Access to work for Survivors of Slavery to enable independence and sustainable freedom*. Available at: [https://www.antislavery.org/wp-content/uploads/2021/03/Coalition\\_AccessToWork\\_report\\_v3.pdf](https://www.antislavery.org/wp-content/uploads/2021/03/Coalition_AccessToWork_report_v3.pdf)

<sup>42</sup> Hestia, (2022), *Underground lives. Aspirational Britain: survivors of modern slavery want to work too*. Available at: <https://www.hestia.org/Handlers/Download.ashx?IDMF=8d6b66d0-3224-440e-a50f-9d69278570eb>

<sup>43</sup> University of Nottingham Rights Lab, (May 2021), *The benefits and the barriers to accessing employment: Considerations for survivors of modern slavery*. Available at: [https://www.antislaverycommissioner.co.uk/media/1599/rights\\_lab\\_access-to-work-pathways\\_final.pdf](https://www.antislaverycommissioner.co.uk/media/1599/rights_lab_access-to-work-pathways_final.pdf)

<sup>44</sup> Walk Free, (2023), *Global Slavery Index*. Available at: <https://www.walkfree.org/global-slavery-index/country-studies/united-kingdom/>

<sup>45</sup> Home Office, (last updated November 2023), *National referral mechanism statistics*. Available at: <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

<sup>46</sup> Office for Statistics Regulator, (2022), *Letter to Home Office: Use of National Referral Mechanism statistics*. Available at: [Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics \(statisticsauthority.gov.uk\)](https://www.statisticsauthority.gov.uk/letter-to-home-office-use-of-national-referral-mechanism-statistics)

122. The NABA Part 5 concerning modern slavery was commenced in January 2023, while the Government's current main focus is to introduce regulations and draft guidance to implement the Illegal Migration Act, whose inadmissibility, detention and removal provisions are not yet into force.

123. These changes in legislation have created a fertile environment for people traffickers to act unpunished, while criminalising victims. This further exacerbated those vulnerabilities that can lead to re-trafficking and exploitation and is resulting in fewer survivors wishing to enter the NRM.

#### 4.1 Identification of survivors of trafficking

##### 4.1a Spike in survivors locked out of identification and support

*GRETA urges the UK authorities to take further steps to improve the identification of victims of THB, including by:*

- *ensuring that the identification process has a reasonable duration, by providing appropriate funding for the recruitment of new staff and making the process more efficient;*
- *continuing to monitor the implication of the Immigration Act 2016 offence of illegal work for the identification and protection of victims of trafficking, and adopting necessary measures for ensuring that victims of trafficking who are undocumented migrants are identified as victims instead of being considered as criminals.<sup>47</sup>*

124. The introduction of new legislations and policies over the past two years have halted and eroded the UK's effort to tackle human trafficking and modern slavery. These changes not only mean that **the above recommendations have not been fulfilled**, but they constitute a rollback from years of gradual improvement.

125. Despite the Government justifying changes to the NRM system on the basis that it is being abused both within the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, they have provided no evidence to support that there is widespread "abuse of the system" as claimed.

126. Data from the NRM end of year summary issued in 2023 covering the period 2022, highlights that *"The proportion of positive reasonable grounds decisions was 87% for adults and 90% for children potential victims. The proportion of positive decisions has remained relatively similar in recent years, with around 9 out of every 10 referrals receiving a positive decision."* Overall the number of positive conclusive grounds decisions were detailed in the report as 88% positive

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<sup>47</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 268, p.68

*reasonable grounds decisions and 89% positive conclusive grounds decisions.*<sup>48</sup> This is not showing widespread abuse of the system.

127. Despite a rise in the NRM referrals year on year, which suggests the identification efforts are working, the number of Duty to Notify Referrals has also been increasing,<sup>49</sup> showing a concerning trend, with more people not consenting to enter the NRM. Front-line practitioners advise that rather than there being abuse of the system, survivors have difficulty being identified and getting into the NRM system in the first place.
128. The Modern Slavery Statutory Guidance was updated on 30<sup>th</sup> January 2023 to increase the threshold for reasonable grounds decisions. From this date, survivors were required to provide objective evidence beyond their own narrative. The guidance was updated, following a legal challenge<sup>50</sup> in July 2023, to make clear that decision makers should consider whether it is reasonable to expect objective evidence to be provided, but there are concerns that a high threshold is still being applied. This is supported by the low levels of reasonable ground decisions seen in the Q3 statistics. In addition, on the same date, guidance on the bad faith and public order disqualification were introduced.
129. Currently, most of the main provisions of the Illegal Migration Act 2023 are not yet in force but there are significant implications for those seeking refuge and survivors of human trafficking effectively removing their rights because of how they enter the UK.
130. The government justification is to deter illegal entry and stop dangerous routes of entry. An up to date overview explainer and legal analysis of the Modern Slavery Sections of the Act by the Policy and Evidence Centre can be located at [Modern-Slavery-PEC-Explainer-Illegal-Migration-Act-v.2.pdf \(modernslaverypec.org\)](https://www.modernslaverypec.org/modern-slavery-pec-explainer-illegal-migration-act-v.2.pdf).
131. More widely, due to the lack of the ability to fully scrutinise the Bill, the cross party Joint Committee on Human Rights launched an inquiry to fully legislatively scrutinise the Bill and a detailed report published on 11<sup>th</sup> June 2023 confirmed the opinion of numerous legal experts that the Bill breaches numerous international obligations and requires significant changes to make it compatible.<sup>51</sup>

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<sup>48</sup> Home Office, (2 March 2023), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022*. Available at: <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>

<sup>49</sup> Duty to Notify referrals reports rose 43% from 3,193 in 2021 to reach 4,580 in 2022. In the first 3 quarters of 2023, there have been 3,885 reports.

<sup>50</sup> Matrix Chambers, (27 June 2023), *SSHD withdraws new evidential test for 'Reasonable Grounds' decision in modern slavery statutory guidance*. Available at: <https://www.matrixlaw.co.uk/news/sshd-withdraws-new-evidential-test-for-reasonable-grounds-decisions-in-modern-slavery-statutory-guidance/>

<sup>51</sup> Joint Committee on Human Rights, (6 June 2023), *Legislative Scrutiny: Illegal Migration Bill*. Available at: [Legislative Scrutiny: Illegal Migration Bill \(parliament.uk\)](https://www.parliament.uk/legislative-scrutiny-illegal-migration-bill)

132. Section 2, which imposes a mandatory removal based on how the person has entered the UK i.e., irregularly and/or by deception, impacts a significant proportion of foreign national victims who are trafficked across borders and have often entered irregularly or via some form of deception. This is the nature of the modus operandi of human traffickers yet directly penalises survivors for how they enter the UK. This is not compatible with the non-discrimination principles in Article 3 of the European Convention on Action Against Trafficking in Human Beings (“ECAT”), non-punishment provision in Article 26 and obligations to identify and support survivors in Articles 10, 12, and 13 and Article 14 of the European Convention on Human Rights (“ECHR”).

*i. Reasonable Ground Threshold*

133. The provisions in the Nationality and Borders Act 2022 have left many survivors outside of the NRM identification and support system by increasing the number of negative reasonable ground decisions and therefore excluding survivors from identification and support. A briefing produced by the Human Trafficking Foundation<sup>52</sup> found that the increment in negative Reasonable Ground Decisions resulted from the changes to the evidential threshold, which introduced the requirement for objective evidence.

134. The Home Office NRM quarterly statistics clearly show how the identification system has been negatively impacted.

Data published by the Home Office in the first 3 quarters of 2023 shows a stark decrease in positive Reasonable Ground Decisions compared to 2022. In Q4 2022, an average of 84% positive decisions were made for adults and 87% for children, compared to 49% for adults and 74% for children in Q1 2023. These numbers decreased further in Q2 2023.<sup>53</sup>

135. Analysis of NRM data has highlighted significant differences in the proportion of positive Reasonable Grounds decisions for UK nationals and foreign nationals for decisions that were made in the first 6 months of 2023. During this period 86% of Reasonable Grounds decisions for UK nationals were positive compared to 40% for foreign nationals. The proportion of positive decisions for UK nationals increased in Q2, 2023 compared to Q1, 2023, rising from 84% to 88%. In contrast, the proportion of positive decisions for Albanians fell from 42% in Q1, 2023 to 14% in Q2, 2023.<sup>54</sup>

136. There have also been dramatic falls in the proportion of positive Reasonable Grounds decisions for some first responder organisations and there are unprecedented differences in the proportion

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<sup>52</sup> Human Trafficking Foundation, (May 2023), *Impact of the Nationality and Borders Act: changes to the Reasonable grounds Threshold*. Available at <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/64803ded7f6d6b3544d1eb85/1686126062880/HTF+Reasonable+Grounds+Threshold+Changes+Briefing+2023.pdf>

<sup>53</sup> Home Office, (Last updated 2 November 2023), *National Referral Mechanism statistics*. Available at: <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

<sup>54</sup> IOM UK, (October 2023), *UK data National Referral Mechanism. Data analysis briefing #7*. Available at: [https://unitedkingdom.iom.int/sites/g/files/tmzbdl1381/files/documents/2023-10/iom\\_uk\\_nrm-briefing\\_2023\\_midterm.pdf](https://unitedkingdom.iom.int/sites/g/files/tmzbdl1381/files/documents/2023-10/iom_uk_nrm-briefing_2023_midterm.pdf)



of positive Reasonable Grounds decisions based on the first responder organisation which made the referral. In Q2, 2023 only 4% of Reasonable Grounds decisions were positive for cases that were referred by Immigration Enforcement whereas a year earlier this was 94%. In the first 6 months of 2023 only 32% of Reasonable Grounds decisions were positive for cases which were referred by the Home Office. This was less than half the proportion of referrals made by the police, local authorities and charities.<sup>55</sup>

137. Despite the recent change in evidential threshold following the Court challenge, the latest statistics published for Q3 2023, continue to show a much lower rate of positive RGDs compared to the same quarter last year. Individuals with negative reasonable grounds decisions are at risk of disengaging from services and can become vulnerable to re-trafficking without support provided through the MSVCC or other alternatives.

138. This is also adding pressure on frontline services who provide support to survivors pre-NRM, as the level of independent advocacy and support including gathering "objective evidence" has substantially increased.

#### *ii. Public Order Disqualification*

139. Survivors have been excluded from the identification and support system as a result of Section 63 of the Nationality and Borders Act 2022, which casts a wide net in terms of those who can potentially be disqualified from identification and protection on the grounds of "public order" or "bad faith."

140. The Explanatory Notes for the Nationality and Borders Act 2023 at paragraph 622 state: "*The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) contains provisions for an exemption to the protections conferred during the recovery period on public order grounds or if it is found that victim's status is being claimed improperly. This Section puts these disqualifications into primary legislation*".<sup>56</sup> However, we believe that this is an incorrect interpretation of Article 13(3) of ECAT.

141. If Article 13(3) is read on its ordinary meaning, its intention was never to be applied to a victim of human trafficking: *parties are not bound to observe the recovery and reflection period if grounds of public order prevent it; i.e., circumstances where a Government cannot provide a recovery and reflection period to a victim due to a particular public order situation e.g. mass rioting or a situation of war like in Ukraine.*

142. The alternative, when read with the explanatory report, is that Article 13(3) is to guarantee that the victim's status will not be illegitimately used. It is a non-sensical argument to state that a

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<sup>55</sup> *Ibid*

<sup>56</sup> Home Office, (28 April 2022), *Explanatory Notes, Nationality and Borders Act 2022*. Available at: [72637 Chapter 36 EN 2022 Cover.indd \(legislation.gov.uk\)](#)

victim of human trafficking is entering a system and illegitimately using a system designed to identify, safeguarding and protect victims of human trafficking.

143. The appropriate response in the UK NRM system to address illegitimate use of the system is already available by way of having specialist organisations acting as First Responders (survivors cannot refer themselves into the NRM). In addition, the NRM is a two-stage decision making process where a negative reasonable grounds decision or conclusive grounds decision (which should technically be made 30 days after the reasonable grounds decision) can be served on the basis of all the available information. However, the public order provision only applies to those who are already identified as potential victims (with a positive RG) and we would argue that this was never the intention of the public order provision as it defeats the very purposes of ECAT as set out in Article 1. In addition, under Article 40(1), ECAT should not affect other rights.
144. Between the commencement of NABA on the 30<sup>th</sup> of January 2023 and the end of September 2023 (end of Q3 2023), both Competent Authorities made 334 disqualifications following 553 requests for disqualification on public order grounds.
145. More widely the Impact of the Nationality and Border Act 2023 as detailed in IOM's analysis of the first 6 months of 2023 notes that 71% of people disqualified from protection under the National Referral Mechanism because they were a 'threat to public order' were referred into the NRM as a potential victim of criminal exploitation.<sup>57</sup> The disqualifications have currently been paused while the Home Office is drafting new guidance following a Court challenge.
146. The Government has conceded several judicial reviews on the public order provision.<sup>58</sup> In a more recent case, in July 2023, the High Court gave permission for judicial review and granted an interim order that the Secretary of State cannot disqualify anyone from receiving support pending trial, unless an initial risk assessment has been conducted and factored into the disqualification decision.<sup>59</sup> At the time of writing, there is no published policy on how this assessment is carried out and therefore the disqualifications on public order grounds have been momentarily paused.
147. The Illegal Migration Act 2023 now casts the net even wider in respect of the public order provision with a mandatory requirement to apply the provision, except in exceptional circumstances. Section 29 of the IMA significantly widens the scope of public order including those who have an offence with any life sentence requiring imprisonment and includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an

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<sup>57</sup> IOM UK, (October 2023), *UK National Referral Mechanism. Data analysis briefing #7*. Available at: [https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom\\_uk\\_nrm-briefing\\_2023\\_midterm.pdf](https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom_uk_nrm-briefing_2023_midterm.pdf)

<sup>58</sup> Duncan Lewis solicitors, (9 June 2023), *Secretary of State concedes public order disqualification decision for the second time*. Available at: [Duncan Lewis issues Public Order Disqualification Policy JR](#)

<sup>59</sup> Matrix Chambers, (27 July 2023), *High Court orders no public order disqualification of slavery victims may take place without a risk assessment pending trial*. Available at: <https://www.matrixlaw.co.uk/news/high-courts-orders-no-public-order-disqualifications-of-slavery-victims-may-take-place-without-a-risk-assessment-pending-trial/>

institution other than a prison which could include immigration detention, detention in a healthcare facility e.g. due to mental capacity or detention in a young offenders institution.<sup>60</sup>

148. This provision is a clear breach of the non-punishment principle (Article 26 ECAT) and Articles 4 (Prohibition of slavery) and 15 (Derogation in time of emergency) of the European Convention on Human Rights, which are non derogable rights. The protection from removal linked to the 'Reflection and Recovery' period, as well as the requirement to provide support all fall within the scope of Article 4 of the ECHR. No exceptions can be made to these requirements because Article 4 is absolute and non-derogable under Article 15 of ECHR as held by the European Court of Human Rights in *CN v. the United Kingdom*.<sup>61</sup> It also implies that because a person has been convicted of one crime, they cannot be identified as a victim of another; which sets a dangerous precedent and could have wide reaching implications.

