

Written Evidence by the Helen Bamber Foundation (ASU0039)

Introduction

1. The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. Our work alongside survivors shows us that, with early and appropriate care and support, they build the strength to move on with their lives. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services.
2. In this evidence we address questions 6 and 8 to 10, but would like to note that we fully endorse the evidence submitted by the Detention Taskforce and Refugee and Migrant Children's Consortium, both of which HBF co-chairs, and that of the Legal Aid Crisis Group.

Accommodation, support and legal aid

Is the support available to asylum seekers under the legal aid, accommodation, and subsistence rules compliant with the UK's human rights obligations?

Accommodation

3. Too often, the survivors supported by HBF are in accommodation that is not only unsuitable for their needs but causes actual physical and mental harm – the more extreme cases potentially breaching article 3 and article 8 of the European Convention on Human Rights (ECHR). Those who enter the National Referral Mechanism as potential victims of trafficking may have access to temporary accommodation,¹ but there are too few 'safe houses' to meet the current need, and most of the existing accommodation is unsafe and inappropriate.² Many of our clients are housed in 'contingency' asylum accommodation, including hotels, for prolonged periods – more than 37,000 people seeking asylum are currently stuck in hotel accommodation,³ which is damaging to their health and well-being, causing depression and suicidal ideation.⁴ HBF has worked with a number of people housed in former military barracks, including survivors of trafficking, and this form of 'quasi-detention' has been widely condemned as 'prison-like' and highly re-traumatising for survivors of torture, trafficking or other serious forms of violence.⁵
4. Inappropriate accommodation increases the risk of (re)exploitation - recent research found evidence of visible, large-scale accommodation in hostels, hotels and houses of

¹ Under the [Modern Slavery Victim Care Contract](#)

² Prolonged destitution and limited access to education and legitimate employment opportunities leaves survivors vulnerable to traffickers who isolate and manipulate their victims who often do not know their rights and entitlements. 4 November 2022

³ BBC News, [Colchester council criticises government over asylum seekers in hotels](#) 4 November 2022

⁴ Refugee Council, [Lives on hold](#), July 2022

⁵ APPG on Immigration Detention, [Inquiry into quasi-detention - full report](#), December 2021

multiple occupancy being targeted by traffickers.⁶ There is a lack of welfare and vulnerability assessments involved in the allocation of accommodation for people vulnerable to exploitation.

Recommendations

5. **Access to safe and appropriate accommodation and adequate financial support is essential to maintain the ongoing safety, health and well-being of survivors of torture and trafficking. The government should:**
 - **Abandon plans to create institutional ‘accommodation centres’ modelled on the use of Napier Barracks, and undertake further work with local authorities to ensure that sufficient, safe accommodation is available in the community with access to healthcare, legal advice and other services.**
 - **Reform asylum reception and accommodation arrangements to promote early identification of risks and vulnerability and recovery needs so that people are kept safe and informed of their rights from the outset.**

Subsistence

6. Low levels of financial support and the lack of the right to work often mean that survivors are unable to meet their essential needs. Those who are successfully referred into the National Referral Mechanism and/or asylum systems receive subsistence payments, but these are extremely low – people in the asylum system are forced to live on just £5.84 per day, or a staggering £1.17 a day if accommodated in hotels. In HBF’s experience, the low rates of financial support provided to our clients can cause them considerable distress and significantly worsen their physical and mental health problems.⁷
7. While enduring long delays in the asylum system (waiting for months or years for decisions - see paragraph 18 below), survivors remain in a situation of poverty, dependency and low socio-economic status. The prolonged inability to work, to provide for themselves or their family, or to start to move on with their lives meant that some people are more likely to be targeted for exploitation, take up work in exploitative conditions and/or get into debt.

