



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Human rights of asylum seekers in the UK, [HC 821](#)

Wednesday 15 March 2023

3 pm

[Watch the meeting](#)

Members present: Joanna Cherry MP (Chair); Lord Alton of Liverpool; Lord Dholakia; Lord Henley; Dr Caroline Johnson MP; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer; Bell Ribeiro-Addy MP; David Simmonds MP.

Questions 70 - 91

Witnesses

I: Kate Elsayed-Ali, Policy Manager, Anti-Trafficking and Labour Exploitation Unit (ATLEU); Robyn Phillips, Director of Operations, Human Trafficking Foundation; Major Kathy Betteridge, Director for Anti-Trafficking and Modern Slavery, The Salvation Army.

Examination of Witnesses

Kate Elsayed-Ali, Robyn Phillips and Kathy Betteridge.

Q70 Chair: Good afternoon and welcome to today's meeting of the Joint Committee on Human Rights. We are a cross-party Joint Committee, which means we have members from both the House of Commons and the House of Lords. Today, we are looking at modern slavery as part of our inquiry into the human rights of asylum seekers in the United Kingdom. In panel 1, we are going to hear from representatives of organisations working to tackle modern slavery. In panel 2, we are going to take evidence from the former anti-slavery commissioner.

We are delighted to be joined by Major Kathy Betteridge, director for anti-trafficking and modern slavery at the Salvation Army, which provides specialist support for all adult victims of modern slavery in England and Wales; Kate Elsayed-Ali, policy manager for the Anti-Trafficking and Labour Exploitation Unit; and third, but by no means least, Robyn Phillips, director of operations at the Human Trafficking Foundation. Thank you all for joining us. You are very welcome.

We have quite a few questions for you this afternoon, so maybe do not all feel the need to answer every question. We will try to direct them at one of you and then ask whether the others have anything to add, but, if you feel that you have something important to say, please catch my eye and make sure that you come in.

Can I kick off by asking you, perhaps starting with Robyn, to set out what the link is between modern slavery, trafficking and asylum? People sometimes mix up modern slavery and trafficking in particular, but they are not really the same thing, are they?

Robyn Phillips: Thank you so much for having me. Human trafficking and modern slavery are used interchangeably. Modern slavery is, essentially, an umbrella term that includes human trafficking but also other forms of slavery and servitude, as well as forced and compulsory labour. Human trafficking is very different from asylum, and it is really key to note that not all people who are seeking asylum are victims of trafficking or modern slavery; equally, not all victims of modern slavery or human trafficking claim asylum. A quarter of those victims of trafficking are British citizens and a huge number are exploited within the UK, whereas asylum is about fleeing persecution from abroad.

One of the key issues that we are seeing at the moment is a conflation between human trafficking and smuggling. Again, those terms are used interchangeably, but it is really key to note the difference. Smuggling is a transaction from A to B, so wanting to get from one place to another across an international border. It is a one-off payment and that is that done, whereas trafficking is an ongoing situation. It involves exploitation, coercion and deception. Even if somebody consents to the transportation part of it, that is then undone by that coercion and deception, as well as the use of threats. Human trafficking does not need to cover an international border and, in fact, a lot of the trafficking we see is internal

within the UK, whereas smuggling is always across an international border.

Kate Elsayed-Ali: Just in case it is helpful, I am from the Anti-Trafficking and Labour Exploitation Unit. I will now use my acronym of ATLEU. We are legal aid lawyers who specifically represent survivors of trafficking and modern slavery. As Robyn said, a quarter of victims at the moment in the UK are British, which, therefore, means that three-quarters are not.

At ATLEU, not all of our clients will have a trafficking claim as well as an asylum claim, but a lot do. Probably a majority of our clients will enter the NRM, but they will also have an asylum claim. It is also important to remember that many victims and survivors of trafficking will make an asylum claim because they would experience a real threat if returned to their home country, given their trafficking experience and the coercion and control mechanisms that were used. While not all victims of trafficking and slavery have an asylum claim, many do, because of those interlinkages.

Chair: You mentioned there the NRM, which is the national referral mechanism. Major Betteridge, would you like to add anything?

Major Kathy Betteridge: No, just that a victim of modern slavery does not claim to be a victim of modern slavery. They need to go through the NRM and the first responder process.

Chair: How does the process for those claiming asylum differ from that for those individuals who arrive in the UK and claim that they are a victim of modern slavery and trafficking? We know that there are quite a lot of people coming to the United Kingdom at the moment to claim asylum, but if somebody arrives to claim asylum, and says that they are a victim of modern slavery and trafficking, how does the process for dealing with their asylum claim differ?

Major Kathy Betteridge: When somebody has claimed to be a victim of modern slavery, or is working with a statutory body and there are signs that they could be a victim of it—

Chair: Not everyone presents and says, “I am a victim of modern slavery”—

Baroness Kennedy of The Shaws: Very few do.

Chair: How do we identify whether they are?

Major Kathy Betteridge: Somebody who is working with such an individual, or who believes that they themselves could be a victim of modern slavery, would contact a first responder. The Salvation Army is a first responder organisation. The first responder organisation will gather the information and hear the story of somebody who is potentially a victim. In that gathering of the information, they will identify the signs and make sure that those are very clear in the process. There are not

just NGOs that are first responder organisations, but statutory bodies, such as the police, Border Force, the Home Office and local authorities.

As a first responder organisation, we will support somebody in telling their story and giving the information about what has happened to them. With their permission, that will then be processed through the national referral mechanism. The decision is made by the competent authority and, bearing in mind the evidence that has been produced, it will decide whether the person has a negative reasonable grounds or a positive reasonable grounds decision.

If it is a positive reasonable grounds decision, the person would be referred to the specialist support service that we provide with 13 other subcontractors. On the basis of that reasonable grounds decision, the person should then be with us for a reflection and recovery period of 30 days, but we have people who are with us for a lot longer. On average, the decision-making time is taking up to 535 days, so we have individuals with us for a long period.

They will then await the decision on conclusive grounds, which means that, based on that evidence and whatever other pieces of evidence the competent authority requires, it will conclude that this person is a victim of modern slavery. That person will then start the recovery needs assessment process, which is to understand what their needs are as they move on with their lives. That is the national referral mechanism process.

Kate Elsayed-Ali: I just wanted to pick up on a point that you had made, Chair, which Baroness Kennedy also echoed. This is, again, from ATLEU's experience of specifically representing victims and survivors of this crime. Disclosure is just so difficult, and self-identification among our clients is really not common at all. People often consider that they have had bad treatment or that they have been treated unkindly, but they often will not be aware of what the law is in the UK, what modern slavery is, what trafficking is, or sometimes even that their treatment was illegal or unlawful, particularly if they have come to the UK from a country where there is a different national framework.

It is really important to remember that we are talking about a cohort of people who have survived extreme trauma. Trauma takes time to disclose and to unpick. If I could say this at the outset, it is of great concern to us that the Nationality and Borders Act has imposed arbitrary timeframes on disclosure. At a time when we have all seen Mo Farah's bravery, for example, our lessons from that should be that disclosure takes time. It is not linear. People need support and a reflection time to be able to disclose their trafficking situation.

Chair: We should understand, from what you are both saying—I will bring Robyn in, if she has anything to add, in a minute—that it might not come to light immediately on somebody's arrival; in fact, it very often does not. It takes time for it to be disclosed. Most people do not self-identify as a victim of modern slavery. How, then, is it picked up on? Major Betteridge mentioned some of the first responders. Of course,

there will be people who have contact with asylum arrivals very early on, and then people who have later contact in the system. What kind of organisations pick up on the fact that something about an asylum seeker maybe indicates that they have been a victim of modern slavery and trafficking?

Major Kathy Betteridge: It can vary. One example is the medical profession. An individual can go to a doctor. Many of our potential victims will be attending a surgery. In one case, the doctor was aware of what this person was describing in relation to her labour exploitation, which was in this country, and the signs that she was physically displaying alerted him to that fact. He suggested that she ring the Modern Slavery Helpline, which then put her in touch with a first responder. That first responder was then able to take her through that process of the NRM.

Robyn Phillips: I would echo that these things take time and it is so important to build rapport and trust with that individual. This may be done by hospital staff or doctors, but also by faith groups. It might take a while, but a person might then disclose to somebody they trust in their community, who then suggests that they contact the Modern Slavery Helpline or speak to the police. Indicators can also be picked up in asylum interviews, as well as by the police at the point of exploitation.

Q71 **Chair:** This committee is very much focusing on human rights. This inquiry that we are focusing on just now is about the human rights of asylum seekers, so we are really interested today in people who arrive in the United Kingdom and are subsequently found, for some reason or another, to be potential victims of modern slavery or trafficking.

Are any of you able to help me with the answer to this question? What proportion of those who arrive irregularly in the United Kingdom identify themselves as victims of modern slavery or trafficking?

Robyn Phillips: Arriving irregularly can be via many means. It can be by small boats, which is a focus at the moment, but also by lorries or through fraudulent visas. The data that we have at the moment is around small boats. Of the 83,236 people who arrived in the UK on small boats between 1 January 2018 and 31 December 2022, only 7% were referred as potential victims of modern slavery. In calendar year 2022, it was only 6%.

Chair: Over a five-year period, from 1 January 2018 to 30 December 2022, only 7% of those arriving in small boats were identified as victims of modern slavery or trafficking.

Robyn Phillips: Yes.