149. TARA provided the below case study to show how different outcomes for survivors could be before the implementation of NABA and IMA.

#### *Case study 2*

*Hanh is Vietnamese and was trafficked and sexually exploited in Europe between 2017 and 2020. Hanh disclosed that she was arrested at least 3 times in Germany and revealed being trafficked to local police there, but no action was taken.*

*In 2020 Hanh travelled in a lorry to the UK where she was offered a childminding job in Scotland after refusing to 'work' in a brothel again. Hanh was then told she would need to cultivate cannabis plants. Hanh was not allowed to leave this house. Hanh did not wish to participate in this, however she was advised she could not leave until the plants had been cropped. One day the landlord of the property visited and contacted the Police who took action and Hanh was arrested in the summer of 2020 and imprisoned.*

*In November 2020 Hanh disclosed her account to a social worker undertaking a court report and Police Scotland were instructed to undertake a referral to the NRM. A positive RGD was issued and Hanh was bailed to TARA pending trafficking investigations.*

*Proceedings continued with two court dates taking place in early 2021. Hanh was excused from attending on both occasions, with her defence solicitor attending on her behalf, as no CGD decision had been made and they were still awaiting the outcome of the NRM. A third court date was set and again, Hanh was advised that she would be represented by her defence solicitor. TARA were then notified by the defence solicitor that due to limited information from the SCA, the Sheriff felt it was reasonable to bring the case to a closure to the benefit of Hanh and that he admonished her. No penalty was imposed by the court although her criminal record remained.*

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<sup>60</sup> Section 29 Illegal Migration Act 2023 sourced at [Illegal Migration Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/11/section/29)

<sup>61</sup> European Court of Human Rights, (13 November 2012), *CN v. United Kingdom*. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114518%22%5D%7D> – paragraph 65

*Hanh then went onto receive a Positive Conclusive Grounds Decision in early 2022 acknowledging that she is a Victim of Trafficking. In light of this, Hanh was keen to see whether the appropriate representative could support her to challenge her criminal record.*

*An appeal hearing was scheduled for the Autumn 2022 but TARA received an update the previous week from Hanh's criminal solicitor to advise that she had received correspondence from the High Court Judiciary office. This stated that they will quash the conviction with the written submissions only, as they agreed that there has been a miscarriage of justice. Hanh continues to be supported by TARA and is focussing on continuing to improve her English. She was granted 11 months Discretionary Leave as a confirmed survivor of trafficking in the Summer of 2023 whilst her claim for asylum is pending and she continues to be supported to uphold her legal rights by JustRight Scotland and is considering her options around compensation.*

***If Hanh's NRM case was still pending at the time of NABA Part 5 commencement in January 2023, her case would have probably been disqualified on public order grounds and she would have been criminalised for acts she was forced to commit by her exploiters. Her asylum case would have also been deemed inadmissible, heightening her risk of re-trafficking and exploitation and preventing her from being identified as a survivor of trafficking and modern slavery. If we imagine Hanh's case under the IMA provisions, she would have been detained and removed due to irregular entry or she would have been kept in exploitation under the threats of the IMA implications.***

### *iii. Identification in immigration detention and prisons*

150. In recent years there has been a significant increase in the number of survivors of trafficking who are being held in immigration detention. This followed the 2021 policy change, which led to survivors of trafficking being included in the Adults at Risk Policy<sup>62</sup> and in turn allowed for their continued detention unless scientific levels of evidence were provided that continued detention would cause them harm. There is a wealth of research<sup>63</sup> and evidence that shows that immigration detention increases the risk of re-traumatisation and has a negative long-term impact on people's physical and mental health. This in turn leads to an increased risk of re-trafficking or further exploitation.

151. While there is a real problem of survivors of trafficking who have been formally identified being detained, there are considerable concerns that the increased use of detention is leading to less

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<sup>62</sup> Home Office, (20 April 2023), *Adult at risk in immigration detention*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1152054/Adults\\_at\\_risk\\_in\\_immigration\\_detention\\_GOV.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1152054/Adults_at_risk_in_immigration_detention_GOV.pdf)

<sup>63</sup> Helen Bamber Foundation, (7 September 2022), *The Impact of Immigration detention on mental health*. Available at: <https://www.helenbamber.org/resources/reportsbriefings/impact-immigration-detention-mental-health-research-summary>

survivors being identified because the detention setting is counterintuitive to them being able to disclose their experiences. It is a traumatic setting, which is often a reminder of experiences of trafficking and survivors are expected to disclose their experiences to a Home Office official, who is also seen as the person responsible for their continued detention.

152. Further details on the concerns surrounding identification of survivors in detention, particularly surrounding the flawed safeguarding systems, are detailed in the Helen Bamber Foundation report 'Abuse by the system: Survivors of Trafficking in Immigration Detention'<sup>64</sup> in October 2022. This report was co-badged by FLEX, ATLEU and Medical Justice.

153. The report made a number of practical recommendations and called for an urgent and comprehensive review of the process for detaining and continuing to detain confirmed or possible victims of trafficking. The findings within the report echo those made by the third annual inspection from the Independent Chief Inspector of Borders and Immigration (ICIBI) of 'Adults at risk in immigration detention'<sup>65</sup> Despite making strong recommendations about improvements that needed to be made, the evidence on the ground from those supporting people are detained suggests there have been little to no improvements.

154. Research published in November 2023 highlights the challenges for prison services in the UK to identify and respond to the needs of survivors of modern slavery and highlights that potential and confirmed survivors of modern slavery are still being imprisoned in the UK despite legislation in all jurisdictions of the UK which is intended to uphold Article 26.<sup>66</sup>

### *Case study 3*

*Sam is a Vietnamese survivor of trafficking who arrived in the UK aged 16 under the control of his traffickers, having been exploited in various countries and brought to the UK under the promise of a 'better life' for Sam and his family. Sam was detained on arrival and claimed asylum the next day but was put into an immigration detention centre. He remained in detention for two weeks before being released without any support and, almost immediately after his release, he was recaptured by his original traffickers. He was then re-trafficked into cannabis production*

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<sup>64</sup> Helen Bamber Foundation, ATLEU, FLEX, Medical Justice, (4 October 2022), *Abuse by the system: Survivors of trafficking in immigration detention*. Available at: <https://www.helenbamber.org/resources/reportsbriefings/abuse-system-survivors-trafficking-immigration-detention>

<sup>65</sup> Independent Chief Inspector of Borders and Immigration, (12 January 2023), *Third Annual Inspection of Adults at risk immigration Detention June to September 2022*. Available at: <https://www.gov.uk/government/publications/third-annual-inspection-of-adults-at-risk-immigration-detention-june-to-september-2022#:~:text=Independent%20report-,Third%20annual%20inspection%20of%20Adults%20at%20Risk%20Immigration%20Detention%20June,April%20and%2030%20June%202022>.

<sup>66</sup> Modern Slavery and Human Rights Policy and Evidence centre (MSPEC), (November 2023), *Tackling the blind spot of the UK anti-slavery regime*. Available at: <https://modernslaverypec.org/assets/downloads/Prisons-modern-slavery-full-report-final.pdf>

*and forced to live in a locked warehouse. He remained there for two years under constant control and enduring violence from his traffickers. Sam was then arrested, tried and convicted for cannabis production and sentenced to 20 months imprisonment. Trafficking indicators had not been acted upon by the immigration authorities nor by the criminal justice system before his case went to court.*

*Having served his criminal sentence, Sam was transferred, once again, to immigration detention where his mental health deteriorated to the point that he was placed on ACDT ('suicide watch') following a suicide attempt. The Home Office were informed that there were indicators to suggest he was a victim of trafficking. However, removal directions remained set and it was only when an emergency judicial review challenge was made by his lawyer that his removal was prevented.*

*Eventually, after being prompted by his legal representatives, the Home Office referred Sam into the UK National Referral Mechanism (NRM) which provides identification, protection and support for victims of trafficking. He received a positive reasonable grounds (preliminary identification) decision and was released the following day. He was granted a 'recovery and reflection' period before finally receiving a positive conclusive ground (final identification) decision and was eventually granted refugee status. Sam was recently awarded substantial damages following a claim for false imprisonment, which included medico-legal evidence on the impact the detention had had on Sam.*

***Sam's initial experience of detention is a prime example of why vulnerable victims of trafficking have difficulties trusting authorities, when he was released without support and was placed in the hands of his traffickers again. This reinforced his belief that he had little option but to remain with the traffickers as the only alternative was immigration detention. It is possible that his four years of unnecessary suffering could have been avoided if the right system had been in place to identify him as a survivor of trafficking and he had not been detained.***

#### *iv. Damaging backlog and waiting times*

155. The new policies also created additional challenges for First Responders, solicitors and other NGOs supporting survivors, who saw their already limited capacity brought to a breaking point. Non-statutory First Responders, especially, have had to close referrals over the past year as they were unable to cope with the demand, meaning that some survivors were left waiting for months before an NRM referral could be completed. Consequently, this also meant delays in accessing support and legal advice.<sup>67</sup>

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<sup>67</sup> Kalayaan (February 2023), *The National Referral Mechanism: Near Breaking Point*. Available at: <http://www.kalayaan.org.uk/campaign-posts/report-launch-the-national-referral-mechanism-near-breaking-point/>

156. NABA has also increased the waiting time to receive a Reasonable Ground decision, which according to the Q3 2023 NRM statistics amounts to 46 days against the expected statutory 5 days timeframe.<sup>68</sup>
157. The changes in decision making at Reasonable Grounds stage have led to significant increases in how long it takes these decisions to be made which will ultimately result in delayed access to support and assistance and may leave people vulnerable to re-trafficking or further abuse and exploitation. Before Q2, 2023 the median waiting for a Reasonable Grounds decision was never more than 6 days. In Q2, 2023 this was 21 days. 18% of people referred to the NRM in the first 6 months of 2023 were still waiting for a Reasonable Grounds decision on the 13th of July 2023.<sup>69</sup> The median waiting time for a Reasonable Grounds decision made in Q3, 2023 was 47 days which was longer than the 30-day minimum recovery period for survivors to access the NRM.<sup>70</sup>
158. This delay affects people's access to support, especially in England and Wales, where survivors are not entitled to access legal aid pre-RGD and they also have limited access to support under the MSVCC contract. Survivors, who are entitled to other types of support such as asylum accommodation or Local Authority housing would usually be signposted there and may not have access to support from the MSVCC outreach service until receiving an RGD. This heightens their risk of becoming destitute and homeless as well as more vulnerable to exploitation and re-trafficking.
159. It is also worth noting that there are very few services providing pre-NRM support in England and Wales so depending on where a survivor is identified they may have no-one to support them to access the NRM system or support them with reconsiderations of negative decisions.
160. Despite the availability of pre-NRM support in Scotland, organisations are increasingly concerned about the wait for Reasonable Grounds Decisions. TARA reported that the current average wait for their service users between 01/04/2023 and 30/11/2023 is 45 days. TARA can provide support during this period, but NRM financial support is impacted by the delays, which makes it challenging for them to manage.
161. Due to the increase in negative reasonable ground decisions, TARA also has to increasingly support reconsideration requests and in that same period have supported 7 women who have requested an RGD reconsideration. Of those 7 requests, 4 now have a positive RGD, but it took an average of 113 days from initial NRM submission to a positive RGD being granted. Of the 7 reconsideration requests submitted, 3 decisions are still pending.

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<sup>68</sup> Home Office (last updated 9 October 2023), *Modern Slavery Statutory Guidance for England and Wales and non-statutory Guidance for Scotland and Northern Ireland*. Available at: [https://assets.publishing.service.gov.uk/media/651e9cf17309a1000db0a8af/Modern\\_Slavery\\_Statutory\\_Guidance\\_EW\\_and\\_Non-Statutory\\_Guidance\\_SNI\\_v3-5\\_.pdf](https://assets.publishing.service.gov.uk/media/651e9cf17309a1000db0a8af/Modern_Slavery_Statutory_Guidance_EW_and_Non-Statutory_Guidance_SNI_v3-5_.pdf) - paragraph 14.49 p.132

<sup>69</sup> IOM UK, (October 2023), *UK data National Referral Mechanism. Data analysis briefing #7*. Available at: [https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom\\_uk\\_nrm-briefing\\_2023\\_midterm.pdf](https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom_uk_nrm-briefing_2023_midterm.pdf)

<sup>70</sup> Home Office, (Last updated 2 November 2023), *National Referral Mechanism statistics*. Available at: <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

162. Delays in decision making are happening also at the conclusive grounds stage. Despite the Home Office recruitment of additional caseworkers, the backlog to receive a conclusive ground decision has also continued to grow with a current median waiting time of 530 days from referral to conclusive ground decision made in Q3 2023, compared with 431 days in Q2 2023.

163. The average (median) waiting time for Conclusive Grounds decisions which were made in 2022 was 543 days. That was the longest recorded annual waiting time that data is available for. Women are waiting more than twice as long for a Conclusive Grounds decision than men. In 2022, the average (median) waiting time for women to receive a decision was 1,066 days compared to 448 days for men.<sup>71</sup> Analysis of NRM data also shows significant variations between how long different nationalities wait for a Conclusive Grounds decision. For example, the median waiting time for Conclusive Grounds decisions made in Q1, 2022 for UK nationals was 362 days compared to 662 days for non-UK nationals.<sup>72</sup>

164. Kalayaan found from an analysis of their service user data that, across the last 5 years, the median wait time between a Reasonable Grounds and Conclusive Grounds decision has been 786 days.<sup>73</sup>

#### **4.1b Lack of a UK-wide standardised training for First Responders**

*Further, GRETA considers that the UK authorities should:*

- *provide systematic training to First Responders, law enforcement, social workers, medical and other staff working at facilities for asylum seekers and detained people, on the identification of victims of trafficking and the procedures to be followed;*
- *monitor the effectiveness of the identification system and its accessibility, in practice, to non-national victims of trafficking.*<sup>74</sup>

165. While we note the presence of good practices at local and regional level, there is still a lack of standardised training amongst statutory and non-statutory First responders impacting on how survivors understand the NRM, the related rights and entitlements and how to access that support. This has created a ‘postcode lottery’ across the nation, where First Responder organisations that have dedicated resources to respond to modern slavery are better able to

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<sup>71</sup> IOM UK, *Illegal Migration Bill, 3 Facts about modern slavery in the UK*. Available at: <https://unitedkingdom.iom.int/illegal-migration-bill-3-facts-about-modern-slavery-uk>

<sup>72</sup> IOM UK, (10 January 2023), *UK Data National Referral Mechanism. Data analysis briefing, Quarter 1 2022*. Available at:

[https://unitedkingdom.iom.int/sites/g/files/tmzbdl1381/files/documents/IOM\\_UK\\_NRM\\_Briefing\\_Q1\\_2022.pdf](https://unitedkingdom.iom.int/sites/g/files/tmzbdl1381/files/documents/IOM_UK_NRM_Briefing_Q1_2022.pdf)

<sup>73</sup> Kalayaan, (5 December 2023), *Kalayaan Statement on delays in the NRM*. Available at: [Kalayaan-Statement-on-delays-in-the-NRM-Decision-Making-Process.pdf](https://www.kalayaan.org.uk/wp-content/uploads/2023/12/Kalayaan-Statement-on-delays-in-the-NRM-Decision-Making-Process.pdf)

<sup>74</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 269, p.68



identify and support survivors of modern slavery. **Therefore, the above recommendations have not been fully implemented.**

166. The Home Office created a web page to gather training and information resources,<sup>75</sup> but this has not been updated since September 2021. Considering the significant amount of changes in legislation and policy over the past 2 years, this does not properly prepare First responders to share adequate information in line with the current state of things. Changes that affect their role as a First Responder such as changes to the NRM form and changes to the Modern Slavery Statutory Guidance were done so overnight with no consultation with First Responders, or clear communication that these changes were occurring, leaving many First Responders unaware of how their duties were affected.