Recommendations

8. **Survivors must have access to enough financial support to ensure they remain safe and can maintain an acceptable standard of living. The government should:**
 - **Grant the right to work those seeking asylum, unconstrained by the Shortage Occupation List, after they have waited six months for a decision on their claim.⁸**
 - **Set asylum support rates at a level that allows for an acceptable standard of living - at a minimum they should be 70% of the rate for mainstream benefits.**

⁶ British Red Cross and UNHCR, At risk: exploitation and the UK asylum system

⁷ Helen Bamber Foundation, Submission to Home Office review of asylum support rates, August 2022

⁸ Refugee Action, Lift The Ban - Common Sense

Legal aid

9. In HBF's experience, positive immigration/asylum decisions are often dependent on the quality and knowledge of legal representatives and services who advocate for survivors. Survivors of torture and trafficking require individual support throughout these arduous procedural systems, and assistance with providing the requisite evidence to substantiate their case, including medical evidence.⁹ However, the very low funds paid for this work and the failure to increase the rates over the past two decades has resulted in the decimation of the legal aid sector. Recent research showed that 90% of support workers helping survivors struggled to find legal advisors for their clients in the past year, with almost half reporting delays of six months or longer.¹⁰ Half of asylum applicants are unable to access legal aid representation.¹¹ The crisis in legal aid leaves survivors without access to lawyers equipped to work on their cases, undermining their access to justice as protected by Article 6 of the ECHR.¹² Others may resort to paying private lawyers and may get into high levels of debt for services which are often sub-standard due to the lack of regulation in the private sector.

10. Recommendations

- **Legal Aid rates should be increased in line with inflation, and all cases should be paid at an hourly rate so that legal aid is sustainable¹³ and providers can afford to continue this vital work.¹⁴**
- **Areas that were removed from scope following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (family reunion, applications based on Article 8) should be brought back into scope and provision for advice on trafficking cases including pre-NRM should be made available to all.**

⁹ HBF provides expert, court standard medico-legal documentation for clients involved in legal procedures. However, we also advocate for recognition that the majority of victims of trafficking have no access to such evidence or any medical documentation, and struggle in many cases to obtain access to appropriate healthcare services.

¹⁰ ATLEU, 'It has destroyed me'. New report by ATLEU reveals how a legal advice system on the brink is failing survivors of modern slavery

¹¹ Jo Wilding, New Freedom of Information data indicates half of asylum applicants are unable to access legal aid representation - Refugee Law Initiative Blog, November 2022

¹² The European Court of Human Rights has found that the right to access to a court contained in Article 6 (1) of the ECHR encompasses the right to free legal assistance in civil matters when such assistance proved indispensable for effective access to the courts and a fair hearing (in particular for ensuring the equality of arms). Human rights protections under Article 6 have been further elaborated on in the Court of Appeal in the UK in the context of legal aid for civil litigation. The court specified that these include practical and effective rights of access to the courts, the ability to 'present the case properly and satisfactorily' before the court of tribunal, and equality of arms such that each side can present their case 'under conditions that do not place them at a substantial disadvantage vis-a-vis their opponent'. *R (Gudanaviciene) v The Director of Legal Aid Casework* [2014] EWCA Civ 162

¹³ As part of the sustainability of legal aid, ILPA in its consultation response to the Ministry of Justice legal aid consultation called for a change to the payment regime so that there is the option to claim payment on account during the life cycle of a case, which can often take years to conclude before the legal representative can bill the case.

¹⁴ ILPA, Consultation response to the Ministry of Justice legal aid consultation, August 2022. Legal aid hourly rates have not increased since 2007 when they were first introduced and were cut in 2011.

Modern Slavery

Is the UK’s legal framework for tackling modern slavery and human trafficking effective, and is it compatible with our human rights obligations? Are there changes that should be made?

Is there any evidence that modern slavery laws are being abused by people “gaming” the system?

11. While survivors of trafficking brought to the UK are struggling to receive the support they need to recover and rebuild their lives, political rhetoric about them has become increasingly hostile, with the government frequently claiming that victims of slavery are ‘abusing the system’.¹⁵ During the passage of the Nationality and Borders Act 2022 through parliament, the government alleged that people are falsely claiming to be survivors of trafficking ‘late in the process’ in order to ‘frustrate immigration action’ and to secure their release. This was used to justify concerning measures in the Act¹⁶ designed to make it harder to be identified as potential victim harder and reduce protections for victims. While claiming that UK modern slavery legislation must be tightened the government has also emphasised that “our domestic legislation should align with our international obligations, [which] includes [the Council of Europe Convention on Action against Trafficking in Human Beings]—ECAT”.¹⁷
12. HBF’s October 2022 report, ‘Abuse by the system: survivors of trafficking in immigration detention’,¹⁸ highlighted that over 90% of people referred to the National Referral Mechanism as *potential* victims of trafficking are subsequently confirmed as victims. Every day, we see cases where people who have been trafficked have not been identified and have been treated as criminals rather than victims and locked up, suffering significant physical and mental harm as result. One case shared in the report involved a young man detained after having been forced to work in a cannabis factory for two years. In immigration detention, his mental health suffered to the point that he was placed on suicide watch. After four years, he was eventually granted refugee status and awarded substantial damages following a claim for false imprisonment, which included medico-legal evidence on the impact the detention had had on him.
13. In short, there is no evidence of a process being abused – rather, people who have already been exploited and mistreated are experiencing further abuse and human rights violations *by* an immigration system that is not fit for purpose. This system prevents victims from being identified and from receiving the support they need and to which they are entitled under Article 4 of the ECHR.