Chair: Do you know what percentage of those people were subsequently recognised as such?

Robyn Phillips: It was 85%, by the Home Office.

Baroness Kennedy of The Shaws: How many claimed that they were?

Robyn Phillips: It is 7% of 83,000, which is a figure I do have somewhere.

Chair: Hang on a second. Of 83,000 small boat arrivals over five years, 7% were potentially identified. Of that small 7% cohort, 85% were recognised by the Home Office. That means that the Home Office thought they were genuine.

Robyn Phillips: That is correct.

Chair: I will come to this in another question a bit later, but is there any information to say that that has changed drastically in the last two and a half months?

Major Kathy Betteridge: At the moment, when our first responders are submitting the NRM forms, there are more negative reasonable grounds decisions than there have been before.

Chair: There are more negative decisions in 2023. Today is 15 March, so we have had two and a half months. Do any of you have any feel for whether there has been an increase in the number of people identified as modern slavery victims in the last two and a half months, or is it simply too early to have that data?

Major Kathy Betteridge: The data would probably be available and we could submit that at a later date. I know from our first responder team that we are receiving referrals on a regular basis and they are growing. The numbers are still coming through, but, like I have said, the number of decisions for negative reasonable grounds has risen.

That also links very much with the subjective evidence that has been required within the Nationality and Borders Act. Based on what Kate is saying as well, where somebody has been significantly traumatised and been through very bad situations, it is really difficult for them then to produce evidence. We asked some of our survivors who we are working with, who are now in our service, "What would that have meant for you if you had been required to submit evidence?" They said that it would have been very traumatic. It would have triggered further trauma, because they have not kept anything that gives the authority the evidence that they are required to produce.

One particular lady who had undergone forced labour in a restaurant said that she was very fearful of exposing that restaurant, because she felt that they would find her and she was in fear for her life. There is a difficulty there for the individual to produce this evidence, but that is now a requirement.

Q72 **Baroness Lawrence of Clarendon:** Thank you all for coming this afternoon. Article 4 of the European Convention on Human Rights prohibits slavery and forced labour. What obligation does the UK have under Article 4 towards those individuals who arrive in the UK irregularly and claim that they have been victims of modern slavery or trafficking?

Kate Elsayed-Ali: I am really pleased to have the opportunity to talk about just how positive our Article 4 obligations are. To be really clear at the beginning, Article 4 is an absolute right. It is not a right from which the UK can derogate in times of emergency. It is non-derogable—that is always a tongue-twister for me.

It imposes both negative and positive obligations. By negative, I would mean an obligation to refrain from subjecting someone to slavery or forced labour. As for the positive obligations, it has requirements of us as a state, such as having in place an appropriate legal and administrative framework, having sufficient support measures for survivors, and having in place systems that can adequately identify, prosecute and punish perpetrators. They really drive us to having a holistic approach to trafficking.

Major Kathy Betteridge: Under ECAT, which our service operates under, an individual who comes into a service is entitled to accommodation if they are destitute. They are also entitled to a support worker, so they will receive that support on a daily basis. They have the right to financial subsistence, medical treatment, counselling and legal support. Underneath that, we are finding that the access to this is difficult, because there is perhaps not enough counselling or legal support available for our client group to access, but, under the ECAT entitlement, that is what they will receive.

Q73 **Baroness Lawrence of Clarendon:** The UK has also ratified the Council of Europe Convention on Action against Trafficking in Human Beings. What obligations does the Council of Europe place on the Government, and how do they differ, if at all, from those under Article 4?

Kate Elsayed-Ali: Both Article 4 of the ECHR and ECAT prohibit slavery and trafficking, and both place positive obligations on us to protect victims of trafficking and to prevent their exploitation. ECAT informs our interpretation of Article 4 of the ECHR. Again, I would say that ECAT imposes really important positive obligations on the UK and, if adequately implemented and enacted, provides a really robust framework for the identification of victims and for their access to support, to recovery and reflection, and to legal aid, which is really important. Access to legal advice is foundational and transformational in the ability of victims and survivors to access rights, support, justice and remedy.

I will not read out all the articles of ECAT. Major Betteridge has identified some of those things. Article 12, for example, talks about the importance of physical, psychological and social recovery. That is our obligation to provide safe and secure accommodation, financial support, medical treatment and counselling. It is important to note that those entitlements are unconditional. Victims are entitled to those support measures, regardless of whether they are co-operating with a police investigation. That is really important to remember, as I imagine we will go forward to talk about the Illegal Migration Bill. Under ECAT, your entitlement to support is unconditional

Article 13 gives victims access to a reflection and recovery period of 30 days. Again, that ensures that people who perhaps have irregular status are able to access a recovery and support period. Article 15 gives access to the right to legal assistance, including legal aid.

I would really see Article 4 of the ECHR and ECAT working in co-operation and providing a framework that is robust and transformative for the ability of survivors to access identification, support, recovery, justice and remedy. We should be valuing and protecting those rights, and certainly not ripping them up under the upcoming Bill as proposed.

Q74 **Baroness Lawrence of Clarendon:** All these rights are there for individuals. Do you know of any individuals who find that they have difficulty in accessing those rights?

Kate Elsayed-Ali: That is the real challenge. My organisation looks at whether victims and survivors can access their right to legal advice in practice. It is really difficult. At the moment, there is a legal advice crisis for victims and survivors of trafficking and modern slavery.

I joined ATLEU last year, and one of the first things that I looked at was working with front-line organisations such as the Salvation Army or Hestia to understand whether they were experiencing difficulties in accessing a specialist quality lawyer for a client. Overwhelmingly, front-line organisations have told ATLEU that it is a crisis for them. Some 90% of front-line organisations that responded to a survey I conducted said that they had not been able to access a specialist lawyer within a sufficient timeframe in the past 12 months, and lots have since said that it is getting worse.

There is a huge demand for access to legal advice and representation, and I would say that that is even more so now. The system is getting more complex. The Nationality and Borders Act introduced a higher level of complexity. It is clear that survivors need access to good-quality advice now more than ever in terms of their ability to be identified, to access their entitlements and to ward off the threat of not being identified, of being detained and of being removed.

That access to legal advice is so important, but at the moment the legal aid system as a whole is in crisis. The funding system is not appropriate, particularly for trafficking and modern slavery cases, which are so complex and so long running. If we refer back to Major Betteridge saying that conclusive grounds decisions take up to 500 days, our clients at ATLEU will be with us for three to five years. Some of our clients who are trying to seek compensation will be with us for eight years. Those cases are really complex and long running, and are beset with delays.

The consequences of not being able to access legal-aided advice are devastating for survivors. We saw an increase in mental health problems. We saw people destitute, homeless and vulnerable to re-exploitation. You have highlighted a really important problem, which is that these positive obligations and these rights exist, but, in the UK at the moment, we have

a problem where people are not able to access them all the time. The current legislative environment with the Nationality and Borders Act is making that more important but more difficult.

Chair: It is the complexity of the law in this area. You cannot go to just any old solicitor or counsel. You need to have somebody who has a real specialism in this area, otherwise you are not going to get the right advice. Is that not the case?

Kate Elsayed-Ali: That is a really important point to mention. These cases are very complex and very long running. The complexity stems from the multiple legal frameworks with which a trafficking survivor will interact. If I give an example again from ATLEU, we assist survivors across the breadth of housing, support, criminal justice and immigration. We help people with asylum claims. Some survivors interact with family law, for example. The cases are incredibly complex. They are long running on the basis of delays in the system, as well as the really important work that needs to be done in terms of building trust to assist disclosure.

We interact with lots of support agencies, so they are complex. The challenge we have at the moment is that the funding for immigration legal aid is deterring providers from specialising. The fixed fee is not an appropriate way to run a case that is so complex and so lengthy.

Q75 **David Simmonds:** You have told us a lot about the operation of the national referral mechanism, so I would like to ask just a brief question about that, and then I have a short follow-up on a connected matter.

Who within the NRM is responsible for making the decision about whether someone meets the test for being categorised as a modern slave? Do you feel that that process complies with our human rights obligations?

Major Kathy Betteridge: The single competent authority will make the decision about whether somebody is a victim of modern slavery, based on the information that it receives through the first responder process. The time that that has taken, as I said initially, is five days, but that is now taking a little longer. As with any mechanism, the NRM process requires improvements.

One area of improvement that we feel is very evident is around the access to a first responder, the training that the first responder will go through, and the quality of that training, as well as the trauma-informed requirements for somebody who is gathering that evidence, so that an individual would have their rights recognised and clearly evidenced in that process.

There is also the funding issue around that. For somebody who is going through that process, the first responder is a self-funded organisation, whether it is an NGO or a statutory body. Improvements are required in the whole area of funding and support for that already traumatised individual who is coming through and having to tell and retell their story.

David Simmonds: Just for clarity, the single competent authority is part of the Home Office that makes that decision.

Major Kathy Betteridge: Yes.

Robyn Phillips: There are two teams within the Home Office. There is the single competent authority and the Immigration Enforcement competent authority. That second body is the one that makes the decisions on people who are deemed to be foreign national offenders. There is a two-stage decision-making process within the NRM—the reasonable grounds decision, which is based on the information provided within the NRM form, and then, as of recently, these objective factors that are required. The conclusive grounds decision is made after 30 days, but, as we heard, a lot later. That is based on more of a thorough investigation and on a balance of probabilities.