167. The Home Office developed a 45 minute online training for First Responders,<sup>76</sup> which gives an overview of the NRM and what to do when identifying, sharing information and referring survivors of modern slavery. This is a useful introductory guidance for First responders to understand their role, but it can't be considered as a stand alone and comprehensive training to effectively prepare them. This training has not been updated since 2020, despite significant changes to the role of First Responder due to recent policy changes. The Home Office also produced a 45 minute child specific e-learning,<sup>77</sup> which, in the same way as the general training, can only be considered as an introductory/refresher tool.

168. Both these trainings have not been updated with the changes introduced by the Nationality and Borders Act 2022 and Information about the Illegal Migration Act 2023. These are also not quality checked, preventing an understanding of how many First Responders use them and what impact these have on their knowledge and preparation.

169. Most of the training available to First Responders is developed in-house by individual organisations and often relies on NGOs and anti-slavery networks capacity and resources. For example, organisations such as the Human Trafficking Foundation, Hope for Justice, Barnardo's, ECPAT UK and others offer awareness raising sessions and training to statutory and third sector organisations, but it relies on the receiving organisation to attend/arrange this for their frontline staff.

170. Another notable gap is the lack of cultural and country-specific competencies needed to support potential victims appropriately and effectively.  
Some organisations, including the Home Office funded Modern Slavery & Organised Immigration Crime team, are developing cultural competencies resources to better equip frontline police

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<sup>75</sup> Home Office, (last updates September 2021), *Guidance: Modern Slavery training: resource page*. Available at: <https://www.gov.uk/government/publications/modern-slavery-training-resource-page/modern-slavery-training-resource-page>

<sup>76</sup> Home Office, *Modern Slavery: First Responders*, Available at: <https://policingslavery.co.uk/FirstResponderTraining/>

<sup>77</sup> Home Office, *E-learning Child victims of Modern Slavery*. Available at: <https://www.policingslavery.co.uk/TacklingChildModernSlavery/>

officers to deal sensitively with non-national potential victims, but these actions remain often localised and inconsistently applied across the UK.

171. This inevitably impacts those survivors who are non-British nationals, creating further barriers to their identification and support. This issue is compounded by the inconsistent use of interpreters as seen in the previous section.
172. It is important to recognise that the NRM system has substantial gaps in the support afforded to all survivors, including British Nationals. However, we can't ignore that recent legislation has specifically affected foreign nationals' survivors, creating therefore a "second class" type of survivors.
173. This is not just evidenced by the disqualification on public order grounds as reported in the above section, but also by the different rate of positive RG decisions for British nationals compared to non-British. A recent IOM briefing analysing the NRM data published by the Home Office, found that 86% of RG decisions for UK nationals were positive compared to 40% for foreign nationals.<sup>78</sup>
174. There appears to have been a particular campaign against Albanian victims, led by damaging government rhetoric, suggesting that people from this nationality in particular are 'gaming' the modern slavery system. The proportion of positive decisions for Albanians fell from 42% in Q1, 2023 to 14% in Q2, 2023. Whereas the historical trend saw 9 out of 10 decisions being positive, now it is closer to only 1 in 10 for Albanians. This narrative has serious consequences for Albanian survivors of trafficking who seek support from authorities who are coming from a position of disbelief. It also sets a dangerous precedent for discrimination against other nationalities.
175. The implementation of the Illegal Migration Act 2023 will put foreign nationals' survivors at further risk by providing for their disqualification from support and full identification process, followed by detention and removal because of the way they have entered the UK. This will happen without consideration of their trafficking experience or the multiple domestic and international treaties, including ECAT, by failing to safeguard individuals from refoulement and derogation of responsibilities. This gives survivors the option of staying detained in a situation of exploitation or being detained by the state which effectively leaves them with no choices at all.
176. The possible long-term implication of the Illegal Migration Act 2023 which diminishes support given to foreign national survivors, is the diminishing ability to be able to record modern slavery data accurately. The legislation will mean that survivors will have less incentive to come forward and disclose their exploitation to the authorities, meaning many survivors will go underground and unknown. First Responder Organisations rely on data to justify the allocation of resources, and if the data shows that there are less and less modern slavery survivors that require support (because less survivors are coming forward), First Responder Organisations will have insufficient

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<sup>78</sup> IOM UK, (October 2023), *UK National Referral Mechanism, Data Analysis briefing #7*. Available at: [https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom\\_uk\\_nrm-briefing\\_2023\\_midterm.pdf](https://unitedkingdom.iom.int/sites/g/files/tmzbd11381/files/documents/2023-10/iom_uk_nrm-briefing_2023_midterm.pdf)

reason to allocate training resources to identify survivors of modern slavery. This will create a perpetual cycle of survivors not coming forward due to fear of deportation or detention, leading to less survivors being identified, leading to less resources being allocated to train First Responders to identify survivors. Invariably, this will also impact on intelligence provided to the police and the ability of survivors to engage with criminal justice processes leading to even fewer prosecutions.

177. Furthermore, the Illegal Migration Act may lead to people who arrived in the UK via irregular means and therefore inadmissible for asylum being left in perpetual limbo as the UK does not have the agreements in place for removal to third countries. This limbo, and the knowledge they will not be able to regularise their immigration status in the UK, may mean this cohort go 'underground' and are therefore at increased risk of becoming survivors of human trafficking within the UK.

178. There is anecdotal evidence of people seeking asylum leaving Home Office run hotels when the Rwanda agreement was announced and disengaging with services due to fear of removal and leaving them vulnerable to exploitation. Rather than following duties to prevent human trafficking, this suggests the UK government's policies are in fact increasing the risk of human trafficking. Additionally, if arrangements with countries such as Rwanda are realised, there is a huge risk of vulnerable cohorts arriving in a country where they do not speak the language, have no support network or income opportunities and are met by traffickers seeking to take advantage of this.

179. In the 2023 Trafficking in Person ("TIP") report Rwanda is in the TIP Report a Tier 2 country thus fails to meet minimum standards, including around the protection of survivors.<sup>79</sup>

## 4.2 Assistance to victims

### 4.2a Fragmented and inconsistent survivors' support system

*While welcoming the measures taken for improve victim assistance, GRETA considers that the UK authorities should take additional steps to ensure that all assistance measures provided for in the Convention are guaranteed in practice, in particular by:*

- *ensuring that victims of trafficking are provided with adequate support and assistance, according to their individual needs, for as long as required, with a view to facilitating their reintegration and recovery, guaranteeing their protection, and ensuring that they are not criminalised for offences they were compelled to commit;*
- *ensuring appropriate oversight over the delivery of services to victims under the Modern Slavery Victim Care Contract by the main contractor and the subgrantees;*
- *involving survivor organisations in the design and delivery of assistance to victims of trafficking;*

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<sup>79</sup> US Department of State, (June 2023), *Trafficking in Person report 2023*. Available at: [https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023\\_Introduction-V3e.pdf](https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023_Introduction-V3e.pdf)

- *in the context of the COVID-19 pandemic, ensuring that appropriate support and assistance, including access to health care, are available to all victims of THB.*<sup>80</sup>

180. Access to support and protection is no longer guaranteed to survivors of modern slavery and human trafficking. The implementation of NABA in January 2023 has increased the threshold to enter the NRM and seen a significant decrease in successful referrals into the NRM, as well as disqualifying any victim where a public order or bad faith disqualification applies.

181. *For example, the Snowdrop project is currently supporting an individual who was refused entry to the NRM due to being convicted for cannabis cultivation, despite support agencies believing this to have occurred as part of their experience of modern slavery. It appears that the four stage assessment<sup>81</sup> used by the Crown Prosecution Service involves a separate decision on whether a person is a survivor of trafficking, and that a positive CG decision is not enough to shield a person from being criminalised for offences they were compelled to commit.*

182. Of significant concern, upon implementation of the modern slavery sections of the Illegal Migration Act, a huge number of survivors will no longer have access to support or protection in the UK and will instead be faced with the threat of detention, deportation or life in limbo, increasing their precarity to remaining in situations of exploitation or being re-trafficked.

183. As seen in previous sections the increased timeframe to receive an RGD as a result of NABA, translates into longer waiting times where survivors are not receiving NRM support or protection. Once in the NRM, quality of support is inconsistent.

184. Under statutory guidance updated since NABA, the length of NRM support has been reduced to 30 days which the Home Office itself admits is not long enough to meet survivors' support needs.<sup>82</sup> It is concerning, however, that on average it takes 530 days for a conclusive grounds decision to be made, delaying survivors' progress with rebuilding their lives as they live under ongoing uncertainty and often without permission to work. This is a timescale of support based not on survivors' needs but on the administration of decision-making.

185. In Scotland instead support is more consistent due to a smaller number of support providers and the majority of survivors having been located in Glasgow where both TARA and Migrant Help are located. TARA can support pre-NRM cases for a 'limited' period of time and can provide post-CGD support, where required, as part of section 9 of the Human Trafficking and exploitation (Scotland) Act 2015. The time frame for this is not prescribed but is dependent on individual needs and assessment rather than NRM timescales.

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<sup>80</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 282, p.71

<sup>81</sup> Director of Public Prosecution, (Last updated 6 July 2022), *The Code for Crown prosecutors*. Available at: <https://www.cps.gov.uk/legal-guidance/modern-slavery-human-trafficking-and-smuggling>

<sup>82</sup> Home Office, (2023), *Modern Slavery: Statutory Guidance for England and Wales*, paragraph 8.23

186. However, issues are starting to emerge due to the Home Office Asylum policy which is resulting in people seeking asylum being accommodated in longer-term dispersal accommodations across the country, including areas with none or limited suitable services. Similar concerns have also been raised in Northern Ireland, where this policy is preventing people from accessing appropriate support and advice, which is mainly located in Belfast where support providers are based.

187. Despite the different and more flexible support practice in Scotland, organisations are concerned that this model will be significantly impacted by the IMA. If and when the Home Office disapplies section 9 and section 10 of the Human Trafficking and Exploitation (Scotland) Act 2015, the Scottish Ministers cannot provide support to survivors in Scotland, meaning the Scottish Government cannot fund support services as outlined in the 2015 Act.

*i. MSVCC support*

188. Support to potential and confirmed survivors of modern slavery is implemented through the Government funded Modern Slavery Victim Care Contract (“MSVCC”), which was introduced to strengthen the support offered to adult survivors of modern slavery. This support can take many forms and should be based on individual needs but is often based on what alternative services survivors may be entitled to. This is especially true for access to safe houses.

189. All survivors who receive a positive Reasonable Ground Decision are also entitled to receive financial support. The financial allowance has recently been split into an Essential Living Rate<sup>83</sup> and a Recovery Rate.<sup>84</sup> This distinction was introduced as a result of a Court challenge due to the previous discriminatory system which was leaving many survivors in situations of destitution.<sup>85</sup> This was a move in the right direction to give potential victims more clarity on their financial rights and entitlements and ensured consistency of support to all survivors. However, it is important to note that the financial support remains insufficient compared to the rising cost of life.

190. In addition to the Recovery Rate, depending on a survivor’s individual circumstances, the MSVCC may provide further financial support by directly funding additional support services related to assisting with their recovery from their modern slavery experience, such as travel, childcare and

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<sup>83</sup> The Essential Living Rate is paid weekly to help a potential or confirmed victim to pay for weekly living needs such as food, clothing and toiletries and varies on the basis of the type of MSVCC accommodation. It is paid at a rate of:

- £47.39 per week; or
- £14.74 per week for victims living in catered MSVCC accommodation (£47.39 minus the cash value of items such as food and drink provided in-kind through catered MSVCC accommodation).

Potential victims who are accessing Universal credits or Asylum Support are not entitled to receive this allowance.

<sup>84</sup> The Recovery rate is £26.47 per week given to all survivors who access the MSVCC services to support access to their psychological and physical recovery needs.

<sup>85</sup> ATLEU, (february 2023), *All potential victims of modern slavery to receive the same rate of support regardless of their accommodation status*. Available at: <https://atleu.org.uk/cases/2023/2/28/all-potential-victims-of-modern-slavery-to-receive-the-same-rate-of-support>

private counseling if these are not already available through MSVCC services. However, there is no clarity whether, especially for mental health service, these are granted and for how long.

191. The Statutory Guidance makes provisions for multiple risk-assessments to be carried out from the point a survivor enters the MSVCC service and a Needs-Based Assessment to be conducted during the reflection period. On multiple occasions, the guidance also emphasises that the support offered should be based on individual needs. In practice, the support continues to be inconsistent and fails to meet the needs of most survivors.
192. *Snowdrop project has encountered survivors who have not seen their NRM support worker for months and asked other organisations for help because their worker was not available or to share concerns which they were afraid to raise due to worries it would impact on their CG decision.*
193. Many frontline organisations raise concerns that the support offered remains often inadequate and qualitatively different across support providers and cohorts of survivors.
194. The introduction of Care Quality Commission (CQC) inspections is a positive step, and there is a large administrative and compliance burden on subcontractors to ensure that victims are cared for, however the effectiveness of this is questionable. It is worth noting that this is a private contract rather than a statutory provision and there is no independent body for the survivor to make complaints to and no requirement to publish reports.
195. *Snowdrop reported that survivors have approached them stating that they feel ignored, disempowered or highly dissatisfied with their NRM support, indicating that the measures in place are not sufficient to ensure adequate care is provided by subcontractors.*
196. Issues are more accentuated in relation to housing and access to services such as mental health. For example, people who are seeking asylum are only on very rare occasions accommodated in safe houses and are usually signposted to asylum support, where they are only offered outreach support by MSVCC contractors, upon receipt of consent. The same happens to British nationals, who are signposted to Local Authority support.
197. In 2021, Reach-In support was introduced as part of the MSVCC contract, which makes longer term support available to survivors with a positive CG decision across England and Wales. However, this is usually only information and signposting.<sup>86</sup> *Snowdrop project stated that this support is insufficient compared to the intense support many post-NRM casework clients receive due to the levels of complexity. This is evidenced by the fact that the Snowdrop project receives referrals from Reach-In providers, demonstrating that Reach-In support alone is insufficient. Snowdrop's intense support is needed for an average of 18 months, up to 4 years, in order for survivors to reach independence.*

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<sup>86</sup> Home Office, (2023), *Modern Slavery: Statutory Guidance for England and Wales*, paragraph 8.32

198. *In Hope for Justice experience, signposting is often inadequate for survivors, who often need independent advocacy and supported referrals especially if they have complex and intersecting legal and psycho-social needs.* The complexities of the system also mean that there needs to be significant specialist advocacy to local authorities and wider state providers to ensure that survivors receive the services that they need.