¹⁵ BBC News, [Home Secretary Suella Braverman to change law to stop channel migrants](#), 4 October 2022

¹⁶ See Detention Taskforce, [Briefing on the Nationality and Borders Bill](#), January 2022

¹⁷ <https://hansard.parliament.uk/lords/2022-03-08/debates/20397778-861E-4D27-B358-53B067DE72A3/NationalityAndBordersBill>

¹⁸ Helen Bamber Foundation, Medical Justice, ATLEU and Focus on Labour Exploitation, [Abuse by the system: Survivors of trafficking in immigration detention](#), October 2022

14. Recommendations

- **The government must ensure that the forthcoming Modern Slavery Bill strengthens the UK's anti-trafficking response and addresses the issues identified by victims, practitioners and international bodies,¹⁹ including the need to have access to work, adequate support and secure status in this country.**
- **The government should prioritise incorporating ECAT into domestic law.**

Nationality and Borders Act 2022

To what extent has the enactment of the Nationality and Borders Act 2022 had an impact on the human rights of asylum seekers?

15. The 'inadmissibility' and 'differentiation' processes introduced into legislation by the Nationality and Borders Act are not only harmful in themselves, but are serving to worsen existing delays and backlogs.
16. The Home Office, if it decides a person has travelled through a 'safe country' on their way to the UK, may consider an asylum claim 'inadmissible' and try to send the claimant to a different country – but often is unable to.²⁰ Since the inadmissibility rules were introduced in January 2021, almost 20,000 individuals have received a 'Notice of Intent' which effectively pauses their claim but only 83 have actually received an inadmissibility decision (only 21 have actually been removed). This has served on to add an unnecessary six month delay to thousands of people's asylum claims.²¹
17. Under the new 'differentiation' scheme, the Home Office must now make *another* decision at the end of the process as to whether someone is a group 1 or group 2 refugee (following their recognising the individual as a refugee) depending on how they entered the country. Group 2 are given a shorter grant of leave (permission) to remain in the country and fewer rights. There is no timeframe for this decision, leaving people in yet another unknown period of limbo, which is known to have a detrimental impact on mental health and recovery.²² As well as worsening delays, the JCHR has already recognised that differential treatment "appears likely to be inconsistent with the right to private and family life under Article 8 ECHR and the prohibition on discrimination under Article 14 ECHR".
18. The backlog in cases awaiting an initial decision is at a record high, with 143,377 people waiting for an outcome on their initial claim for asylum at the end of September 2022 – an increase of 21,164 people since the end of June 2022.²³ 67% of HBF's clients waiting

¹⁹ US Department of State, [Trafficking in persons report 2022](#)

²⁰ In part due to the UK's withdrawal from the Dublin III scheme, which allowed the UK to send asylum seekers who had passed through a safe third EU state back to have their claim processed there.

²¹ Home Office [Immigration Statistics for year ending September 2022: How many people do we grant protection to](#)

²² See, for example, Phillimore J, Cheung SY. [The violence of uncertainty: Empirical evidence on how asylum waiting time undermines refugee health](#). Soc Sci Med. 2021 Aug;282:114154.

²³ Freedom of Information Response 71905: [Annex-A-Data-for-FOI-71905](#).

for an initial decision have been waiting for over two years. The human impact of the Home Office's failure to tackle the asylum backlog is incalculable - thousands of survivors are left in limbo waiting for decisions, with a devastating impact on their mental and physical health.

19. Recommendations:

- **The government must adequately resource decision making to ensure that the backlog of asylum claims is cleared, with the most vulnerable prioritised (including children's cases) and decisions made on the papers (without the need for an interview) where possible.**
- **The government should remove processes that cause further delay in decision making and leave refugees in less secure positions, including provisions on inadmissibility of asylum claims and differential treatment.**

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