David Simmonds: We are talking about this issue in the context of the Illegal Migration Bill. It has been argued that the rights that are enshrined in the convention apply only to people who have travelled to the UK directly from the place where they were at risk. If they have been present in another country, they are not eligible to enforce any of those rights in the UK. Kate, given the legal context of your evidence, I am interested in your view about that.

Kate Elsayed-Ali: I am aware, based on the Explanatory Memorandum that was published with the Bill, that the Government believe from that argument that the provisions can be applied compatibly with both Article 4 of the ECHR and ECAT. I have to say that I plainly reject that. I consider that incorrect.

I know that I said this earlier, but compliance with ECAT is premised on deeming all victims of trafficking who fall within these measures as a threat to public order, which they are not. There is no basis in law for such a wide use of that provision. Instead, victims targeted by Clause 2, for example, will receive no support for their recovery or protection in the UK and, conversely, in fact, face detention and removal to either their home country or an unknown third country.

The only exception made to that is people who fall into what I would see as a very limited and restricted category of those who would face serious and irreversible harm on removal, or people who are co-operating. That is just much more restrictive than the standards applied within ECAT. I just consider the Illegal Migration Bill to be a flagrant breach of our obligations under ECAT and under Article 4 of the ECHR.

Robyn Phillips: If somebody is trafficked to the UK and then exploited within the UK, where they have come from is by the bye. It is irrelevant to the situation. We do see that the majority of individuals who claim to be victims of modern slavery in the UK are exploited within the UK. It is a huge conflation between immigration and modern slavery to be talking about it in this context. We really need to be looking at modern slavery through a safeguarding lens.

Chair: That is a very important point. Can I ask you about this notion that modern slavery laws are being abused or that the system is being gamed? The Home Secretary has said that “modern slavery laws are being abused” to block removals. Do any of the three of you agree with that statement?

Kate Elsayed-Ali: I categorically reject that. If the Home Secretary wants to allege this, she needs to produce the evidence that is being asked of her. As civil society, we have asked numerous times for the evidence that the system is being misused.

The Home Secretary and the Home Office have been reprimanded by the Office for Statistics Regulation for their use of statistics. I do not know whether the committee is aware that, in December, three UN experts—one on trafficking, one on contemporary forms of slavery and one on migration—expressed great concern at the use of unevidenced claims that the system was being misused, but also expressed concern, which I echo, at the really inflammatory rhetoric that has been used in past months against victims and survivors of trafficking and modern slavery and against legal representatives.

It is dangerous. It is damaging. I speak out of concern for my colleagues who are lawyers and represent survivors of trafficking and modern slavery. There are real-life consequences when you demonise victims and survivors, or when you demonise legal representatives. The Law Society has urged the Government to stop the hostile language being used against lawyers.

I am making two points. No evidence has been brought forward to support these claims. My organisation’s experience of 10 years of supporting victims and survivors to navigate systems is that they can often be hostile and they can be complex. They are not gold-plated. If you are waiting for three to five years for a decision, during which time you are not able to work, I would question that narrative. I would call on the Government to stop the use of this inflammatory language.

David Simmonds: That is a useful and clear contribution. I agree with what you have just set out. I have another point of clarification. Notwithstanding the argument being advanced that the convention rights would not apply because people have arrived from a country that can be deemed a safe country, British law sets out, through modern slavery laws, how we will support people. What would your view be about the situation of an individual who was seeking to enforce their rights and who might have come to the UK as an asylum seeker, but who would also meet the test regardless, allowing them to be deemed a modern slave? Would the fact that they were an asylum seeker somehow set them outside that, in that they would have to rest on convention rights to be able to enforce their position and their rights to be treated as a modern slave, or would they be able to do it regardless? It is a wee bit of a legal question.

Kate Elsayed-Ali: I was just thinking that. I am sure you are aware of the UNHCR's statement that the Illegal Migration Bill in its current form is a clear breach of our obligations under the refugee convention. I have been quite clear that the Bill, in its current form, is in breach of ECAT, in breach of Article 4 of the ECHR, and in breach of our obligations under the refugee convention.

I have worked on trafficking and modern slavery for 15 years now, but this is my first time specifically working on the UK. I used to work for an organisation that worked globally, particularly in west Africa, and I have just been stunned by the environment in the UK in my now 10 months of specifically focusing on the UK.

The speed at which we are dismantling our systems of identification, protection and support for victims is quite a sight to be seen. Colleagues on the panel will know that, after the Nationality and Borders Act, when this threat was coming up and new legislation was coming, I would ask them what else could happen. What else happened, to my horror, is that there is a Bill that threatens to remove people entirely from their rights to access identification, support and recovery under our modern slavery systems.

It literally threatens to rip them up, and I am just stunned; I am appalled. I could use all of those adjectives, but I really urge a country that, at one point, stood and proclaimed itself to be a world leader in tackling trafficking and modern slavery at home and abroad to think about what legislation we will have left if this immigration Bill goes through. It is utterly denying people the right to identification and protection.

As an organisation that speaks to people who have emerged from trafficking and modern slavery, one of the things that traffickers use as a real method of control and coercion is that threat of illegality, detention and removal. We are literally putting it in law.

Q76 **Baroness Kennedy of The Shaws:** It is also possible to be both an asylum seeker and a person who is subjected to modern slavery. They are normally two sets of things that can provide protection, and the problem is that, here, there is an obfuscation. Major, do you consider yourself a lefty bleeding heart? The currency just now is to suggest that people who are criticising the legislation and what is being put on the table to deal with issues around asylum seeking and immigration are lefties. Are you a lefty? I am interested to know.

Major Kathy Betteridge: My stance is that individual people are at the end of this Bill and decision process. Those individual people have not had the right and do not have a voice to express their concerns. They have been through some horrific situations. I firmly believe that we should be able to give them that right to have a time of recovery and reflection, because they cannot make those decisions quickly. They have been through some horrendous trauma, and they need to have time to enable

themselves to do that and, therefore, to access the legal system in order for the perpetrators to be held to account. That is really important.

I am not sure that I have fully understood and answered correctly your question around the process, but, currently, if somebody is a victim of modern slavery, and has potentially come from a safe country and is seeking asylum, under the Nationality and Borders Act in particular, they are still able to claim modern slavery. They would then just need to tell their story. Although the signs would be apparent, the evidence was not required at that point. I am not sure whether that was your question. Coming from a safe country, they could seek asylum as they go through the process of being identified as a modern slave.

Baroness Kennedy of The Shaws: Perhaps—

Chair: I am very conscious of the time, because we have a lot of ground to cover. Perhaps people could come back with their supplementaries when they come to their questions, otherwise we are not going to cover all the ground. I just want to bring it back to this question of the notion that the laws are somehow being abused. Kate, you have given us a very powerful answer about the lack of evidence for this. Just focusing on something else, the Home Secretary has also said that, when the Modern Slavery Act was passed, it was envisaged that 3,500 referrals would be made to the NRM a year, but she says that, last year, 17,000 referrals were made.

I wonder whether any of you could help us—and I will come to Robyn first, because I know that you wanted to make an additional point—with why there is now a difference. They envisioned 3,500 as opposed to the 17,000 last year. Is that something to do with asylum seekers or is it explained by something else?

Robyn Phillips: We should be celebrating that number, because it shows that awareness of modern slavery has grown. That is the number of victims who have been able to come forward and access support.

Just going back to that issue around abuse, it is the Home Office that makes a decision on whether somebody is a victim of trafficking, and that is a two-stage decision-making process. It is not a flippant decision. There are levels to this. Consistently, the Home Office finds that nine out of 10 of those individuals are victims of modern slavery, so I would say that that is proof that the system is working as intended. It is designed to see whether there are fraudulent or incorrect claims, and to make sure that it is those individuals who are victims of modern slavery who get that support.

In terms of this abuse, that just does not add up for me. Again, just to echo Kate's point around UN special rapporteurs, the statistics regulator has also said that there is no evidence to back up that the system is being gamed. It is showing that it is being used, and used effectively.

In terms of that number, we have seen an increase in training. We still deliver training to local authorities and we still get social workers who have never heard of the national referral mechanism, despite it being introduced in 2009 and them having had a statutory duty to make those referrals since 2015. We see an increase in awareness that they have this responsibility to make those referrals, which could help to explain some of the increase in numbers as well.

Chair: The crucial takeaway is that, regardless of the increase in numbers, the Home Office itself is still finding that nine out of 10 of these people are genuine victims.

We have already asked you quite a few questions about the Nationality and Borders Act and the Illegal Migration Bill, but I know that colleagues have further questions that they want to ask about this. I would just ask colleagues to be conscious that we have touched on it already to an extent, and to try to tailor their questions around that, so that we can get through as much as possible.

Just before I come on to that, Caroline, who has joined us online, wants to ask a supplementary about the stats and the evidence for abuse of the system.

Q77 **Dr Caroline Johnson:** I want to ask more about the details of the figures, because the Government are arguing that the system that was designed to support and help extremely vulnerable people—the sort of people you look after and represent—is now being abused and manipulated by people who seek to claim modern slavery to avoid deportation, particularly foreign national offenders. The Home Secretary said at the Dispatch Box this week that 73% of those detained for removal claim modern slavery through the NRM, and 3% of those not in detention make the same claim or have that claim processed for them. How would you explain that?