*ii. Support for survivors in Asylum accommodations*

199. The asylum support system has deteriorated over the years with a growing reliance on the use of hotels. While the Home Office has recently announced the exit from 50 of their 400 asylum hotels by January 2024,<sup>87</sup> it is extending the use of large sites, such as airfields<sup>88</sup> and barges.<sup>89</sup>

200. Following this announcement, the Home Office has updated Annex F of the Modern Slavery Guidance to clarify that *room sharing and all asylum accommodation, local authority housing and temporary accommodation provided by the police, charities and hostels are considered to be generally suitable prior to a Reasonable Grounds decision.*<sup>90</sup> This means that large sites, such as airfields and vessels are also considered safe sites where to accommodate survivors until they receive a RGD. If the decision is positive, survivors will need to be moved to more appropriate accommodation. In practice, however, hotels are included in those accommodations considered to be secure and suitable, as they have been used for years to accommodate survivors of modern slavery with an ongoing asylum claim.

201. Potential victims who are also seeking asylum are routinely placed in asylum hotels, despite concerns around poor living conditions and limited support. A recent Refugee Council report looking into living conditions in these hotels, also highlighted reports of people who went missing from hotels and are suspected to have been trafficked.<sup>91</sup>

202. This evidence already suggests that hotels can't be considered safe placements for adults and children (we'll analyse the specific situation of children in the next section).

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<sup>87</sup> Home Office, (24 October 2023), *Home Office to exit first 50 asylum hotels by the end of January*. Available at: <https://www.gov.uk/government/news/home-office-to-exit-first-50-asylum-hotels-by-the-end-of-january>

<sup>88</sup> ITV news, (13 July 2023), *Asylum seekers move into Wethersfield Airfield in Essex*. Available at: <https://www.itv.com/news/anglia/2023-07-12/asylum-seekers-arrive-at-wethersfield-airfield>

<sup>89</sup> Sky news, (19 November 2023), *Bibby Stockholm: Number of people living on barge is increasing, local campaign groups says*. Available at: <https://news.sky.com/story/bibby-stockholm-number-of-people-living-on-berge-is-increasing-local-campaign-group-says-13011639>

<sup>90</sup> Home Office, (last updated October 2023), *Modern Slavery: Statutory Guidance for England and Wales and Non-Statutory Guidance for Scotland and Northern Ireland*. Available at: [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 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/103111/modern-slavery-guidance-for-england-and-wales-and-non-statutory-guidance-for-scotland-and-northern-ireland) - paragraph 15.8, p.192

<sup>91</sup> Refugee Council, (July 2022), *Lives on hold: The Experience of people in Hotels Asylum Accommodations*. Available at: <https://www.refugeecouncil.org.uk/wp-content/uploads/2022/07/Lives-on-hold-research-report.-July-2022.pdf>

203. A recent report from the Human Trafficking Foundation, analyses the challenges which persist with both accessing stable accommodation and the suitability of the accommodation on offer. It is recognised that an absence of accommodation options can be a driver for survivors to remain with, or return to, their perpetrator when the alternative is risking homelessness.
204. The report found that only 13% of potential victims are housed in a safehouse under the Modern Slavery Victim Care Contract (MSVCC), with the vast majority (87%) of adult survivors living in accommodation outside the MSVCC, such as in asylum or social housing, in potentially precarious living situations with friends and family or placed in detention or prison.
205. The lack of suitable housing is putting potential victims in precarious situations, heightening those vulnerabilities such as poor mental health, destitution and homelessness, which can lead to re-trafficking and exploitation.
206. In addition to these survivors of trafficking who receive any form of leave to remain, whether limited leave as a survivor of trafficking or asylum status, and who are in accommodation provided by the Home Office, are facing destitution and homelessness because of changes to the “move on” process. Civil society organisations are routinely seeing that those granted status are now being given only seven days’ notice to leave their accommodation<sup>92</sup>, during which time they are expected to secure housing and financial support. As this is a virtually impossible task there is additional pressure on local authority homelessness services.
207. In relation to those who have sufficient support to make a homelessness application to the local authority, they are seeing delays in decision making. Even when an application is made as soon as the eviction notice is received, Local Authorities are generally not making a decision on whether they will provide housing until the day of eviction and this is usually not done until they are chased, with people frequently having to get a solicitor to be involved. They are also required to provide evidence about why they should be considered a priority need which is an arduous task and creates further hurdles.
208. There are concerns that survivors of trafficking who are not housed are ‘falling through the cracks’ and are ending up homeless, destitute and at increased risk of being re-trafficked or exploited further. The response from support providers have been mixed on this, with some offering to provide a safe house space if the person has not been housed by the Local Authority, but others have not offered this, presumably in part due to the significant lack of available safe house spaces. There appears to have been a lack of training for some support providers supporting people through homelessness applications and regarding their entitlement to alternative accommodation.

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<sup>92</sup> Refugee Council, (6 September 2023), *Thousands of new refugees face destitution and homelessness after being told to leave their accommodation at short notice*. Available at: <https://www.refugeecouncil.org.uk/latest/news/thousands-of-new-refugees-face-destitution-and-homelessness-after-being-told-to-leave-their-accommodation-at-short-notice/>



*iii. Access to mental health service*

209. Other concerns in relation to assistance have emerged in relation to access to specialist services such as mental and physical health.
210. Survivors can be referred to the NHS mental health service but are often discharged after an initial assessment for not reaching the required threshold to access this service. Even when they meet the threshold, there are extremely long waiting lists, meaning that potential and confirmed victims have to wait many months before accessing vital mental health support. Often NHS services struggle to accept referrals for non-British victims due to the need of interpreters and in recognition that their service may not be the most appropriate because they lack specialist knowledge in working with refugees and victims of trafficking.
211. Some third sector organisations, such as the Helen Bamber Foundation, the Snowdrop project, Freedom from Torture and others offer specialist therapeutic and counselling services, however these are in high demand due to the scarce availability of statutory mental health services.
212. Similar issues apply to children, where access to mental health services such as Child and Adolescent Mental Health Services (CAMHS) have significantly long waiting times, high thresholds and no specialism for children from migrant backgrounds or where English is a second language. Children receive no specific access to mental health services from a referral into the NRM. These children rely heavily on third sector support, such as ECPAT UK, the Refugee Council, New Citizen Gateway and others. Some Local Authorities such as Camden Council funds NHS therapists who are specialised in supporting unaccompanied children, but these are isolated pockets of good practice.
213. Access to services is also affected by poor geographical spread. As noted in the previous section, some areas don't have or have very limited access to legal aid solicitors, the same applies to welfare services. Survivors placed in a city would have a very different offer and availability of services than someone living in a rural area. Since the Government implemented a compulsory National Transfer Scheme for unaccompanied children, where Local Authorities have to accept a certain quota of children into their care, many Local Authorities found themselves hastily trying to put in place support for children. The same happened to adults and families being placed in hotels across the UK.
214. The scarcity of basic services and the inability to ensure cultural and religious needs are met, can be detrimental to survivor's mental health and can lead to re-trafficking and exploitation.

*iv. Access to support in immigration detention*

215. Civil society organisations agree that survivors of trafficking should not be detained and should, instead, be provided with the support they are entitled under international and domestic law in

the community, including secure accommodation, psychological assistance and legal information and support. This is crucial to enable them to recover and rebuild their lives.<sup>93</sup>

216. However, many survivors are still kept in detention where they are often failed by the system preventing them from accessing adequate services to enable their recovery. Detention's environment is inconsistent with survivors' recovery needs.

217. Recently The Brook House Inquiry<sup>94</sup> found detention safeguards to be dysfunctional. The inquiry was commissioned after allegations that people held in immigration detention were subjected to torture, inhuman and degrading treatment. The findings were damning, exposing a dehumanising system. Vulnerable people were exposed to the risk of mistreatment and were subjected to actual harm; there were 19 incidents of credible breaches of Article 3 of the ECHR, which prohibits torture, inhuman and degrading treatment, within a 5 month period.<sup>95</sup>

218. The Abuse of the system report<sup>96</sup> in addition to raising issues around identification of survivors in detention settings, also found multiple failures in the support provided.

219. The report highlights that there is a lack of specialist support within prisons and no information on the need for individual support worker contact. This results in detention staff being required to provide support and information to detainees, whereas survivors of trafficking who reside in a community setting have an allocated independent support worker under the Modern Slavery Victim Care Contract. This is inappropriate considering that many survivors fear and distrust authorities because of treats made by their traffickers and their precarious immigration situations.

#### *v. Recovery Needs Assessment (RNA)*

220. In 2019, the Home Office introduced a framework to support confirmed victims of modern slavery (i.e those who have received a Positive Conclusive Ground Decision), called Recovery Needs Assessment.<sup>97</sup> This allows a support worker within the Modern Slavery Victim Care

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<sup>93</sup> Helen Bamber Foundation, ATLEU, FLEX, Medical Justice, (October 2022), *Abuse by the system: Survivors of trafficking in immigration detention*. Available at: [https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF\\_.MJ\\_.Final\\_.pdf](https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF_.MJ_.Final_.pdf)

<sup>94</sup> The Brook house Inquiry, (19 September 2023), *The Brook House Inquiry report*. Available at: <https://brookhouseinquiry.org.uk/>

<sup>95</sup> Medical Justice, (19 September 2023), Brook House Public Inquiry report published. Available at: <https://medicaljustice.org.uk/brook-house-public-inquiry-report-published/>

<sup>96</sup> Helen Bamber Foundation, ATLEU, FLEX, Medical Justice, (October 2022), *Abuse by the system: Survivors of trafficking in immigration detention*. Available at: [https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF\\_.MJ\\_.Final\\_.pdf](https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF_.MJ_.Final_.pdf)

<sup>97</sup> Home Office, (last updated 1 March 2023), *Recovery Needs Assessment (RNA)*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1138946/MA\\_RCH\\_2023\\_-\\_Recovery\\_Needs\\_Assessment\\_v7.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138946/MA_RCH_2023_-_Recovery_Needs_Assessment_v7.pdf)

Contract (MSVCC) to work with a survivor to develop recommendations for support and for the Home Office to assess and provide for the survivor's ongoing recovery needs arising from their modern slavery experiences.

221. The ATMG produced the first independent review of the RNA and the findings reflect a discouraging picture. The RNA system is failing survivors of modern slavery, who are not being able to access vital support when they need it, increasing their vulnerability to further exploitation. Survivors who participated in the research, told of getting lost in the RNA's bewildering bureaucratic demands, of feeling untrusted and upset during invasive questioning, being destitute and at risk of re-exploitation, of impossible dilemmas regarding childcare, and of losing essential financial or emotional support through no fault of their own. Some survivors are being exited from the process before they are ready, which they found disheartening and disempowering.<sup>98</sup>
222. Snowdrop project reported receiving referrals of survivors exiting the NRM who have significant unmet needs that increase their precarity to being re-trafficked, such as unsupported learning disabilities and homelessness. Some of these survivors had not been informed of their right to an RNA, or not been involved in the assessment process, or requests for support had been refused by the Home Office despite ongoing needs. There is a need for improved training around needs assessment and RNA completion, as well as more consistent decision-making on RNAs.
223. Additional issues were raised in relation to the implementation of the Recovery Needs Assessment for survivors held in detention and it was noted that the guidance around this it's vague. A Helen and Bamber Foundation and Medical Justice report highlights that the Modern Slavery Needs interview template primarily focuses on support with interpreters and legal proceedings, with just one question regarding emotional support which asks whether a person 'would like to be referred to a counseling service for emotional support, to help with your recovery from modern slavery'. There is no information about what this 'counseling' will entail, who would provide it and how long it would be provided for. The template suggests the needs assessment will be done as a one of rather than there being regular engagement with the survivor.<sup>99</sup>
224. The Modern Slavery Unit within the Home Office has recently informed the sector that the Government has now dropped the commitment to offering 12 months' support after a positive CGD. This decision was made on the basis that the support can still be offered through the RNA system. This is concerning considering the failures in support provided through the RNA system both in detention and the community.

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<sup>98</sup>ATMG, (April 2022), *One day at a time. A report on the Recovery Needs Assessment by those who experience it on a daily basis*. Available at: [https://www.antislavery.org/wp-content/uploads/2022/04/RNA\\_One\\_Day\\_At\\_A\\_Time.pdf](https://www.antislavery.org/wp-content/uploads/2022/04/RNA_One_Day_At_A_Time.pdf)

<sup>99</sup> Helen Bamber Foundation, ATLEU, FLEX, Medical Justice, (October 2022), *Abuse by the system: Survivors of trafficking in immigration detention*. Available at: [https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF\\_MJ\\_Final\\_.pdf](https://medicaljustice.org.uk/wp-content/uploads/2022/10/2022.AbuseByTheSystem.HBF_MJ_Final_.pdf)

#### 4.2b Insufficient statutory mental health support provision

*While welcoming the commitment made to improving mental health support to victims after exiting the NRM, GRETA considers that the UK authorities should guarantee timely access of victims of trafficking to psychological assistance and ensure that it is provided for as long as their individual situation requires, in order to help them overcome their trauma and achieve a sustained recovery and social inclusion.*<sup>100</sup>

225. Whilst statutory guidance states that support workers should support victims in the NRM to self-refer to mental health services via their GP,<sup>101</sup> access to psychological assistance remains insufficient. Community mental health teams and IAPT services have long waiting lists, and IAPT services are time-limited and not designed for supporting people with complex trauma. Many victims are therefore unable to access the specialist psychological support they need.
226. Snowdrop's therapy service was created and developed in response to the lack of suitable psychological assistance, providing specialist therapy services for survivors of modern slavery and human trafficking in South Yorkshire. Referral sources include GPs, IAPT, and Community Mental Health Teams who have assessed survivors and identified that their service cannot meet the individual's psychological support needs due to the level of trauma. Evidently, mental health professionals themselves are recognizing that their services are not appropriate for victims of complex trauma.
227. Snowdrop's experience of developing trauma-appropriate psychological support is based on neuroscientific research<sup>102</sup> and provides four pathways of psychological support<sup>103</sup> for survivors at any stage of the NRM (pre, during or post-NRM), for as long as the individual needs it. We have found that in order for most survivors of complex trauma to engage in talk therapy, they first need interventions that help them manage the impact of their trauma and move out of states of unresolved trauma which is trapped in the nervous system and neural networks. The duration of therapy depends on the individual and varies from six weeks to over a year. Unfortunately, this provision is dependent on charitable funding and it remains a postcode lottery in terms of what support is available on a local level.

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<sup>100</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 100, p.32

<sup>101</sup> Home Office, (2023), *Modern Slavery: Statutory Guidance for England and Wales, version 3.5*. 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-northe>

<sup>102</sup> Ogden, P. & Fisher, J., (2015), *Sensorimotor Psychotherapy: Interventions for Trauma and Attachment*.