Robyn Phillips: When somebody is in detention or has that close proximity to professionals who are aware of the support available, it is quite often at that point that they are able to disclose or are told, “This is what modern slavery is; we have concerns that you might be a victim of this crime”, and offered protection. That might also be the Home Office letting them know about the NRM and making that referral itself. I cannot remember the exact number, but the right honourable Sir Iain Duncan Smith made a point at Second Reading when he said, about the 73%, that it is only a couple of hundred individuals.

Chair: I can help you with that, because I spoke to Iain Duncan Smith about this. He has had a look at the official stats, and the Centre for Social Justice, which he is associated with, has done some work on this. Apparently, that 73% amounts to just 294 individuals. Similarly, the 65% of people detained for removal in January to September 2022 who were referred to the NRM were just 842 people out of the total 33,029 migrants who arrived on small boats during the same period.

We know from the Home Office's own stats that, last year, between January and September, 65% of people detained for removal were referred to the NRM, but that is just 842 people, which is less than 1% of the 33,029 migrants who arrived in small boats during the same period. I am not very good at arithmetic, but I make that as being 0.03% of the overall total. It is quite small, is it not?

Robyn Phillips: It is, and it, therefore, seems like a very disproportionate response for the Illegal Migration Bill to be, essentially, banning anybody who has arrived irregularly from claiming to be a victim of modern slavery, especially when we look at those detention stats. The Home Office has said that 92% of those who were referred to the NRM did get that reasonable grounds decision as positive.

Chair: Yes, that is what IDS told me. Of these victims, 95% in 2021, and 93% in 2022, received a positive reasonable grounds decision, so we have to be very careful. We have to delve into that 73% figure that the Home Secretary gave us.

Dr Caroline Johnson: Just to follow up on that, this is a really important point when it comes to this Bill that we are currently looking at. You said at the beginning that it is taking 535 days to process people's claims. Can you specify when that is from? There is the date that they are referred to the NRM, there is a reasonable grounds decision by the competent body, and then there is the conclusive grounds decision. What timeframe does your 535 days cover?

Major Kathy Betteridge: It covers from the point of the positive reasonable grounds decision, whenever that happens. That should be up to five days from when they started the NRM process. It is from that five-day point to when they receive their conclusive grounds decision.

Dr Caroline Johnson: Are there changes in trends? Is it possible that the Government are picking up trends that are not quite visible to us in the statistics yet? Have there been changes in the number of people referred and whether they are male or female, or their ages, over time? Is it possible that, because decisions are taking the better part of two years to make, we are seeing, effectively, two-year-old data?

Major Kathy Betteridge: We have information around trends because we hold that contract. Over the period that we have delivered this contract, we have seen that the numbers of females were the highest, but now the number of male potential victims is creeping up. We are also very aware that the age bracket, if I remember rightly from our report last year, is between the ages of 23 and 49. They are the larger age range. We are also noticing that the numbers of British nationals are the second highest in the service, so that is another area that has changed significantly.

Dr Caroline Johnson: With the 535 days from the reasonable grounds and that lower threshold—"We're going to check and look carefully"—to decision-making, and the change from being predominantly female to

many more men, is it possible that, listening to their argument, the Government have identified a change from people who are victims of modern slavery and trafficking claiming, to the system genuinely being used more by people, particularly men who are foreign national offenders, to avoid deportation? Is it possible that they are right, but that we are just not seeing it, because we have not seen those people receive final decisions, as there were so many people waiting in the backlog to get a final decision?

Major Kathy Betteridge: It is difficult to say. When the evidence is placed in front of them, they are making the decision, so I would not be able to answer that.

Robyn Phillips: I would just add that the stats I have been using today are from the Government's research paper that they published this month, and the 2022 annual statistics from the national referral mechanism, which are also published by the Government.

Chair: That is *Research and Analysis: Modern Slavery Referrals for People Detained for Return after Arriving in the UK on Small Boats*, published on 7 March.

Robyn Phillips: That is the one.

Chair: That is where Iain Duncan Smith took his stats from.

Lord Dholakia: There is a big discrepancy between 3,500 referrals ultimately made and the 17,000 indicated by the Home Office. Is there a training difference between people who are trained by the Home Office at the NRM and your staff who are dealing with this particular matter?

Major Kathy Betteridge: Training is a key issue. We are not involved in the decision-making, so I could not comment on the training that a decision-maker receives. The training that is required for the first responder is a concern, because there is no statutory training and there are no standards around that. That is something that we have asked for, so that all first responders are receiving the same training at those very early stages. I would not be able to comment on the decision-making.

Chair: Let us move on, because I really want us to have a bit of a look at the Nationality and Borders Act and the Illegal Migration Bill.

Q78 **Baroness Kennedy of The Shaws:** Those two pieces of legislation have introduced various changes to the modern slavery framework. I just wanted your assistance, as briefly as possible, on what the main changes are that have been introduced by the Act that is already in place and the one that is on the stocks just know. Do they comply with the UK's human rights commitments?

Kate Elsayed-Ali: I and the sector believe that the Nationality and Borders Act was a regressive piece of legislation. It has created a much more complex and bureaucratic system. Part 5 on modern slavery entered into force at the end of January and we are beginning to see the

real-time implications of the changes, so I will defer to Major Betteridge on those.

Particular areas of concern that I would highlight include the raised threshold for a reasonable grounds decision, which my colleague referred to, and what is now being required of first responder organisations that are having real capacity challenges with the number of non-statutory first responder organisations, for example. It is introducing a level of complexity and evidence that I would see as something that legal case workers do. I am particularly concerned by the amount of evidence and case working that it would require now to get a positive RG compared to previously.

We are in the early days. I am sure that Major Betteridge can speak to this better than I can, but, anecdotally, we are beginning to see an increase in negative RGs, whereas, previously, those would have been positive. I have to say that they are not because someone is displaying fewer indicators of trafficking, forced labour or modern slavery, but rather because what is required of the referral is closer to what you would have needed for a conclusive grounds decision.

I can highlight two key areas of legal advice and representation relating to this that are out of scope for legal aid. First, pre-NRM advice is available only for a very small cohort of survivors under the Nationality and Borders Act. Advice on trafficking identification is also out of scope. That is one of these areas where more is being required and the burden is really being shifted on to victims and survivors of trafficking and modern slavery to prove that, as opposed to ECAT asking for that positive obligation that we identify people and do not expect traumatised people to produce evidence that is difficult to get, particularly within that short timeframe for an RG decision.

Another clause of the Nationality and Borders Act that I and ATLEU are really concerned about is the disqualifications clause on the grounds of bad faith and public order. On the basis of public order, anyone who has a 12-month prison sentence could be subject to that. It is really important to remember how common trafficking for forced criminal exploitation is. Lots of victims and survivors will have criminal convictions for offences committed under coercion, and now, as part of the disqualifications clause of the Nationality and Borders Act, face being disqualified.

The key clauses that I would identify are disqualifications, the increased reasonable grounds threshold, and changes to the definition of a victim. To bring this to a conclusion, it is a more complex system and one that is really dependent now on people having access to well-trained first responder organisations and to good-quality legal advice and representation.

Q79 **Baroness Kennedy of The Shaws:** You have described your concerns and the areas. Do you consider that there are breaches of the Human Rights Act, and of our human rights obligations and our international

obligations? It was argued in relation to the Act, but I want to speak about the Bill that is currently going through. Do you see it as breaching our obligations?

Kate Elsayed-Ali: As people become subject to the legislation, there will be areas for challenge going forward. I would see those on the basis of the ones that I have identified on disqualifications and on access to support and entitlement. That is something that we will be looking at.

Robyn Phillips: The issue with both pieces of legislation is that the focus is trying to label victims as criminals, when we need to be focusing the light on the real criminals, who are the traffickers. It is only when we allow victims to come forward at their own pace, to build that rapport, trust and disclosure, and to access support, that the police can start to build a case for prosecution and we can bring those real criminals to justice. There are major concerns in terms of these extra barriers to being able to identify somebody.

For example, with the new laws within the Nationality and Borders Act, you could have somebody who has been in domestic servitude for the last 20 years, who now comes forward to a local authority and asks for help. They say, "I will make a referral to the NRM, but I am going to need a witness testimony. I am going to need proof of the experience that you have had".

That person needs the maximum amount of support they can get to start to rebuild their lives, recover from that trauma and, I hope, bring a case against those people who kept them in domestic servitude, and not to be told, "We don't even have the initial evidence to be able to now make that referral so that you can start to access the support that you need". We are really concerned.

In terms of the public order qualification, we are now seeing cases where somebody was criminalised for acts that they committed while being criminally exploited and there were found to be reasonable grounds to believe that they were a victim of criminal exploitation within a cannabis farm. They have now been disqualified under public order, because they have those convictions for crimes that the courts admitted were committed under duress. They are now not able to access support. There is talk of removing that person. Again, the focus needs to be on those individuals who force them into committing those crimes, because, once we focus on those individuals, that is how we are going to prevent there being further victims of modern slavery.

Baroness Kennedy of The Shaws: Major, add only if there is something more that you can, but I am imagining that your experience is pretty much the same as the others.

Major Kathy Betteridge: Yes, absolutely. It undermines the reflection and recovery period, and does not get to the heart of the issue, which is the criminal gangs that are the perpetrators.

Q80 **Bell Ribeiro-Addy:** Thank you for your answers so far, because you

have been quite clear about your views on what the changes in the Bill would mean for victims and our obligations under the convention and ECAT.