<sup>103</sup> Snowdrop Project 4 counseling pathways. Available at: <https://www.snowdropproject.co.uk/media/docs/Snowdrop-Project-Counselling-Pathways.pdf>

228. Survivors exiting the NRM should, in theory, have support in place, however Snowdrop has met survivors whose needs had not been fully assessed or who did not have follow-on support in place. Whilst the establishment of Reach-In support made low-level support available to all survivors with a positive conclusive grounds decision across England and Wales, this is an information and signposting service only and does not guarantee timely access to psychological support.

### 4.3 Residence permit

#### 4.3a Low numbers of residence permits granted

*Recalling the recommendations made in its second report, GRETA urges the UK authorities to:*

- *ensure that all victims of human trafficking who have received a positive Conclusive Grounds decision and whose immigration status requires it are issued a renewable residence permit when their personal situation warrants it or when they are cooperating with the authorities in criminal investigations or proceedings and their presence in the UK is required for this purpose, in accordance with Article 14(1) of the Convention;*
- *ensure that all child victims are issued such residence permits, in accordance with the best interests of the child, pursuant to Article 14(2) of the Convention.*<sup>104</sup>

229. **The above recommendation has not been implemented.** Last year, over 12,000 non-UK nationals were referred to the NRM. For these people, immigration status is a key concern, however shockingly few of those recognised as survivors of trafficking are granted leave to remain in the UK. In 2020 to 2022: 5,578 adults were confirmed as victims of trafficking but only 364 adults subject to immigration control were granted leave via the NRM.

5,266 children were confirmed as victims of trafficking, but fewer than 21 were granted leave via the NRM.

230. Those that were granted leave often only received it after lengthy delays and for a short period of time. Due to the significant flaws in the leave to remain process under the NRM, many non-UK national survivors are reliant on the asylum system as a way of being granted a secure form of immigration status, with a route to settlement, something that is not available for those in the NRM. 93% of Helen Bamber Foundation clients who have been trafficked are in both the asylum and NRM systems.

231. On 30th January 2023, Home Office policy was changed in order to reflect section 65 of the Nationality and Borders Act 2022 which significantly worsens the problem of survivors of trafficking being left with insecure status. Now 'Temporary Permission to Stay' will be only granted to confirmed victims of trafficking in order to:

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<sup>104</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 314, p.78

- Assist the person in their recovery from any physical or psychological harm arising from their exploitation. However, if the person can get assistance in their home country, then permission to stay may not be granted.
- 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. Again, it must be confirmed that it is necessary for the person to be physically present in the UK to cooperate with the investigation or prosecution.

232. The first of these three reasons to grant leave is now much narrower than in the pre-2023 guidance, which stated that leave could be granted where “necessary owing to personal circumstances”. We do not consider that the now significantly narrowed guidance is in accordance with article 14, and no longer bears any semblance to considering a person's personal situation. There is no provision for children to access a grant of a residence permit solely on a consideration of their best interest as set out in the Convention.

233. This is evidenced by the fact that a recent freedom of information request showed that the number of people granted leave to remain between February-July 2023 was only 36, with a breakdown of the period of leave as follows:

- Less than 6 months leave – 11
- 6-12 months – 17
- 13-24 months – 7
- 24+ months – less than 5

This is around a third (proportionately) of the number granted in 2022.

234. The report by the Helen Bamber Foundation “leave in Limbo: Survivors of Trafficking with uncertain immigration status” from August 2023<sup>105</sup> highlighted the problems caused by the limited grants of leave to remain and concerns about changes under the Illegal Migration Act 2023, which not only removes all protections and support for survivors of trafficking who are subject to the duty to remove under section 2 of the act but also means that they not have any way of regularising their status in the UK, except in very limited circumstances.

235. A Freedom of Information Request showed that in 2021 only 21 victims of trafficking with positive Conclusive Grounds decisions were actually removed from the UK through the ‘Enforced Returns’ process. With these low removal rates it is clear that the Act will create permanent limbo for many people who will be left in the UK not knowing what will happen and without adequate support. This will only compound their risk of being re-trafficked or exploited further and will lead to a

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<sup>105</sup> Helen Bamber Foundation, (15 August 2023), *Leave in limbo: Survivors of Trafficking with uncertain immigration status*. Available at: <https://www.helenbamber.org/resources/reportsbriefings/leave-limbo-survivors-trafficking-uncertain-immigration-status>

deterioration in their mental health. By restricting access to the UK's NRM and the asylum system, the Act is simply placing more power in the hands of the traffickers.

#### *Case study 4*

*KM is a survivor of trafficking who arrived in the UK on a small boat after escaping his home in Iran. Over his journey to the UK, he was transported through Turkey and various countries in Europe. During this time, KM was sexually abused, exploited in forced domestic work (trafficked for labour exploitation), and suffered other forms of inhuman treatment.*

*Upon arrival in the UK, KM was detained immediately and claimed asylum on the same day. KM was held in immigration detention for several months, where his mental health deteriorated significantly. At his lawyer's request, KM was assessed by a psychiatrist and diagnosed with PTSD, depression, and anxiety. His lawyer made multiple sets of representations and eventually Home Office Immigration Enforcement referred him into the National Referral Mechanism (NRM). Within four days, the Home Office found that there were reasonable grounds to believe KM to be a victim of trafficking and he was subsequently released from detention.*

*Months after his release from detention, KM was referred to the Helen Bamber Foundation (HBF) and he started to receive multidisciplinary care for his recovery. HBF provided a clinical letter to request that KM be conclusively recognised as a victim of human trafficking and his immigration status regularised as a matter of urgency. 21 months after his NRM referral, KM 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 six 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 KM was granted refugee status (and five years' leave to remain) on the basis that he was at risk of being re-trafficked and he has now finally been able to start rebuilding his life.*

***This case study shows that the grant of discretionary leave for survivors of trafficking and modern slavery follows a lengthy process, it is not fit for purpose, and is rarely granted in line with survivors' needs.***

#### 4.3b Fragmented data

*GRETA considers that the UK authorities should collect data on the number of residence permits granted to both adults and child victims of trafficking and investigate the reasons for the low number of residence permits granted.*<sup>106</sup>

236. **The above recommendation has only been partially implemented.** The Government does collect data on the number of survivors granted Temporary leave to remain as Victim of Trafficking (VoT leave) as introduced by NABA, but these are not published as part of the NRM quarterly statistics. Organisations have only been able to gather data in relation to this via FOIs.

237. While the number of survivors granted leave to remain following a positive conclusive ground decision continues to decrease, we are not aware of any efforts to try and explore the reason behind low numbers. It is important to note that the narrowing of the criteria to grant leave to remain runs contrary to Art 14 ECAT and data reported in the above 4.3a section shows that this may have reduced the number of grants even further.

## 5. Criminal Justice response

### 5.1 Non-punishment provision - (Art 26)

*Recalling the recommendations made in its second report, GRETA urges the UK authorities to:*

- *ensure that the non-punishment provision is capable of being applied to all offences that victims of trafficking were compelled to commit, by ensuring that victims are promptly identified as such and receive adequate support from their first contact with law enforcement agencies;*
- *ensure that the allocation of the burden of proof does not substantially hinder the application of the non-punishment provision;*
- *remove the requirement to apply the “reasonable person” test in the framework of the statutory defence of child victims pursuant to section 45 of the MSA;*
- *strengthen their efforts to ensure the compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, by further developing the existing guidance and promoting it through training of police staff, prosecutors and judges, including staff working in prisons and immigration detention centres, as well as social workers and all First Responders.*<sup>107</sup>

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<sup>106</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 313, p.77

<sup>107</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 177, p.51



238. **We note that the above recommendations not only have not been fully implemented, but the most recent legislations run in direct contrast with ECAT.** The non-punishment principle in the UK continues to be inconsistently and insufficiently applied, failing to ensure victims’ identification and adequate support. The introduction of NABA and IMA is favoring the criminalisation of victims and their disqualification from the NRM and support. These policies turn victims into criminals and empower traffickers and exploiters by rendering their threats reality.
239. As stated in one of the above sections, the public order disqualification introduced by NABA and its extension through the IMA are based on a misinterpretation of Article 13(3) ECAT. The introduction of the public order disqualification means that a victim who has received a 12+ months prison sentence will be disqualified from the recovery and reflection period and relieves the Home Office from its duty to complete the identification process. This principle is in breach of articles 10, 13 and 26 ECAT by way of failing to give a potential victim the opportunity to be fully identified, to be supported through their recovery period and for criminalising them for a crime they were forced to commit as part of their exploitation. This also prevents potential victims from cooperating with authorities to bring their perpetrators to justice, removing their right to justice.
240. These pieces of legislation become powerful tools in the hands of traffickers and exploiters, who routinely use fear of authorities and threats of detention and removal to control their victims. The Government is giving them a “legal” written proof of their threats.
241. According to a Hestia’s report published in 2020<sup>108</sup> factors such as debt bondage, fear of authorities, threats to family and loved ones are all ways to control victims and prevent them from disclosing exploitation. As part of the research behind the Hestia’s report, police said that ‘making the right judgment on whether or not a person involved in a criminal activity might have been a victim of exploitation requires considerable investigation and often working with the individual over a long time.’ Interviews with Hestia advocates identified that victims of criminal exploitation are in general less likely to “open up” and often take longer to disclose information. This time and resources are often not available to the police.
242. We are also concerned that the new definition of serious criminality introduced by section 63 NABA will result in exploiters diversifying further recruitment tactics to target those who would not be deemed “suitable victims” for identification, safeguarding and support.
243. For example, Hope for Justice reported that in their many years of work they witnessed that genuine victims with pre-existing vulnerabilities including previous (often minor) offending behaviour are actively targeted by exploiters on recruitment. This was illustrated in the Operation Fort case which is Europe’s largest known case of trafficking for the purposes of forced labour

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<sup>108</sup> Hestia. (2020), *Underground lives: Criminal exploitation of adult victims*  
[https://www.antislaverycommissioner.co.uk/media/1446/1196\\_criminal\\_exploitation\\_report\\_2020\\_v0\\_13w.pdf](https://www.antislaverycommissioner.co.uk/media/1446/1196_criminal_exploitation_report_2020_v0_13w.pdf)

where victims were targeted from outside prisons. Many of the key witnesses, if the NABA and IMA were implemented now, would have been detained and deported and not been able to give evidence resulting in the conviction of a significant organised crime group.

244. The Helen Bamber foundation in their written evidence on the Nationality and Borders Bill to the Public Bill Committee stated that in their experience ‘one of the most effective ways to keep victims in fear is to force them to commit crimes, so they will be criminalised if they come forward to the authorities.’<sup>109</sup>

245. The challenges with placing a public order threshold so low is that vulnerable adults and children will be denied access to the NRM system on the basis of previous convictions, so they are unlikely to come forward in the first place and their exploitation will not be addressed, nor will traffickers be prosecuted. This will create a new level of vulnerability as traffickers will target those disqualified from support.

246. One of the ways in which the non-punishment principle is given effect in the UK is through section 45 of the Modern Slavery Act 2015, which affords a victim of trafficking facing prosecution a defence to certain offences where such offences were committed as a result of trafficking. State authorities (including prosecutors) also have a duty to consider trafficking in their decisions to prosecute or to discontinue prosecution against an individual who is a victim of trafficking.

247. However, the statutory defence can’t be raised for more than 100 offences, including common ones which victims are forced to commit as part of their exploitation.

248. Dame Sara Thornton, the UK’s Independent Anti-Slavery Commissioner (IASC), ran a call for evidence on the application of Section 45 which led to the publication of a report in October 2020.<sup>110</sup> The report identifies four specific issues relating to the use of S45:

- a) Police are not consistently considering from the outset of an investigation whether a suspect could be a victim of trafficking and whether the statutory defense may apply;
- b) Discontinuation of investigations and prosecutions as soon as the defense is raised;
- c) Over-reliance throughout the criminal justice system on the decision making of the Single Competent Authority (SCA);
- d) The statutory defence being raised late in the criminal justice process.

249. Another worrying finding is that ‘the identification of victims is not leading to effective protection from the harm posed by the traffickers, highlighting that non-prosecution alone is not enough to protect a child or vulnerable adult, but that it must be supported by effective

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<sup>109</sup> Helen Bamber Foundation, (October 2021), *Nationality and Borders Bill 2021-2022. Written evidence to the public Bill Committee*. Available at: <https://www.helenbamber.org/sites/default/files/2021-10/Nationality%20and%20Borders%20Bill%20written%20evidence%20Bill%20Committee%20HBF%20October%202021.pdf>

<sup>110</sup> Independent Anti-slavery Commissioner, (2020), *The Modern Slavery Act Statutory Defence: A call for evidence*. Available at: [the-modern-slavery-act-2015-statutory-defence-call-for-evidence.pdf \(antislaverycommissioner.co.uk\)](https://www.antislaverycommissioner.co.uk/wp-content/uploads/2020/10/The-Modern-Slavery-Act-2015-Statutory-Defence-Call-for-Evidence.pdf)

safeguarding. The operation of the statutory defense is neither adequately protecting victims of trafficking nor adequately protecting the public.’ (Bristow & Lomas, 2020).

250. This is a clear failure of the justice system and of the State to protect the victims of modern slavery and human trafficking.

251. Recent media reports on convictions of cannabis gardeners suggest there remains a significant lack of awareness or understanding about the legislation introduced throughout the UK to uphold the UK’s obligations under Article 26.

#### *Case study 5*

*On 18<sup>th</sup> November (Anti-Slavery Day) 2023 a Judge at Norwich Crown Court exclaimed “The message has got to go out that being exploited by serious organised criminals is not a get out of jail free card” as they handed down a 12 month custodial sentence for cannabis production to a 20-year old Albanian man found inside a cannabis factory.<sup>111</sup>*

#### *Case study 6*

*In February 2023 an 18-year old Vietnamese man received an 8 month custodial sentence at York Crown Court for cannabis production after he was found inside a cannabis factory. The Judge said, “It’s quite clear you have been used or (you were) what is termed these days a modern slave” . . . You were living on a mattress (and) there is nothing to suggest you (made) any money whatsoever from this criminality . . . It’s a common story that people are hoodwinked into thinking they can get work and they are abused in this way.”<sup>112</sup>*

#### *Case study 7*

*In October 2023 two Vietnamese men were refused bail and remanded in custody at Banbridge Magistrates Court in Northern Ireland after they were charged for cultivating cannabis, possessing a Class B drug, attempted possession of a Class B drug and dishonestly causing electricity to be diverted. A Police Constable provided a quote to the media report which*

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<sup>111</sup> Eastern Daily Press, (19 October 2023), *Jail for 20-year-old found at Norfolk cannabis factory*. Available at: <https://www.edp24.co.uk/news/23864458.jail-20-year-old-found-norfolk-cannabis-factory/>

<sup>112</sup> The Stray ferret, (6 February 2023), *Harrogate cannabis gardener jailed after £250,000 farm found*. Available at: <https://thestrayferret.co.uk/harrogate-cannabis-gardener-jailed-after-250000-farm-found/#:~:text=Used%20as%20a%20'modern%20slave'&text=%E2%80%9CIt's%20quite%20clear%20you%20have,money%20whatsoever%20from%20this%20criminality.>



### 6.1a ICTG service has not been fully rolled out

*GRETA welcomes the authorities' commitment to fully roll out the ICTGs service and the removal of limits for ICTG support, and stresses that targeted support is crucial when victims, especially children, who find themselves in a situation of increased vulnerability, putting them at risk of re-victimisation. The transition to adulthood and the exit from social care services exposes young adults to the risk of being re-trafficked and requires an adequate response from the authorities to reduce this risk.*<sup>114</sup>

258. Despite multiple evaluations demonstrating the benefits and positive outcomes for children accessing the ICTG service, this has not been fully rolled out yet, covering ⅔ of areas across England and Wales. **Thus, the above recommendation has not been implemented.**

259. The Home Office committed to fully roll out the service by 2025. This means that until then, many children are at heightened risk of exploitation and re-trafficking without access to a specialist service that advocates in their best interest and supports the understanding of their trafficking/exploitative experience.

260. Where present, the ICTG service offers different professionals depending if the children are unaccompanied or living in a family setting. ICTGs work directly with unaccompanied children and their professional support network. Regional Practice Coordinators (RPC) usually support the professional network and family, but with no direct contact with the child.

261. The ICTG service is usually accessed by children up until the age of 18, with the possibility of a 3-month extension for specific and high-risk cases.

262. In the past year, the service introduced new pilot services in the form of a Regional Practitioner (RP), who works directly with children in families and a post-18 ICTG who works with children who have turned 18. These are welcome and much needed services, however it's paramount that steps are taken to fund these across all areas. At the moment, these are only offered in a few areas and in limited numbers.

### 6.1b Roll back in children's safeguards and increased risk of re-trafficking and exploitation

*GRETA notes that significant commitments remain unmet and considers that the UK authorities should take further steps to improve child victims' identification and assistance, and in particular:*

- *ensure that the NRM process is in line with trafficked children specific needs, by providing specific training among professionals about the NRM, ensuring information sharing and adequate co-ordination between the NRM and local child protection processes;*

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<sup>114</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 293, p.73

- ensure that the identification process has a reasonable duration, including by providing appropriate funding for the recruitment of new staff and for making the process more efficient;
- make the Independent Child Trafficking Guardianship (ICTG) scheme operational across the whole territory in England and Wales;
- ensure that long-term support and adequate assistance are provided to children in the transition to adulthood, in order to reduce the risk of re-victimisation and to ensure their effective access to justice and facilitate their social reintegration and recovery;
- continue to take actions for reducing the risk of children going missing from care and to set up a system for tracking re-trafficked children, in order to understand the extent of this issue and react adequately;
- provide training to all professionals working with child victims of trafficking, by paying particular attention to children who are potential victims of criminal exploitation and online sexual exploitation, and ensure that child victims are not prosecuted for their involvement in crimes committed as a result of their exploitation;
- ensure that sufficient long-term funding is provided to enable local authorities to carry out their work and to face the emergency related to the COVID-19 pandemic.<sup>115</sup>

263. **Some of the above recommendations have been partially met** thanks to the introduction of the Devolved decision-making panels in pilot sites. However, this is true only for some areas of England and Wales and we invite the Home Office to progress with a full roll out of the pilot. Additionally, age dispute children and children within 100 days of their 18th birthday are excluded from devolved decision making and subject to long waiting times and decisions by central government through the traditional Single Competent Authority NRM model. Regrettably, we note grave concerns in regards to weakened safeguarding systems for children and an erosion of their rights and access to identification and support.

*i. NRM Devolved decision making panels pilot*

264. In June 2021, the Home Office started a Devolved-decision making panel pilot to trial a local multi-agency approach in the NRM decision-making for children. This system facilitates information sharing amongst the child's professional network and strengthens their safeguarding response and cooperation, while reducing the NRM decision time.

265. We welcome the introduction of this process, which constitutes an effective multi-agency model of collaboration and frames modern slavery as a safeguarding issue, giving professionals the opportunity to meet the child's needs and ensure better protection and support.

These panels now cover 20 sites across 30 Local Authorities and are usually constituted of professionals such as social workers, police, health, ICTGs and other NGO's.

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<sup>115</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 301, p.75

266. Recent data published by the Home Office shows that between June 2021 and September 2023, **93%** of Reasonable Ground Decisions made by the pilots' sites were positive and the median time taken to reach a decision was 37 days.

While **86%** of Conclusive ground decisions CGDs were positive and the median time taken was 58 days.<sup>116</sup> The proportion of positive decisions are in line with the more general decision trends before the commencement of Part 5 NABA and the waiting times are within the required statutory timeframes.

267. NRM outcomes for those children who are not accessing the pilot are very different and show that the proportion of positive decisions have sharply decreased. Following the commencement of Part 5 NABA in January 2023. In Quarter 3 2023, **69%** of reasonable ground decisions and **76%** conclusive ground decisions for children were positive.<sup>117</sup>

#### *ii. Use of hotels*

268. The Home Office has been responsible for multiple child protection failures by placing unaccompanied children in hotels since June 2021. Children were supposed to be placed in hotels on a temporary basis while Kent County Council (unlawfully) refused to take them under their care.

269. However, the Home Office continued to use hotels, in total 7, with reports of some children living there for months while waiting to be transferred to a Local Authority under the National Transfer Scheme (NTS). During this time, children were kept outside of the statutory child protection system with limited or no access to services they were entitled to, such as education, health, an allocated social worker etc.

270. This practice created additional issues in relation to those children who arrived a few months before turning 18. For a child to qualify for leaving care support (post-18 support), they would need to have been at least 13 weeks under the care of a Local Authority. While children were kept in hotels, they were outside of the care of any Local Authority, which meant that those nearing 18, risked missing out on the Local Authority post-18 support and to be transferred directly to Adult support. It is unknown how many young people in this situation have been affected.<sup>118</sup>

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<sup>116</sup> Home Office, (Updated 3 November 2023), *Annex: analysis of the devolved decision-making pilot for child victims of modern slavery*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/annex-analysis-of-the-devolved-decision-making-pilot-for-child-victims-of-modern-slavery>

<sup>117</sup> Home Office, (Updated 3 November 2023), *Modern slavery: National Referral mechanism and Duty to Notify Statistics UK, Quarter 3 2023 - July to September*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/annex-analysis-of-the-devolved-decision-making-pilot-for-child-victims-of-modern-slavery>

<sup>118</sup> ECPAT, (2021), *Outside of the frame: Unaccompanied children denied care and protection*. Available at: <https://www.ecpat.org.uk/outside-the-frame-unaccompanied-children-denied-care-and-protection>

271. The hotels have been proven to be highly unsafe for children, with a recorded 442 children going missing and 166 of them still missing. Of the children who went missing, only 17% of them were referred to the National Referral Mechanism.<sup>119</sup> This evidence the poor safeguarding measures taken by the Home Office which has put children at direct risk of trafficking and exploitation. The children who have been found, were often in different parts of the UK and subject to exploitative situations.<sup>120</sup>

272. The practice of accommodating children in hotels has recently been ruled unlawful following a Court Challenge brought by ECPAT UK against the Home Office and Kent County Council.<sup>121</sup> At the time of writing, the Home Office states that there are no children accommodated in hotels. Despite this, the Illegal Migration Act grants powers on the Home Secretary to directly accommodate unaccompanied children without certainty of how they will access their duties and entitlements under child welfare law by Local Authorities.

*iii. Local Authorities use of unregulated accommodations*

273. Until recently, Local Authorities have been routinely using unregulated accommodation for 16-17 years old young people. These accommodations are usually run by private companies with great inconsistency in terms of support for children as well as very limited and fragmented training offered to staff. This was compounded by the lack of a statutory evaluation system to check the quality and suitability of these placements.

274. In March 2023, the Department for Education published a new guidance which sets the quality standards that all supported accommodation should meet, which includes the requirement for all accommodations to be registered with Ofsted to make sure they are under its inspection regime.<sup>122</sup> All providers of supported accommodation should adhere to these mandatory standards from the 28th of October 2023.

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<sup>119</sup> Children's Commissioner, (November 2023), *Unaccompanied children in need of care*. Available at: <https://assets.childrenscommissioner.gov.uk/wpuploads/2023/11/Unaccompanied-children-in-need-of-care-PDF.pdf>

<sup>120</sup> The Guardian, (18th February 2023), *Revealed: UK's missing child refugees put to work for Manchester gangs*. Available at: <https://www.theguardian.com/uk-news/2023/feb/18/uk-missing-child-refugees-put-to-work-manchester-gangs#:~:text=Revealed%3A%20UK's%20missing%20child%20refugees%20put%20to%20work%20for%20Manchester%20gangs,-Police%20focus%20search&text=Once%20again%2C%20they%20had%20gathered,approached%2C%20some%20whistled%20the%20alarm.>

<sup>121</sup> ECPAT UK, R (on the application of) v Kent County Council & Anor sourced at [ECPAT UK, R \(on the application of\) v Kent County Council & Anor - Find case law \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/uk-legal/docs/20230228-ecpat-uk-r-on-the-application-of-v-kent-county-council-and-anor/)

<sup>122</sup> Department for Education, (23 March 2023), *Guidance. Providing supported accommodation for children and young people*. Available at: <https://www.gov.uk/government/publications/providing-supported-accommodation-for-children-and-young-people>



275. Furthermore, there have been failures in finding suitable accommodations for 15 years old and younger children with reports of children being placed in hotels, despite the requirement to place them in accommodation which meets the children's home standards . Even when children are placed with a foster carer, there are reports of bad practices where children are moved to a semi-independent accommodation as soon as they turn 16 regardless of individual needs. There is also a reluctance to place older children with foster carers even where there is an evidenced need and significant safeguarding risks. There is a national shortage of foster carers and wider accommodation provisions, with many local authorities recently collapsing financially under wider financial strains and budgetary reductions which significantly impact their children's services.
276. Multiple reports from ECPAT UK<sup>123</sup> have highlighted how the lack of consistency and specialist support in accommodation settings has led to children going missing, many never to be found or to experience multiple episodes of trafficking and exploitation.
277. The housing situation becomes even more unsuitable when unaccompanied children turn 18 and they are usually transitioned to a non-recourse to public funds accommodation if they still have insecure immigration status. These types of accommodation are usually unsafe and inappropriate to house vulnerable young people. Most don't have staff in placement, but only an outreach support worker who may see them from time to time.
278. The majority (84%) of unaccompanied children seeking asylum under the care of Local Authorities in England on 31 March 2023 were aged 16 and 17.<sup>124</sup> This means that often children have little time to receive support and to learn those independent life skills to be able to confidently thrive with less support. This increases children's vulnerabilities, putting them at higher risk of exploitation and re-trafficking.
279. Civil society organisations report grave concerns in relation to the situation of those children transitioning to post 18 support, which is a very crucial time for unaccompanied children,

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<sup>123</sup> ECPAT UK reports:

- ECPAT UK, (2011), *On the Safe side: Principles for the safe accommodation of child victims of trafficking*. Available at: <https://www.ecpat.org.uk/one-the-safe-side-principles-for-the-safeaccommodation-of-child-victims-of-trafficking>
- ECPAT UK, (2016), *Heading Back to Harm*. Available at: <https://www.ecpat.org.uk/heading-back-to-harm-a-study-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk#:~:text=modern%20slavery%20research-,Heading%20back%20to%20harm%3A%20A%20study%20on%20trafficked%20and%20unaccompanied,EC PAT%20UK%20and%20Missing%20People>.
- ECPAT UK and Missing People, (2018), *Still in Harm's Way: An update report on trafficked and unaccompanied children going missing from care in the UK*. Available at: <https://www.ecpat.org.uk/still-in-harms-way>.
- ECPAT UK, (2020), *When harm remains: an update report on trafficked and unaccompanied children going missing from care in the UK*. Available at: <https://www.ecpat.org.uk/when-harm-remains-an-update-report-on-trafficked-and-unaccompanied-children-going-missing-from-care-in-the-uk>

<sup>124</sup> Department for Education, (16 November 2023), *Children looked after in England including adoptions*. Available at <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions>



these, 850 were found to be children.<sup>129</sup> This resulted in children being placed in accommodations where they had to share rooms with adults for many months with no safeguards and appropriate care in place.

286. The Refugee and Migrant Children Consortium raised multiple concerns during the passage of the Nationality and Borders Bill (NABA), highlighting how the new provisions will give the Home Office control of the age assessment process and would rely on the inaccurate and unethical use of scientific methods.<sup>130</sup>

287. This legislation also created a National Age Assessment Board, which sits within the Home Office and provides for local authorities to request age assessments be carried out by them or they can do so despite a local authority wishes to determine age for the purposes of immigration functions. This runs contrary to the principles set out in domestic case law which has determined children services to have the relevant expertise to determine age through a process that must be caselaw compliant following the 2003 Merton determination. Age determination by Home Office social workers will lack the independence needed as they are commissioned by a government body which has immigration enforcement functions rather than child protection, creating perverse incentives in the procedure.

288. Section 52 NABA also states that the Secretary of State may make regulations specifying scientific methods that may be used for the purpose of age assessments. This may include examining or measuring parts of a person's body, including by the use of imaging technology; the analysis of saliva, cell or other samples taken from a person (including the analysis of DNA in the samples). These can only be used if the individual consents to this or someone with parental responsibility does on their behalf. However, the lack of consent will be considered as a credibility issue and the Illegal Migration Act further amends this provision to set out that a refusal to a medical test will result in automatic assumption of adulthood.

289. Despite the wealth of evidence and statements made by professional medical bodies and other domestic and international institutions rejecting the use of scientific methods as being unethical and highly imprecise,<sup>131</sup> the Government recently made regulations to implement these measures. The interim Age Estimation Science Advisory Committee (AESAC) made very clear that "if biological age assessment is implemented it should be used to assess whether the age claimed

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<sup>129</sup> Helen Bamber Foundation, Asylum Aid, Humans for Rights Network, (April 2023), *Disbelieved and denied*. Available at: [Children treated as adults HBF HFRN AA April23.pdf \(helenbamber.org\)](https://www.helenbamber.org/children-treated-as-adults-HBF-HFRN-AA-April23.pdf)

<sup>130</sup> The Refugee and Migrant Children's Consortium, (2022), *Nationality and Borders Bill – House of Lords Second Reading Part 4 (Age Assessments)*. Available at: [HoL-Second-Reading-RMCC-age-assessments-Final.pdf \(refugeechildrenconsortium.org.uk\)](https://www.refugeechildrenconsortium.org.uk/HoL-Second-Reading-RMCC-age-assessments-Final.pdf)

<sup>131</sup> Royal College of Paediatrics and Child Health, (14 September 2023), *RCPCH responds to UK Government plans to authorise the use of x-rays in age assessments of children seeking refuge and asylum*. Available at: [RCPCH responds to UK Government plans to authorise the use of x-rays in age assessments of children seeking refuge and asylum | RCPCH](https://www.rcpch.org.uk/news-and-views/rcpch-responds-to-uk-government-plans-to-authorise-the-use-of-x-rays-in-age-assessments-of-children-seeking-refuge-and-asylum)

See also: Council of Europe Children's Right Division, (2017), *Age Assessment. Council of Europe member states policies, procedures and practices respectful of children's rights in the context of migration*. Available at: [168074b723 \(coe.int\)](https://www.coe.int/t/e/children/age_assessment.aspx)

by UASC is possible” (emphasis added) and should only be used as part of a wider social work assessment that is compliant with existing guidance and case law.<sup>132</sup>

290. All the above provisions have created an unsafe environment for children, who, by being wrongly age assessed, are finding themselves in precarious and unsafe situations, outside of the care system, becoming easier prey for traffickers and exploiters. This also damages children’s trust in authorities and prevents them from seeking support, pushing them in the hands of traffickers who may use this situation to coerce and control them.