Are there any ways in which you believe that the law being proposed, from your experience, would help combat people trafficking and modern slavery? Are there any measures that you think would make a difference?

Kate Elsayed-Ali: To repeat, trying to keep it brief, it does the reverse. For all the time I have worked on trafficking and forced labour, the common threat that abusive employers and traffickers use is this threat of detention and removal. This is what the Illegal Migration Bill itself proposes. I cannot think of how you prevent trafficking or how you punish and prosecute perpetrators when you have ripped up our systems for identifying and supporting victims.

We already know how hard it is to pursue criminal investigations, even when you have well-supported victims still in the country. It is so much more difficult if people are removed to their home country or a third country. I am aware that there is a small exception, but I see that as so narrow. Again, ECAT provides that support and recovery is unconditional. It should not be made conditional where people have been victims of a serious crime. We need to remember that when we are talking about the issue of trafficking and modern slavery.

We need to look at the issue as it is. These are people who have been subjected to a serious crime. If I had been subjected to it, I would expect to be supported and protected, and be able to access safeguarding, not to have this risk hanging over me of detention and removal. I find it so disappointing that this is where we are.

If I refer back to the Nationality and Borders Act, which already created a more hostile and more complex system. Part 5 of that entered into force only two months ago. Why are we legislating without seeing what the impact of that will be?

Robyn Phillips: I would go as far as saying that this Bill condones modern slavery where the person has entered into the country irregularly.

Bell Ribeiro-Addy: That was my next question. Actually, you are saying that it condones it. Do you believe that it removes certain protections? If so, will it actually encourage modern slavery?

Robyn Phillips: We could certainly see an increase in cases, not just of those who are already victims of modern slavery but also those who came to the UK to claim asylum and now are left in perpetual limbo. We already see that Home Office hotels are approached by traffickers, for not just children—there are still 200 children missing—but adults as well, who are picked up and taken for work. They are not allowed to work. Therefore, it is likely to be exploitation. We know that, when people have a fear of removal, they are likely to go underground and there is an increased risk of vulnerability to human trafficking there. There are so

many complex layers. This increases the risk of trafficking to all individuals.

In terms of removal, we are talking about removing people to a country that they have no ties with. They have no connections, income or community. Again, these are all common vulnerabilities that we know to be relevant to trafficking. We are putting an already vulnerable cohort into that environment and waiting for further trafficking.

Major Kathy Betteridge: Also, it plays into the hands of the perpetrators. Part of their rhetoric is to tell their victim, "You don't speak to the authority. You are only going to be sent away and your family will suffer". This plays into it, because they will not then come forward and declare themselves as being a victim of modern slavery, so it will not help the situation.

The whole issue of modern slavery is in the immigration portfolio, when this is a safeguarding matter for individuals who are victims of this horrendous crime.

Q81 **Bell Ribeiro-Addy:** That segues into my next question. The protections of modern slavery do not cover people who are also subject to immigration law. A lot of the rhetoric around this Illegal Migration Bill is literally put in the title. It is said to be about illegal immigration. Obviously people who seek asylum cannot possibly be illegal under international law. I wanted to ask whether you had any gauge, figure-wise, of how many of those who seek protection under modern slavery protections, who are from another country, have come in in a way that the Government would deem legal. I know it may sound ridiculous, but I mean quite literally coming up to the border and being trafficked in, but with what the Government would deem legitimate documentation to come into the country.

Robyn Phillips: I do not have the figures to hand, but we can certainly look into that. It is extremely challenging to even investigate that. We know that, in terms of international trafficking, somebody trafficked into the country is often given a false visa. They will not even necessarily know that it is a false visa because they are being trafficked. They are being coerced. That is often a method to bring somebody into the country. This would not necessarily be collected in statistics, but we can have a look and if there is anything we can find we can send it in writing.

Bell Ribeiro-Addy: I was trying to get to the bottom of what the Government deem to be people entering by so-called illegal routes when they are being forced in that direction. That, I believe, is the crux of what the Government are trying to say. In terms of the majority of people who are coming through and then being subject to some form of immigration control, how often are we detaining people in this situation, even if they have been able to demonstrate that they are victims of modern slavery?

Kate Elsayed-Ali: I do not know whether colleagues are aware that there is a task force on immigration detention, and I would be really

happy to send through its recent report that looked at the numbers and experiences of victims of modern slavery who have entered the immigration detention system.

Bell Ribeiro-Addy: Thank you. That would be very helpful. We have found over the years that, of the people who have been detained in various immigration detention centres, over 70% are eventually allowed to leave. There are some instances where a referral has been made for modern slavery. It is a bit problematic, because private companies are paid daily for them to stay there, knowing that perhaps they should actually not be there in the first place.

Kate Elsayed-Ali: Robyn, did you have statistics about the number of people referred from immigration detention who then received positive conclusive grounds?

Robyn Phillips: Yes, 92%.

Kate Elsayed-Ali: So 92% of people referred into the NRM from immigration detention ultimately received a positive CG decision.

The Chair: Those are stats we looked at earlier. We will now move on to look particularly at the position of children.

Q82 **Lord Alton of Liverpool:** I wonder whether, before I ask you specifically about children, I can put Lady Kennedy's question to you in a slightly different way, rather than about bleeding heart liberals. It was a different Home Secretary, one I rather admire, who was the author of the modern slavery legislation, which many of us here supported. It was bicameral; it was bipartisan. Many of us saw it as world class and this country leading the way.

Two days ago, Theresa May said that the Illegal Migration Bill was "shutting the door" in the face of genuine victims of persecution and modern slavery, tarnishing the United Kingdom's reputation on the world stage. Before I ask you about children, how do you react to that? Do you agree with Mrs May or do you reject that?

Kate Elsayed-Ali: Like I said earlier, as a country that at one stage professed to be a world leader on the domestic stage and the international stage at tackling trafficking and modern slavery, I believe the Bill is tarnishing us and will tarnish us. I was referring, I think, to criticism by the UN special rapporteur on slavery in terms of unevidenced claims and hostile rhetoric against survivors and legal representatives, which is obviously close to my heart, representing an organisation of lawyers.

The UK Government established that mandate. In 2007, the UK established the mandate of the UN special rapporteur on contemporary forms of slavery. It is quite stark that, in December 2022—I am sure that in the upcoming months he will have words to say about the immigration Bill—he is reminding the UK not to use unevidenced claims against survivors and legal representatives, and is calling for an end to the

regressive legal and policy framework. This was before this Illegal Migration Bill was formed. He also reminded the UK of its duty to appoint an independent anti-slavery commissioner.

As a UN representative for an international NGO, the UK used to be my ally on the world stage at tackling trafficking and modern slavery. Now I am in a situation where I have to say to you, and I have said quite clearly, that this immigration Bill rips up our obligations under the refugee convention, ECAT and Article 4 of the ECHR. We are tarnished.

Lord Alton of Liverpool: Specifically on the issue of children, and perhaps your colleagues can pick up that wider question as well in their replies, we have obligations. Many of us were involved with my colleague, Lord Dubs, when he promoted the Dubs amendment, which specifically was about children. He himself is a product of Kindertransport in former times, when Parliament insisted that we had special obligations towards children. We also have obligations under the rights of the child in international law.

Where does that leave us in the context of this new Bill? Are we removing rights of children? Are we going to hold them when we find them and then deport them much later on? What damage do you think that might do? How is that impacted by the European Convention on Human Rights?

Robyn Phillips: The three organisations before you are not experts on children, just to underlie anything that we say by stating that from the start. I know that the Refugee and Migrant Children's Consortium has written a briefing on the Illegal Migration Bill and is extremely concerned about the measures, one being this issue of the Home Office being responsible for children and young people.

In terms of children being placed in Home Office accommodation and hotels, almost 10% of those children have gone missing. It is a really urgent issue that we need to address, because 200 of those children have not been found. We are really concerned that this is primary legislation that gives Home Office powers to accommodate children when, looking at those statistics, it does not have a great track record.

We are also concerned that this new legislation can terminate the looked-after status of a child by a local authority, again placing more responsibility on the Home Office, as opposed to the local authority, which are the experts in supporting children. We are really concerned, especially the Refugee and Migrant Children's Consortium, that this could lead to Home Office-run reception centres for unaccompanied children, which could be disastrous.

Major Kathy Betteridge: I was going to comment on your first comment. I believe that it shuts the door and it is a Bill that will tarnish us as a country. As the Salvation Army, we have colleagues across the globe and are in contact with many other charitable organisations. Not only they but others come to the Salvation Army in the UK and ask us to talk them through the NRM process and the Modern Slavery Act, because

they see it as a really good model to help and support victims of modern slavery.

An individual who comes to us, in many cases, if not the majority, does not have the paperwork to prove that they have come through in a legal way. They come in literally the clothes they stand in, invariably, so they will not have the opportunity to receive support. That is not acceptable.

- Q83 Lord Alton of Liverpool:** Would you be able to furnish the committee with more information about the plight of children especially and the 200 who have gone missing? What has happened to them? What do we know about their plight? Will the provisions of the new legislation make that situation even worse? That is at the heart of my question. If they are going to be seized and kept in this country until they can then be deported when they get to the age of 18, what happens to them in the meantime?

You have rather suggested that they will be placed in an asylum, a hotel or in temporary accommodation, and without proper parental care during that time. You are suggesting, I think, that that would leave them open to abuse and to being used in illegal situations. If you cannot today, because you have said that you are not experts in this field—thank you, Robyn, for being clear about that—would you be able to furnish the committee with more information about it? This is legislation that is before both Houses and we would be very interested to pursue this aspect of it.