## 6.2 Cross-cutting themes

### 6.2a Child House pilot

*GRETA welcomes the Child House pilot and considers that the UK authorities should further develop this good example of child-friendly justice which can enhance the protection of child victims of trafficking.*<sup>133</sup>

291. In 2018, the Home Office, NHS England, the Mayor’s Office for Policing and Crime (MOPAC) and the Department for Education funded a pilot Child House in North Central London. In 2022, following a successful pilot, the University College London Hospitals NHS Foundation Trust (UCLH) was commissioned to provide a sustainable Child House service – the Lighthouse,<sup>134</sup> in partnership with the Metropolitan Police and the NSPCC. The Lighthouse is funded by NHS England, North Central London Integrated Care Board, MOPAC and the Crown Prosecution Service. This can be accessed by children and young people in Barnet, Camden, Enfield, Haringey and Islington.

292. Despite the very positive assessments and the proven benefits of this model, this has not been expanded to other areas of the UK yet nor expanded to other forms of exploitation that are not sexual. **Therefore, this recommendation has not been implemented.**

### 6.2b NRM continues to be unsuitable to meet children’s needs

*GRETA invites the authorities to ensure that the NRM process is child-friendly and adapted to the specific needs and vulnerability of children (see also paragraph 300).*<sup>135</sup>

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<sup>132</sup> AESAC, (January 2023), *Biological evaluation methods to assist in assessing the age of unaccompanied asylum-seeking children*. Available at: [Biological methods to assess unaccompanied asylum-seeking children’s age - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114141/biological_methods_to_assess_unaccompanied_asylum-seeking_childrens_age_-_gov_uk.pdf)

<sup>133</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 223, p.58

<sup>134</sup> [The Lighthouse \(thelighthouse-london.org.uk\)](https://www.thelighthouse-london.org.uk/)

<sup>135</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 226, p.58

293. The NRM process continues to be inadequate to meet children’s needs. Local Authorities are not funded to provide additional support to children who have been trafficked and often rely on the support of third sector and voluntary organisations. During the Covid pandemic this situation has been exacerbated by the multiple lockdowns, which meant that children had less direct contact with professionals supporting them such as social workers and other specialist services as well as their friendship networks, while often living in inadequate settings.
294. Youth justice, youth work and child protection practitioners all outlined concerns that lockdown restrictions may also have made some young people more vulnerable, and in particular increasingly susceptible to grooming and criminal exploitation through drug supply and distribution.<sup>136</sup> Children reported feeling isolated and there has been a surge in mental health issues and requests for support, which could not be met by statutory services.<sup>137</sup>
295. In the meanwhile, the number of children trafficked continues to grow, but the identification system is failing them due to the introduction of NABA and IMA and the inconsistent application of the non-punishment principle through s45 defence.
296. Some academic literature around child criminal exploitation, found that drug supply dealers seek to exploit children because they “represent a cheap, easily recruited workforce” and they specifically target children with a number of vulnerabilities, including high rates of missing episodes, being looked after/in the care system, exclusion from mainstream education, and experiences of being victimised and/or having perpetrated serious youth violence.<sup>138</sup> This often results in children survivors of modern slavery, especially those subject to criminal exploitation, being criminalised and not recognised as survivors of modern slavery due to the blurred line between being a victim and perpetrator of a crime.<sup>139</sup>
297. A 2021 Independent Anti-Slavery Commissioner and ECPAT UK’s report analyses the situation of child trafficking in the UK and it highlights concerns in relation to the criminalisation of children, who even when identified, are not provided with effective safeguarding responses to protect

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<sup>136</sup> National Youth Agency, (2021), *Drug gangs use social media to groom young people in county towns*. Available at: <https://www.nya.org.uk/drug-gangs-use-social-media-to-groom-young-people-in-county-towns/>

<sup>137</sup> Young Minds, (2021), *Covid impact on Young people with mental health needs*. Available at: <https://www.youngminds.org.uk/about-us/reports-and-impact/coronavirus-impact-on-young-people-with-mental-health-needs/#main-content>

See also: King’s College London, (9 February 2022), *How has COVID-19 impacted children and young people?*. Available at: <https://www.kcl.ac.uk/an-isolated-generation-the-impact-of-covid-19-on-children-and-young-people>

<sup>138</sup> University of Nottingham Rights Lab, (26 November 2021), *Covid-19 and child criminal exploitation in the UK: implications of the pandemic for country lines*. Available at: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/academic-publications/2021/covid-19-and-child-criminal-exploitation-in-the-uk-implications-of-the-pandemic-for-county-lines.pdf>

<sup>139</sup> The Children’s Society, (2019), *Counting Lives: Responding to Children who are criminally exploited*. Available at: <https://www.childrensociety.org.uk/information/professionals/resources/counting-lives>

them from further exploitation. The report also includes more recent case law and information pertaining to the application of s45 statutory defence.<sup>140</sup>

298. We also note concerns in relation to the Competent Authorities decision-making processes. The Modern Slavery statutory guidance for England and Wales says the “IECA is responsible for a specific cohort of adult cases” and that the “SCA is the competent authority for all other cases referred to the NRM, which includes all child cases.” However, NRM statistics show that the IECA has made more than 700 Reasonable Grounds decisions for child cases. Those statistics also show that in the first 9 months of 2023 77% of Reasonable Grounds decisions for child cases made by the SCA were positive compared to just 40% for decisions by IECA.<sup>141</sup>

## 7. Measures to prevent and combat trafficking for the purpose of labour exploitation

### 7.1 Corporate accountability

*GRETA welcomes the UK authorities’ commitment in preventing and eradicating human trafficking from businesses and supply chains, including in the public sector, and considers that the authorities should continue their efforts, making full use of the existing legislation and further developing it, by introducing mandatory sanctions for companies which fail to comply with their due diligence obligations under the MSA.*<sup>142</sup>

#### **The above recommendation has not been implemented.**

299. Following calls to improve the legal framework on corporate accountability, in 2020 the UK Government committed to strengthening the TISC provision. This would have included its extension to the public sector, introducing mandatory reporting requirements for Modern Slavery Statements, and financial penalties for failure to publish a Statement.

300. As of November 2023, none of these commitments have been implemented apart from the introduction of a Government-run registry for statements. Further, a more ambitious approach is needed to drive effective action. Even with the announced measures to strengthen TISC, these will simply create sanctions for failing to produce a Modern Slavery Statement, but still will not require businesses to take concrete measures to prevent, mitigate and remediate forced labour and modern slavery in their supply chains, nor provide penalties for a failure to do so.

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<sup>140</sup> Independent Anti-Slavery Commissioner and ECPAT UK, (2021), *Child Trafficking in the UK 2021: a snapshot*. Available at: [https://www.antislaverycommissioner.co.uk/media/1724/ecp05-a4-report-snapshot-21\\_aw7.pdf](https://www.antislaverycommissioner.co.uk/media/1724/ecp05-a4-report-snapshot-21_aw7.pdf)

<sup>141</sup> Home Office, (2 November 2023), *Modern Slavery: National Referral Mechanism and duty to notify statistics UK, July to September 2023*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023#documents>

<sup>142</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 234, p.60

301. The recently passed Procurement Act 2023 will require departments to take stronger action on modern slavery; for example it has an element that Governments can exclude companies from contracts if they are convicted of modern slavery. However, it is unclear how this will be enforced or managed by procurers.<sup>143</sup> The Act does not entail any specific duties and, as such, it is unclear what specific actions will stem from this legislation as well as its effectiveness.

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

## 7.2 Weak Market Labour Enforcement

*GRETA stresses the importance of endowing this new Single Enforcement Body with a remit and resources which would enable it to effectively prevent and combat human trafficking for the purpose of labour exploitation.*<sup>144</sup>

*GRETA considers that the UK authorities should step up their efforts to prevent human trafficking for the purpose of labour exploitation, including by:*

- *further strengthening the remit and capacity of labour market inspectorates and ensuring that ongoing training is provided to all inspectorate staff to enable proactive identification and referral of victims of THB for the purpose of labour exploitation;*
- *taking measures to reduce labour exploitation among overseas domestic workers, by implementing the recommendations of the Ewins Review, introducing information and awareness sessions, and monitoring the issuing of ODW visas;*
- *continuing to tackle labour exploitation in car washes and raise awareness among users and workers;*
- *strengthening the provision of information to presumed victims of THB on their rights and the possibilities to receive assistance;*
- *continuing to monitor the impact of Brexit and the COVID-19 pandemic on labour exploitation, and ensuring that victims of trafficking receive adequate information and support for being registered for the EU Settlement Scheme.*<sup>145</sup>

303. **The above recommendations have not been fully implemented.** Despite having made a commitment to implement a Single Enforcement Body (SEB), the Government abandoned such

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<sup>143</sup> MSPEC, (29 June 2022), *Public procurement - key for addressing modern slavery in supply chains?* Available at: <https://modernslaverypec.org/latest/public-procurement-modern-slavery>

<sup>144</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 245, p.62

<sup>145</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 253, p.64

plans in December 2022.<sup>146</sup> Additionally, the suggested model of the Single Enforcement Body was more limited in scope than had been initially intimated, posing serious concerns with regard to the remit and resources that would be allocated. In this sense, the SEB was suggested as including only three labour market enforcement authorities (the Gangmasters & Labour Abuse Authority, the Employment Agency Standards Inspectorate and the HMRC National Minimum Wage team), as opposed to covering to full scope of labour market authorities. Moreover, the Government has failed to implement the secure reporting provisions and policies, recommended by GRETA in its second-round evaluation of the UK, that would help to build community trust among migrant workers and end the practice of joint or simultaneous inspections with immigration enforcement.<sup>147</sup>

304. We have seen a further deterioration of resources for labour market enforcement. At the time of the third-round evaluation, the number of labour market inspectors per 10,000 workers was estimated at 0.4. By April 2023, this had decreased further to 0.29 per 10,000 workers. This is against a benchmark of 1 labour inspector per 10,000 workers set out by the ILO.<sup>148</sup> The incredibly underfunded labour market enforcement system in the UK has meant that an extremely limited number of proactive inspections are conducted.<sup>149</sup> In this context labour market enforcement authorities often rely on ‘spot-the-signs’ and ‘know your rights’ trainings, and limited after-the-fact enforcement. In this reactive system, the onus is placed on the worker to report violations, though the workers that are the most vulnerable to exploitation are often the least likely to come forward.<sup>150</sup>

305. The ramifications of the limited remit and funding of the GLAA have also been further highlighted in recent years. For instance, the labour law compliance has been a significant issue on the Seasonal Worker Visa. In his inspection on the immigration system as it relates to the agricultural sector,<sup>151</sup> the Independent Chief Inspector for Borders and Immigration highlighted

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<sup>146</sup> The Telegraph, (13 December 2022), *Tories ditch manifesto pledge to create worker’s right super watchdog*. Available at: <https://www.telegraph.co.uk/politics/2022/12/13/tories-ditch-manifesto-pledge-create-workers-rights-super-watchdog/>

<sup>147</sup> GRETA (2016), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom - Second Evaluation Round*, p.26. Available at: [https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abdc](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abdc&p.26)

<sup>148</sup> International labour organisation, (16 November 2006), *ILO calls for strengthening labour inspection worldwide*. Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_077633/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_077633/lang--en/index.htm)

<sup>149</sup> Unchecked & FLEX (2022), *Briefing: Labour market enforcement gap*. Available at: <https://unchecked.uk/wp-content/uploads/2021/11/Labour-Market-Enforcement-Gap.pdf>; p.17

<sup>150</sup> Human Trafficking Foundation, (2022), *UK Labour Visa Schemes: Creating the Conditions for Exploitation? Post-Event Report Summary*. Available at: <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/63a09670b6676413e7607197/167146865660/HTF+Post+Event+Briefing+Final.pdf>; p.5

<sup>151</sup> Independent Chief Inspector of Borders and Immigration, (19 December 2022), *An Inspection of the immigration system as it relates to the agricultural sector May to August 2022*. Available at: <https://www.gov.uk/government/publications/an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector-may-to-august-2022>



those challenges with enforcing labour law compliance partially stemmed from ‘a lack of clarity over roles and responsibilities of the various government departments or bodies involved.’ In his inspection on the immigration system as it relates to the agricultural sector, the Independent Chief Inspector for Borders and Immigration highlighted that challenges with enforcing labour law compliance partially stemmed from ‘a lack of clarity over roles and responsibilities of the various government departments or bodies involved.’

306. The Government has also failed to implement the recommendations put forward in the Ewins Review concerning Overseas Domestic Workers.
307. There should be a reform of Home Office inspection rules relating to ODW work in private households, as the nature of private households as workplaces means that they are very difficult to monitor. This may include requiring that the employer consent, at the time of the ODW visa application, to unannounced visits.
308. For employers of ODWs referred into the NRM, there is also typically no proscription on them re-entering the UK, leading to the possibility of repeat offenders. There is little to suggest that the Home Office cross-references subsequent entry clearance applications of sponsors who have been identified as exploitative employers by PVOTs in NRM referrals.
309. Kalayaan also saw cases from Subject Access requests made to UKVI where an employer has been prevented from obtaining an ODW visa for a worker overseas because border officials believe they will not pay National Minimum Wage and abide by UK law and then has managed to subsequently obtain one for the same worker, who has entered the NRM.
310. There is a need to review prevention measures for overseas domestic workers, given the failure to implement the Ewins recommendations for 8 years.
311. The labour shortage that has followed the end of freemovement has also led to creation and expansion of routes that produce considerable risks of exploitation. This includes the Health and Care Work Visa and the Seasonal Worker Visa. In December 2021, the Government added care work to the Shortage Occupation List to address the shortage of care workers and allowed care workers to use the Health & Care Worker visa. The number of Health & Care Worker visas granted grew from 47,194 in the year ending 2022, to 121,290 in the year ending June 2023 (a 157% increase). In the period of June 2022 to June 2023, the Health & Care Worker visa represented 57% of all ‘Worker’ visas.<sup>152</sup> The MAC has stated that “it’s now by far the biggest occupation that’s using the immigration system.”<sup>153</sup>
312. Organisations have long warned of the need to address the risks of exploitation in the care sector and of their concerns regarding the use of sponsorship requirements on visa routes to

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<sup>152</sup> Home Office (2023), *National statistics - Why do people come to the UK? To work*. Available at: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-june-2023/why-do-people-come-to-the-uk-to-work>

<sup>153</sup> The Guardian (2023), at note 2. See also Home Office (2023) at note 5.

address labour shortages following the end of free movement.<sup>154</sup> It is evident that the Government has failed to properly heed these concerns, and has not addressed these risks. Increasingly, there have been reports of severe forms of labour exploitation in the UK care sector, with issues including illegal fees, exorbitant repayment clauses, non-payment of wages, debt bondage and excessive overtime highlighted in media coverage.

313. Using data collected through the Modern Slavery & Exploitation Helpline, Unseen reported a 606% increase in the number of modern slavery cases in the care sector from 2021 and 2022.<sup>155</sup> The Director of Labour Market Enforcement has identified adult social care as a high-risk sector for labour exploitation, with live-in and agency care workers believed to be at particular risk.<sup>156</sup> The Migration Advisory Committee (MAC) has stated that the Government has tacitly accepted exploitation in the care sector.<sup>157</sup>

314. The UK introduced the agricultural Seasonal Worker visa as a pilot in 2019. Since then, the scheme has expanded from under 3,000 visas in 2019 to up to possible 57,000 available in 2023 (10,000 of these could be released subject to unpublished criteria and 2,000 are shorter visas for the poultry sector). This rapid scheme growth has been despite concerns that the scheme can create risks of exploitation for workers, including reports of workers being left without work after only a few months in the UK, so unable to repay migration debts.<sup>158</sup> Despite the GLAA licensing Scheme Operators, who sponsor workers' visas and are responsible for bringing them to the UK and placing them in employment with farms they do not routinely monitor or inspect farms or the

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<sup>154</sup> See:

- FLEX (2019), *Disposable Workers: the future of the UK's migrant workforce*, p.6. Available at: [https://labourexploitation.org/app/uploads/2019/03/FLEX\\_Briefing\\_DisposableWorkers\\_Final.pdf](https://labourexploitation.org/app/uploads/2019/03/FLEX_Briefing_DisposableWorkers_Final.pdf);
- FLEX (2019), *The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper*, p.16. Available at: [https://labourexploitation.org/app/uploads/2019/05/Report\\_Risks-of-Exploitation-in-TMPs\\_May-2019\\_Final.pdf](https://labourexploitation.org/app/uploads/2019/05/Report_Risks-of-Exploitation-in-TMPs_May-2019_Final.pdf);
- FLEX (2018), *Preventing exploitation in the shadow of Brexit: The risks of temporary migration programmes*, p.6, Available at: [https://labourexploitation.org/app/uploads/2018/09/FLEX-Briefing-temporary-migration\\_FINAL.pdf](https://labourexploitation.org/app/uploads/2018/09/FLEX-Briefing-temporary-migration_FINAL.pdf);
- FLEX & LEAG (2017), *Lost in Translation: Brexit & labour exploitation*, p.12. Available at: <https://labourexploitation.org/app/uploads/2017/08/LEAG-POSITION-Impacts-of-Brexit-Final.pdf>

<sup>155</sup> Unseen, (2023), *Who cares*. Available at: <https://www.unseenuk.org/wp-content/uploads/2023/11/unseen-Care-Sector-report-2023.pdf>

<sup>156</sup> Director of Labour Market Enforcement (2022), *United Kingdom Labour Market Enforcement Strategy 2022/23*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1143364/uk-labour-market-enforcement-strategy-2022-2023.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1143364/uk-labour-market-enforcement-strategy-2022-2023.pdf)

<sup>157</sup> The Guardian (2023), *Exploitation of care workers in England is 'appalling', says government adviser*. Available at: <https://www.theguardian.com/society/2023/jul/30/exploitation-of-care-workers-in-england-is-appalling-says-government-adviser>

<sup>158</sup> Landworkers alliance, FLEX, JCWI, New Economics Foundation, Sustain, (2023), *Debt, migration and exploitation. The seasonal worker visa and the degradation of working conditions in UK Horticulture*. Available at: <https://landworkersalliance.org.uk/wp-content/uploads/2018/10/LWA-Debt-Migration-and-Exploitation-2023.pdf>,

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workers' employment conditions.<sup>159</sup> They will only become involved with workers' employment conditions if they reach the threshold of slavery. It is not clear in practice which agency is responsible for proactively enforcing 'lower level' breaches for workers on the scheme that are not considered as reaching the threshold for slavery, particularly given the short length of the visa and therefore time available for investigations or redress before the worker leaves the UK.

## 8. Repatriation and return of survivors

*GRETA urges the UK authorities to review the victim return and repatriation policies in order to ensure compliance in law and practice with Article 16 of the Convention, including by:*

- *ensuring that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies working with relevant partners in countries of return; such assessments should also ensure effective enjoyment of the child's right to education and measures to secure adequate care or receipt by the family or appropriate care structures in countries of return (Article 16 (5) of the Convention);*
- *ensuring that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, is preferably voluntary and complies with the obligation of non-refoulement. This includes informing victims about existing support programmes, protecting them from re-victimisation and re-trafficking. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection;*
- *carrying out a comprehensive risk assessment prior to the return of victims, including through enhancing international co-operation, in order to ensure compliance with the non-refoulement principle, as well as enabling the effective reintegration and protection of victims of THB returned to other countries.<sup>160</sup>*

*GRETA also considers that the UK authorities should include the aspect of safe and preferably voluntary return in the training provided to law enforcement agencies, and collect and publish information about the number of victims of trafficking who return via the VRS and which countries they return to.<sup>161</sup>*

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<sup>159</sup> UK Parliament, (10 October 2022), *Gangmaster Licensing: Questions for Home Office*. Available at: <https://questions-statements.parliament.uk/written-questions/detail/2022-10-10/59819/>

<sup>160</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraph 322; p.79

<sup>161</sup> Group of Experts on Action Against Trafficking in Human Beings (GRETA), (20 October 2021), *Evaluation Report United Kingdom, Third Evaluation Round*. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; Paragraphs 323; p.80

315. **The above recommendations not only have not been implemented, but the introduction of the Illegal Migration Act 2023 will deteriorate safeguarding measures on return and may lead to further re-trafficking and exploitation as well as constitute a breach of survivor’s human rights.**
316. It is difficult to estimate the extent of enforced and voluntary returns of survivors of trafficking and modern slavery in the UK because the Government doesn’t release statistics in relation to this. However, charity After exploitation submitted a Freedom of Information request in 2020 and found that both voluntary and enforced returns and trafficking outcomes are held centrally on the Home Office’s Case Information Database.<sup>162</sup>
317. As a result of the Freedom of Information request, After Exploitation stated that data suggests a relatively small proportion of survivors are deported and most of them access voluntary returns. However, *subsequent examination of voluntary returns data by After Exploitation revealed that a majority of potential victims (52%) returning via voluntary return were initially held in immigration detention, leaving charities to question whether such returns may be undertaken by survivors out of desperation rather than as a result of informed consent.*<sup>163</sup>
318. The return process is recognised as an enabler of re-trafficking due to the challenges within the return process including not understanding levels of risk to individuals returning.<sup>164</sup>
319. A 2021 Independent Anti-Slavery commissioner report<sup>165</sup> found that people were put at risk *by the absence of reintegration programmes, on-going support, fear of reprisals, a lack of employment opportunities and increase the risk of re-trafficking, regardless of if they are returning to their home nation, if the UK is their home nation or if they are eligible to remain within the UK.* The risks identified are even higher when returns are not on a voluntary basis and when support is not offered.
320. Further issues heightening the risk of re-trafficking on return are discussed in the same report, including the lack of effective tracking of outcomes for survivors.
321. These findings are even more crucial considering the recent enactment of the Illegal Migration Act 2023. Civil society organisations are deeply concerned about the removal principle underpinning this Act, which poses a duty on the Home Secretary to remove anyone who fits

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<sup>162</sup> What do they know, (9 August 2020), *Freedom of Information request, Voluntary Return: category fields*. Available at: [https://www.whatdotheyknow.com/request/voluntary\\_return\\_category\\_fields](https://www.whatdotheyknow.com/request/voluntary_return_category_fields)

<sup>163</sup> After Exploitation, (2020), *Voluntary return + deportation*. Available at: [https://afterexploitation.com/returns-enforced-voluntary/#\\_ftn6](https://afterexploitation.com/returns-enforced-voluntary/#_ftn6)

<sup>164</sup> Human Trafficking Foundation and the International Organization for Migration,(2019), *Findings and Recommendations for Assisted Voluntary Return and Reintegration for Survivors of Modern Slavery*. Available at: <https://www.humantraffickingfoundation.org/news/2019/6/assisted-voluntary-return-and-reintegration-for-survivors-of-modern-slavery>. p 3

<sup>165</sup> Independent Anti-Slavery Commissioner and University of Nottingham Rights Lab, (November 2021), *Re-trafficking: the current state of play*. Available at: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/november/re-trafficking-the-current-state-of-play.pdf>

within the four criteria in section 2 of the Act with few narrow exceptions including for survivors who cooperate with police. However, even those survivors who cooperate with police will be removed from the UK if it is not deemed necessary for them to be in the UK to cooperate or at the end of the investigation proceedings.

322. This duty runs directly in contrast with Article 16 ECAT (repatriations of victims of human trafficking and modern slavery) and Article 40 ECAT (relationship between ECAT and other international treaties).
323. If, as a result of the IMA provisions, survivors are not referred to the NRM or are disqualified from it, they will not receive a Positive Reasonable and/or Conclusive Ground Decision, which in turn will also prevent the Home Office from acknowledging that the individual is a vulnerable adult at level 2 of the Adult at risk policy. This assessment should inform the decision to release a vulnerable adult from detention in conjunction with immigration consideration and public order.<sup>166</sup>
324. Therefore, these provisions will create a very dangerous situation where survivors could be removed to their country of origin or to a supposedly “safe” third country without a proper risk assessment taking into consideration their specific circumstances.
325. It is deeply concerning that the Act does not include Safeguarding provisions. This gap will put individuals at further risk of harm and re-trafficking.
326. This also implies a breach of Article 16 ECAT, regarding repatriations of victims of human trafficking and modern slavery, where returns should preferably be voluntary.<sup>167</sup> This is subject to Article 16(2), which states that the return of a victim “shall be with due regard for the rights, safety and dignity of that person”. This applies to the sending and receiving State. The return of a victim shall also take into account the status of any legal proceedings related to the fact that the person is a victim, in order not to affect the rights that the victim could exercise in the course of the proceedings as well as the proceedings themselves.<sup>168</sup>
327. The explanatory Report to ECAT (“ECATER”) at paragraph 203, cites relevant Court judgements in respect to the deportation of victims. The case *Soering v. United Kingdom*<sup>169</sup> rules that the extradition of a person should be prevented if they will face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country.

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<sup>166</sup> Home Office, (30 January 2023), *Adults at risk: Detention of potential or confirmed victims of modern slavery*, v.3.0. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1132830/Adults\\_at\\_risk\\_Detention\\_of\\_victims\\_of\\_modern\\_slavery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1132830/Adults_at_risk_Detention_of_victims_of_modern_slavery.pdf) - p.14

<sup>167</sup> European Convention on Action Against Trafficking in Human Beings - Article 16(2)

<sup>168</sup> ECATER - Paragraph 202 25 European Court of Human Rights (7 July 1989)

<sup>169</sup> *Soering v. The United Kingdom*, 1/1989/161/217. Available at:

<https://www.refworld.org/cases,ECHR,3ae6b6fec.html>

328. This ruling was made on the basis that it would engage Article 3 of the EHRC. In the case *Cruz Varaz and Others v. Sweden* (20 March 1991, Series A, No. 201),<sup>170</sup> the European Court of Human Rights has decided that these principles also apply to deportation.

329. It also breaches the non-refoulement principle set out in Article 33 of the Refugee Convention,<sup>171</sup> which prohibits States from returning individuals to territories where they are at risk of persecution, torture, or other forms of serious or irreparable harm. The note on non-refoulement submitted by the High Commissioner explains that the principle of non-refoulement applies not only in respect of the country of origin but to any country where a person has reason to fear persecution.<sup>172</sup>

330. The Act is therefore also incompatible with Article 40 ECAT, which deals with the relationship between ECAT and other international instruments aimed at ensuring “greater protection and assistance” for victims. This provision clearly shows, once more, the overall aim of this Convention, which is to protect and promote the human rights of victims and survivors of trafficking and to ensure the highest level of protection for them.<sup>173</sup>

331. Article 40(2) states that Parties can conclude bilateral and multilateral agreements in respect to the matters governed by ECAT. However, the wording makes clear that Parties are not allowed to conclude any agreement which derogates from the Convention.<sup>174</sup> Therefore, this Act breaches Article 40 ECAT by making agreements with third party countries derogating the UK duty to identify, support and protect victims and survivors of modern slavery and human trafficking. Simply, there is no legal or evidential basis for externalised measures to identify and protect victims and survivors, ECAT demands the identification and protection of victims by the competent authority in the territory. As Rwanda is not a signatory to ECAT or ECHR there is no accountability structure or ability to enforce these rights including in the European Court of Human Rights if rights are breached.

332. Recently the UK Supreme Court ruled the Rwanda plan unlawful stating that Rwanda is not a safe country to remove refugees to, but also in recognition that this is in breach of the non-refoulement principle.<sup>175</sup>

333. In response to this ruling, on the 7th of December 2023, the UK Government introduced the Safety of Rwanda (Asylum and Immigration) Bill, which has passed the second Reading in the

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<sup>170</sup> European Court of Human Rights, (20 March 1991), *Cruz Varas and Others v. Sweden*, 46/1990/237/307. Available at: <https://www.refworld.org/cases,ECHR,3ae6b6fe14.html>

<sup>171</sup> UNHCR, (1951), *Refugee Convention*. Available at: <https://www.unhcr.org/uk/3b66c2aa10>

<sup>172</sup> UNHCR (1977) *Note on non-refoulement (Submitted by the High Commissioner) EC/SCP/2*. Available at: <https://www.unhcr.org/uk/excom/scip/3ae68ccd10/note-non-refoulement-submitted-highcommissioner.html>

<sup>173</sup> ECATER - paragraph 373

<sup>174</sup> ECATER - paragraph 374

<sup>175</sup> *R (on the application of ASM (Iraq)) v Secretary of State for the Home Department [2023] UKSC 42*. Available at: <https://caselaw.nationalarchives.gov.uk/uksc/2023/42>

House of Commons.<sup>176</sup> A briefing supported by more than 90 organisations in the UK highlights how this Bill runs contrary to the Rules of Law and the significant harm it will bring to those seeking asylum, including survivors.<sup>177</sup>

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<sup>176</sup> UK Parliament, (7 December 2023), *Safety of Rwanda (Asylum and Immigration) Bill*. Available at: [Safety of Rwanda \(Asylum and Immigration\) Bill - Parliamentary Bills - UK Parliament](#)

<sup>177</sup> ILPA, Freedom from Torture and Justice, (8 December 2023), *Joint Briefing for Second Reading in the House of Commons*. Available at: <https://ilpa.org.uk/safety-of-rwanda-asylum-and-immigration-bill/>