Robyn Phillips: Absolutely, I will send that in writing.

- Q84 Dr Caroline Johnson:** Thank you to the panel. I am horrified to hear of 200 lost children. We will look forward to reading the information that you have and, I hope, them being found. The legislation introduced by Theresa May's Government was ground-breaking and world-leading, seeking to protect very vulnerable people. Is it perfect or are there ways in which it could be improved, by both providing more help to those people who really need it, and targeting the help to ensure that the public can be confident it is going to those who need it the most, and not casting a net towards the abuse that the Government described?

Major Kathy Betteridge: From my perspective, I believe that there are improvements that could be made. There always would be. Partly, the decision-making process—so that length of time, 535 days—needs to be shortened. The decision-making process could and should be improved.

Also, I believe that there is a need for the statutory bodies and others that are working at a strategic level and at a local level to work better together in relation to what their role is. I am talking about local authority and health. Our providers are constantly knocking on those doors to try to galvanise that partnership working.

That should be happening more at a government level, so that the departments are aware of responsibilities and can work together to help somebody move out during the 30-day period that they should be in our

service—actually they are not; they are in for a lot longer—with support for them as individuals, given the issues they face. That is only a couple. There is a lot more that I could suggest, but I will allow my colleagues to contribute.

Kate Elsayed-Ali: Perhaps unsurprisingly, I am going to talk about access to legal advice. No system is perfect, as Major Betteridge said. A system being imperfect is not a reason for ripping it up altogether. To talk about positive improvements that ATLEU would like to see, one would be to address the legal advice crisis, through looking at the systemic barriers that are driving the lack of available expert and specialist legal-aided advice.

On addressing the funding system, we are clear that fixed rates are not appropriate for this work. There need to be hourly rates, with changes to make the system less administratively bureaucratic and complex, bringing into scope for legal aid advice prior to entering the NRM, advice on trafficking identification and advice on applying to the criminal injuries compensation scheme.

I will highlight one more thing before I hand the floor to Robyn. A real gap is that there is not a civil remedy for trafficking and modern slavery. Introducing that civil remedy would simplify the process of recovering compensation from perpetrators. We need to remember that survivors of trafficking and modern slavery have experienced a very serious crime and deserve to be identified as such, access support and be safeguarded. Also, we need to make trafficking and modern slavery higher risk for the perpetrators. One way that we could simplify doing so would be to introduce a civil remedy.

Robyn Phillips: The Modern Slavery Act introduces the Section 45 defence. If an individual has been forced to commit a crime while they are in exploitation, that introduces a defence for those crimes. There needs to be clearer training across the criminal justice system on what that means for adults and children, so that more victims can access it and there is a clearer understanding of that.

We need to create an environment where all victims feel safe to come forward. At the moment, it feels like we are regressing on that, especially with the current rhetoric. As Kate has mentioned, that is really concerning, because it means that victims will not be coming forward. If they are not coming forward, there is no way of us tracking down the traffickers.

My final point would be a plea for closer working between policymakers and those professionals working in this field, but also the survivors themselves, who have a wealth of experience. Many are able to work in the sector and have so much knowledge that policymakers could gain from to make sure that the system is fit for purpose.

Dr Caroline Johnson: That is really helpful. Major, you talked about the 535 days. You want to make that shorter. Is it that long because the

process has become so complicated that the legal arguments take ages, or is it just taking that long because the numbers are higher than it was anticipated they would be, so the system is overwhelmed?

Major Kathy Betteridge: I cannot answer that question because I do not know the process of that decision-making. It is held by the competent authority. I do not know what is required. We have asked that question. We have asked why it is taking so long and what resources are required, but we have not been given a response to that question, so I am unable to answer, I am afraid.

Dr Caroline Johnson: That is helpful. Thank you.

The Chair: That is a question we perhaps have to put to the Home Office.

Major Kathy Betteridge: That is what we do and we do not receive an answer.

Robyn Phillips: Kathy Betteridge mentioned that training for first responders would be helpful. That would also improve the quality of information that goes through to those decision-makers. At the moment, a police officer, for example, who has never even come across the national referral mechanism before can make a referral. It may just be a one or two-line referral. If they had had that in-depth training, the information would go through to the single competent authority to be able to make a more informed decision.

Baroness Kennedy of The Shaws: Picking up on what Caroline Johnson has just asked you, she placed two alternatives in front of you. I am going to put a third one: that there are not enough case workers inside the Home Office to either deal with asylum or deal with modern slavery. Those who are making those assessments, which are difficult in any event, have too high a burden of case load and therefore it takes a very long time. During the years of austerity, the numbers were cut. We need a much greater cohort of people to make those very difficult decisions. Would that be realistic?

Major Kathy Betteridge: That could well be part of the problem.

Robyn Phillips: More resources are always helpful.

The Chair: Thank you very much indeed to all three of you for what has been an extremely useful and comprehensive evidence session. I am sorry that we kept you here a bit longer than I said at the outset, but I hope you will agree that it has been very worth while, so thank you very much indeed.

Examination of Witness

Professor Dame Sara Thornton.

Q85 Chair: Good afternoon, Professor Dame Sara Thornton. We are delighted to have you here. I know that you have sat through the previous session, so thank you for that. It is appreciated. I am going to introduce you properly now. You completed a three-year term as the UK Independent Anti-Slavery Commissioner in April of last year and since then a replacement has not been appointed. Before that, you joined the Metropolitan Police Service in 1986. You had a 33-year career within policing and you served as chief constable of Thames Valley Police from 2007 until 2015. You are currently the University of Nottingham's Rights Lab professor of practice in modern slavery policy.

Very recently, I interviewed you for the "Committee Corridor" podcast, when we did a special episode on modern slavery. If any of our viewers this afternoon want to listen to that, they can access it through their usual podcast platforms.

We have a few questions for you this afternoon. You have sat through the previous session, so there may be a bit of duplication. As I said, you were the Independent Anti-Slavery Commissioner from May 2019 to April 2022. The post has not been filled since you left. Can you explain for us what the role of the anti-slavery commissioner is? Are you concerned that no anti-slavery commissioner has been appointed, despite the fact that it is more than 10 months since you left your role? It will soon be a year.

Professor Dame Sara Thornton: The role of the Independent Anti-Slavery Commissioner was established by the Modern Slavery Act 2015. The role is set out in legislation and it is about encouraging good practice in the prevention, investigation and prosecution of modern slavery offences and support for victims. It is important that it is an independent role and, when I carried it out, I always tried my very best to be objective and to be informed by the evidence and the data.

The failure to appoint is deeply regrettable, particularly given the level of public discourse about modern slavery. There is a real need for that fearless, independent, expert voice, and that is missing. That is so much more the case in the last two weeks, after the Illegal Migration Bill was published. I listened to the Second Reading on Monday. That should have been informed by the views of an Independent Anti-Slavery Commissioner, and it was not. The debate in Parliament was not informed by an independent public officeholder.

As well as scrutinising what government is doing, the other loss from not having a commissioner is all the positive work that you can do with civil society, business and law enforcement. That has all just stopped for the last 10 months. It is a concern.

You might recall that the independent review of the Modern Slavery Act in 2019 suggested that responsibility for the appointment should be for the Cabinet Office, not the Home Office. That recommendation should have been accepted because, potentially, the Home Office has a conflict of interest. The other thing, which I think this committee might have discussed back in the day, is that the post should probably be for a longer

period. Three years is not a long period. I would suggest five or seven years, so that the postholder can speak without fear or favour.

- Q86 **Chair:** The first Independent Anti-Slavery Commissioner, Kevin Hyland, resigned, citing government interference in his role. When you left, you told the *Independent* that the Government's asylum overhaul was driven by "political calculation" rather than expertise and that the fight against modern slavery in Britain was not what it had been. Can you tell us what you meant by that? It is pretty robust.

Professor Dame Sara Thornton: It is ironic. I was saying that back in April and the situation has changed. I was talking about the whole issue of the abuse argument and the small boats. I completely agree that we need to stop people taking those perilous journeys across the channel, but it is the sort of issue that needs really detailed, calm analysis, because it is complicated and difficult.

Instead, we have this rather Trumpian "stop the boats" and this very easy characterisation of it being an issue about Albanians falsely claiming modern slavery. As you all know, most people who come in small boats are actually from countries such as Afghanistan, Iraq, Iran, Eritrea and Syria, so they are going to be granted asylum, quite rightly.

Into that mix, we have had this constant suggestion that modern slavery protections were being abused. I presume by that government means that people are making a false claim that they are a victim of modern slavery in order to somehow improperly access modern slavery protections. That is what I assume it is. I think there have been four arguments and, if I may, Chair, I will go through them.

The other thing that is really important to say, because this gets confused, is that, if somebody is a victim of modern slavery as identified in the NRM, which you have just heard all about, that does not mean that there is an automatic right to stay here. They are completely different processes. One easy way I find to think about it is that the NRM is a decision about what has happened in the past. An asylum decision is about future risk. One is past and one is forward looking.

There are the four arguments. These started to appear a couple of years ago, when the *New Plan for Immigration* was published, which was a precursor to the Nationality and Borders Bill. The first argument was that, basically, there had been such an increase in referrals—you have already discussed that—from just over 3,000 in 2015 to 17,000 last year, that that must mean there is abuse.

There are several things wrong with that and you covered some of that. Victims do not make claims and often the word "claim" is used, which is interesting. They are referred by first responders. That means that somebody is taking an objective view because they are recognising the signs.

Also, the piece of data that really undermines this argument is that, in 2022, on the latest statistics, 91% had positive conclusive grounds. In

fact, the percentage of positive conclusive grounds decisions has been gradually going up. Five years ago or so, they were in the high 50s, I think. It was 91% last year. That is the first abuse argument that is used.

The second abuse argument is this one about late referrals. I will come back to the 7 March data in a minute. This late referral argument was made again about two years ago, and it was late referrals from immigration detention. The figures the Home Office produced said that, for people in immigration detention, the referral rate was 5% in 2018. By the time we had got to 2021, in the first five months it had gone to 20%.

My argument was always that that is not necessarily an argument about abuse. We had had a report by Stephen Shaw, who had looked at vulnerability in detention and suggested a whole range of recommendations about the improvement of identification of vulnerability, including modern slavery, in immigration detention. In fact, when I was the Independent Anti-Slavery Commissioner, I remember going to a detention centre and meeting some of the staff who were in what was known as detention engagement teams. They were telling me how they were better trained and better at identifying potential victims of modern slavery.

From two years ago, this was the debate. I do not think that it has ever been resolved. I also think that a late referral is not necessarily unreliable. There are all sorts of reasons, and colleagues on that previous panel talked about access to advice, to NGOs, to lawyers, which people have never had before, but they have it when they are in detention. That was the second argument.

You dealt with the third abuse argument as well. This argument was about how many people coming across in small boats were being referred into the NRM. The back story from my perspective is that the suggestion was it was very high and most people were. In fact, I think the Home Secretary, talking to a newspaper last September, said that about 80% of Albanians were making modern slavery claims.

I had tried for quite a while to get this data out of the Home Office. In the end, I made a freedom of information request, which actually was declined, but then I appealed and eventually got the data in September last year. That data has now been published and, as was referred to, between 2018 and 2022, 7% had been referred into the NRM, a very small percentage of those who are coming in small boats. It was the third area of abuse, but also some really problematic statistics. I noticed in the recent publication that, even for people from Albania, the figure is only 12% over that four-year period.

Chair: That is in the 7 March publication.

Professor Dame Sara Thornton: No, that is in the 23 February publication.

The fourth abuse argument is the 7 March paper, which you mention. I am not sure whether to confuse matters, because I picked different data out of that report than Sir Iain Duncan Smith. We both came to the same conclusion that the numbers detained for return are a very small minority of the total numbers coming in the small boats. I can give you the figures I picked out.

Chair: Please give us your figures, because I may have misunderstood IDS.

Professor Dame Sara Thornton: It depends which figures you take from the report. They were saying that, over 21 months, so the whole of 2021 and to the end of September 2022, 1,709 people were detained for the purposes of return from small boats, of whom 1,136 had been referred into the NRM. This is where the high percentage comes from, the 60% or 70%.

My first point is that, of the overall numbers of people coming in the small boats, that is a small percentage. The second point, however, is that that paper makes it clear that 92% received a positive reasonable grounds decision from the Home Office. Interestingly, almost all are then released from immigration detention, although in 2022 I noted that half those releases were not by the Home Office but were by immigration judges, so presumably there had been some sort of appeal, which suggests a toughening of stance in the Home Office.

The main problem I have with that whole publication—I sometimes think that it is a form of wilful blindness—is that those cases are in the NRM. They are going to be progressing to a conclusive grounds decision. The way the paper is written implies that somehow these are improper. My view is that the competent authorities should be investigating these cases and making a conclusive grounds decision. You cannot assume that these are all somehow wrong. It will be really interesting to see what the percentage of positive conclusive grounds is in these cases eventually.

The other thing that struck me about this whole issue of people, in the words of the Government, “frustrating” removal is that the backlogs are what is making this really problematic. If these decisions could be made in a few weeks, rather than a few years, it would not be such an issue. It is the operational problems that are causing the Government to take this sort of issue.

As I say, what I find interesting about the data is that it is a really small proportion, but, for me, it betrays a mindset, which is that these are all somehow problematic. I do not think that you are able to say that at this stage. Let the system take its course, rather than speculate unhelpfully.

Chair: That is very helpful. Quickly, before we move on, do you think that this rhetoric about the abuse of the modern slavery system will undermine the confidence of victims of modern slavery to make disclosures and to seek protection?

Professor Dame Sara Thornton: The rhetoric has certainly undermined modern slavery protections. A phrase I have used before is that it is having a chill effect on the confidence of victims and survivors to come forward. You heard evidence from my colleagues about practical examples of that chill effect. The rhetoric precedes this Illegal Migration Bill, where the situation is even more significant. The Bill, as was explained, will have a devastating impact on protections for victims of trafficking.

Chair: We are going to come on and ask you some questions about the Nationality and Borders Act and the Bill that you have just mentioned.

Q87 **Lord Dholakia:** Can I make an admission, first, that Sara Thornton and I both serve as trustees of the Police Foundation? That is of no relevance to this particular inquiry. In your view, is the current legal framework effective in protecting people who are victims of modern slavery or trafficking?

Professor Dame Sara Thornton: The current framework is not perfect, but it provides protection from deportation while in the NRM. It provides accommodation. You heard from Kathy Betteridge about the great work that Salvation Army does. It provides support for victims.

I decided that I would pick three short thoughts. The first one is that point about backlogs—535 days on average. Then, if there is a subsequent asylum claim, you are in the NRM decision-making backlog and then you are in the asylum decision-making backlog. We looked at this when I was commissioner, and it means that victims of modern slavery are waiting for such a long time. I have met so many victims and survivors who have been waiting years with their lives on hold. You can imagine the impact upon the individual.

Secondly, the system at the moment does not have sufficient emphasis on long-term recovery. It is good on rescue, but there are difficulties in terms of survivors accessing accommodation, work and proper mental health support over the long term. There are long-term issues about enabling people to regain their independence and to live lives of sustainable independence.

Lastly, and there has been quite a bit of research on this, the system was not designed for British citizens. Many end up feeling pretty unsupported by the current system.

Q88 **Baroness Meyer:** Professor Thornton, thank you very much. This is very interesting. I want to ask you a question that has been covered a bit before, but I would like to hear your view. The Nationality and Borders Act 2022 introduced significant changes to the modern slavery and trafficking framework. What impact have those changes had on victims of modern slavery and trafficking?

Professor Dame Sara Thornton: As was said earlier, the provisions were enacted only at the end of January, so it is quite early to say, but I would make three comments. I was always concerned about the breadth

of the definition of the public order disqualification, which I could see was going to mean that many victims could be denied support. I know at the time a lot of the human rights lawyers were arguing that it breached Article 4 of the human rights convention.

I am still worried about that, but, my goodness, the public order disqualification has been massively increased in this new Bill. We will come to that later, but I am still concerned, as it stands, that it could see many victims excluded. The reason why I was particularly concerned about it, apart from the fact that it begins to say that there are deserving and undeserving victims, is that you are going to prosecute cases only if you have witnesses. If you do not provide support to victims, they are not going to be prosecution witnesses.

We did some calculations at the time, which showed that quite a few people who had given evidence in criminal trials would potentially have been caught by this disqualification. It seemed to me that, if you wanted to prosecute more traffickers, you were not helping yourself by passing that particular section.

Another provision, which has not yet been implemented, was the slavery trafficking information notices—this idea that you give a document to somebody who had come into the country and say, “If you are going to claim to be a victim of slavery and trafficking, can you do it within a set period?” This idea that victims have to disclose to a deadline seemed to me to be completely uninformed by the issues of trauma, trust and confidence that colleagues spoke about earlier. That has not been implemented. I do not know why.

On the third issue, I noted that Kathy Betteridge made comment about this, but I too have heard some early reports that, since the reasonable grounds threshold was changed and there was this requirement for some degree of objective fact, there are more negative decisions being made. That is early noise coming from the system, so it is largely too early to say, but there are some worrying signs.

Q89 Lord Alton of Liverpool: Dame Sara, it is a rare opportunity to say thank you for all the work that you did and, indeed, that Kevin Hyland did as commissioner before you. I have just stepped back from being a trustee of an anti-trafficking modern slavery charity and I was very struck by the protections that the modern slavery legislation gave as well as the presumptions it made.

I would like to take you on to the Illegal Migration Bill. On issues such as truthfulness, it is quite difficult for someone who is escaping a country where there is massive persecution to be able to truthfully tell the circumstances, so often there will be false accounts. Will the presumptions be changed now in the Illegal Migration Bill? If someone tells a story that is not true, how will that affect their right to stay in the UK?

Professor Dame Sara Thornton: The proposals in Clauses 21 to 28, as colleagues have said, have a devastating impact on the modern slavery

protections that we have. Clause 21 says that, if somebody meets the condition for removal under Clause 2 and has a positive reasonable grounds decision, any prohibition on their removal or any leave to remain does not apply, unless they are co-operating with an investigation or criminal proceedings.

The Bill proposes that that public order disqualification in the Nationality and Borders Act, which I just referred to, is automatically applied to an illegal migrant who the Secretary of State has said that they are required to remove. That is a massive extension of that public order disqualification to everybody. Clause 22 says that, again, if they meet the conditions for removal and have a positive reasonable grounds decision, any requirement for support and assistance does not apply either. The whole framework of modern slavery protections does not apply if somebody is an illegal migrant after 7 March.

It basically denies those who are trafficked to this country and arrive irregularly any modern slavery protections. In effect, it suspends protections, in a way, for anybody who is not British. You might have noticed that it is for a two-year period. It has a sunset provision. I wonder whether the use of the sunset provision suggests that the Home Office realises that this is a pretty severe measure that it is proposing. We are proposing that we are abandoning victims of the most serious crime, frankly because they are not British.

It will be the victims who are punished, not those who are trafficking them. As was said earlier, this is the sort of thing that enables traffickers to tighten their grip even more on victims. There is that exception that, if people are co-operating with an investigation or criminal proceedings, it will not apply. It seemed to me that the caveats about the Secretary of State believing that it was absolutely necessary that they remained in the country set the bar quite high, but it also fails to appreciate the trauma and lack of trust and confidence that victims will have. I suspect that the exception will be little used.

I am very concerned. In terms of this particular committee, it seems to me that it cannot be compatible with Article 4 and a state's positive duty to identify and support victims of trafficking, irrespective of where the exploitation occurred. That is really important. That is quite clear in Article 4. Nor is it compatible with that obligation on the state to investigate potential cases of trafficking. It is highly problematic. I had a quick look at the Council of Europe's latest guidelines on Article 4 and a summary of all the cases. I am sure that you will be getting legal advice on that, but my reading of it is that I do not see how it can be compatible with Article 4.

Lord Alton of Liverpool: You have rather read our minds. ECAT and the ECHR would have been my next specific question, but you have covered that pretty well in what you have just said. There is one item, though, that perhaps we could pursue a little further in talking about the disapplications that you have said will have a devastating impact. It will be the victims who will be punished, rather than the criminal gangs who

are responsible for the misery of the people we have been talking about. What about the recovery or reflection period? What impact will the removal of that have on victims of modern slavery and trafficking specifically?

Professor Dame Sara Thornton: I suspect that, rather than being in one of Kathy Betteridge's safe houses, a victim will be in a detention centre for however long and then removed if there are ever any removal agreements. It goes back to the fundamental point about this Bill, which a lot of people have said. Is it really workable? Where are all these thousands of people going to be detained and to which countries are they going to be removed? On the face of it, the practical implication for a victim of trafficking is that, rather than getting the care and support as part of the Salvation Army contract, with a caseworker, maybe legal advice and medical care if that is needed or counselling, somebody will be in a detention centre, pending removal.

Can I say something about ECAT? I was mainly talking about ECHR. That extension of the public order definition is interesting, because it is an ECAT disqualification, but it seems to me to go so much beyond what anybody could have anticipated when they drafted ECAT. ECAT is about trafficking. It is, in effect, saying that, if you have been trafficked into this country, that is a public order disqualification. There is a real problem about Article 13.

Article 16 of ECAT allows for people to be removed to another country, but after the conclusive grounds decision. This is wanting to remove people after the reasonable grounds decision.

The other issue is Article 26. We talked about non-punishment in the earlier session. If you are detaining somebody who has been maybe tricked, coerced or compelled to come into this country illegally, you are then punishing them for an unlawful act that they were compelled to commit, which is in contravention of Article 26. There is a real issue with ECAT. It is interesting that the legislation seeks to use that public order disqualification, but in a way that I cannot imagine that anybody ever anticipated.

Lord Alton of Liverpool: You heard Robyn Phillips in our earlier session as well refer to the position of children and people who are under-age. Is there anything perhaps that you can add to what she said? She told us that 200 children had gone missing and had not been found. Presumably, that number will be added to if some of these provisions were to be implemented. Do you have a view about that?

Professor Dame Sara Thornton: I have spoken publicly of my concern about the current situation, where children have been placed in hotels. Several hundred have gone missing. As you say, 200 remain missing. I am gravely concerned that there has not been more of an outcry about this. It seems to me highly likely that these children and young people will be in situations of exploitation. They might be in cannabis farms; the

young women, I am afraid, might be in brothels or just being forced into exploitative work. That is the reality.

As I understand it, this legislation would detain children until they were 18 and then seek to deport them. I would suggest that you hear from ECPAT or one of the children's charities, which I know are gravely concerned about what is proposed.

Q90 **Lord Dholakia:** My question relates to recommendations for reform. How do you think the modern slavery and trafficking framework for those who arrive irregularly should be reformed?

Professor Dame Sara Thornton: The first thing is probably very obvious, but the Illegal Migration Bill is highly problematic. It is problematic across the board, as many people have said, in that it is probably unworkable and certainly breaches international law. In terms of modern slavery, Clauses 21 to 28 are disastrous. It seems to me that they are a response to poorly evidenced claims of abuse. They will abandon large numbers of vulnerable and genuine victims. I am really concerned about that. First, please, how can we really be contemplating passing Clauses 21 to 28?

On the second recommendation, I would pick up on that earlier point about the role of the commissioner. It is worth revisiting the independent review's recommendation that it should maybe be a Cabinet Office appointment and that it certainly should be for a longer period. That would help.

In terms of reform, it seems to me that a lot of the problems are operational, rather than about legislation. The backlogs, whether it is trafficking decisions or asylum decisions, are appalling and have been getting worse and worse. Ever since the competent authority was formed in 2019, just as I started, the backlogs have grown and grown.

Also, and this was hinted at earlier on, I have a concern about the quality of the decision-making in both systems. Certainly when trafficking decisions are challenged they are quite often overturned. I remember that last year, with the permission of the woman involved, I saw a letter that the Home Office had sent to a survivor of slavery and trafficking, denying her humanitarian protection.

The quality of the letter was appalling. She was referred to as a "he" throughout the letter, which is pretty basic. What was really concerning was that the Home Office caseworker was arguing that it was safe to send her to Eritrea. The Americans write what is known as the TIP report every year, which basically goes through most countries in the world and assesses how good they are at dealing with slavery and trafficking. Eritrea has a very poor report and maybe it is about three pages. The caseworker had cherry-picked the one positive statement, which said something like, "Eritrea has been co-operating in regional meetings". They had put that in this poor woman's letter and ignored the fact that most of the issues about Eritrea were highly problematic.

For me, that was such a grave illustration. Not only had this poor woman waited for years, but actually the quality of the decision-making when it came was really quite poor. I do not see many of those letters, but I have a suspicion that that was not that unusual.

Having said that there are a lot of operational issues, I am very interested in whether those NRM trafficking decisions could be devolved locally. You might be aware that trafficking decisions for children are part of a pilot, which has been very successful, with local authorities making those decisions.

It was so successful, actually, that even more local authorities have now joined in. The decisions are made so much more quickly. Also, the decisions are much more assured, because all the experts are round the table, rather than caseworkers sitting remotely, trying to work out from lots of documents whether somebody has been trafficked. That should be looked at seriously. If you are going to devolve it, the money has to follow from the Home Office to the local authorities.

Chair: Absolutely, yes. That is key.

Q91 **Baroness Kennedy of The Shaws:** Dame Sara, it has been really interesting hearing from you. In a report that I did on asylum issues in Scotland, I made the suggestion that, actually, asylum decisions too should be devolved. There is a problem about the quality of decision-making, and it is reflected in the fact that there is such a churn of the people who are in the decision-making roles inside the Home Office.

I think that there is still a culture inside the Home Office of the starting point being no, rather than having an open mind and coming to decision-making. People do not enjoy the role. They do not find any pleasure in the business of making those decisions, so they leave the Home Office jobs very readily.

You were remarkable. Everyone felt that you were an incredible commissioner. You were also a great leader of policing in an area that I got to know rather well when I was heading a college at Oxford. You have mentioned that the period of office for anybody in the role that you had should be extended to give that longer independence. The idea that you have to move on after three years, when you were just getting on top of the job, is too soon. Would you have stayed longer if you had been given five years, or had you had enough? What was your position at the point of the three years? Could you have been given another three-year slot?

Professor Dame Sara Thornton: I would have been happy to serve five years. It would have been possible to extend or give me another term of office, but that did not happen.

Baroness Kennedy of The Shaws: I do not want to invade matters of privacy, but was it that you were too independent?

Professor Dame Sara Thornton: You would probably have to ask the Home Office that.

Baroness Kennedy of The Shaws: We will. It is a great regret that you are no longer in that role. Another commissioner role where there was an unwillingness to replace was the victims' commissioner. There is a concern that one might have, as an observer of this, that strong, independent-minded women in these roles somehow do not get replaced or extended.

Professor Dame Sara Thornton: In terms of the extension, Dame Vera Baird and I were in exactly the same position. You will not be surprised to know that we discussed it and Vera decided to apply for her own job. I decided that that was not appropriate. There was always an option to extend me; I was not going to be extended, so I was not going to apply for the job. In both cases, there have been adverts and processes, and we still do not have anybody. I think that it is poor administration, but in both cases it could be argued that it is quite convenient to not have those fierce, independent voices on behalf of victims and issues of modern slavery at this very difficult time.

Chair: Last year, just before Christmas we had the Justice Secretary before us. I asked him quite a few questions along similar lines about the victims' commissioner.

We will have to leave it there. Can I thank you? I associate myself with the complimentary remarks that have been made about your service. Thank you for a really fantastic evidence session this afternoon that has given us a lot to think about and a lot of take-aways for when we finally get the Home Secretary in front of us. Thank you very much indeed.