

Written Evidence by the Taskforce on Victims of Trafficking in Immigration Detention (ASU0043)

This submission has been compiled by the Taskforce on Victims of Trafficking in Immigration Detention [The Taskforce], 13 expert organisations working with victims of trafficking. The Taskforce works to ensure no victim of trafficking is detained under immigration powers.

Q4: Are the rules on detention and processing, and the treatment of detained asylum seekers, consistent with the UK's human rights obligations?

Deprivation of liberty is a serious interference with an individual's human rights and should only be used where 'necessary' and 'proportionate'.¹ Yet the Home Office routinely detains people subject to immigration control, without judicial oversight, causing them significant harm.² This includes survivors³ of trafficking and modern slavery, who may be detained after imprisonment (having been wrongly convicted for offences their traffickers forced them to commit), and/or because they do not have permission to remain in the UK. Everyone under consideration for detention should benefit from independent judicial oversight of the decision to detain including provision to challenge.

Immigration detention typically causes profound long-term trauma.⁴ For trafficking survivors, immigration detention increases the risk of re-traumatisation and negative long-term physical and mental health outcomes; further, the Royal College of Psychiatrists holds that survivors of torture and trafficking are "*at greater risk of harm, including deterioration in mental health and increased risk of anxiety, depression and PTSD, than would be experienced in the general detained population*".⁵ Detention can also prevent victims from being identified and receiving crucial support⁶ to which they are entitled under Article 4 of the European Convention on Human Rights (ECHR).

¹ Joint Committee on Human Rights (JCHR) (2019), *Immigration detention Sixteenth Report of Session 2017–19*, 28. Available at:

https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148405.htm#_idTextAnchor015

² In the year ending March 2022, 25,282 people entered detention; there were only 3,447 enforced returns (14%). UK Government. Home Office (2022), National statistics - How many people are detained or returned? Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2022/how-many-people-are-detained-or-returned>.

³ We use the terms 'victim' and 'survivor' interchangeably throughout.

⁴ JRS UK (2020), *Detained and Dehumanised: the impact of immigration detention*. Available at:

https://www.jrsuk.net/wp-content/uploads/2020/06/Detained-and-Dehumanised_JRS-UK-Report_28.06.2020_FINAL-1.pdf

⁵ Royal College of Psychiatrists (2021), *PS02/21 - The detention of people with mental disorders in immigration removal centres*, p.13. Available at: https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/position-statements/position-statement-ps02-21---detention-of-people-with-mental-disorders-in-immigration-removal-centres---2021.pdf?sfvrsn=58f7a29e_4#:~:text=It%20is%20the%20view%20of%20the%20Royal%20College.greatly%20increasing%20suffering%20and%20the%20risk%20of%20suicide.

⁶ Labour Exploitation Advisory Group (2019), *Detaining victims: human trafficking and the UK immigration*

Referrals of potential victims to the National Referral Mechanism (NRM) from immigration detention have tripled over the last five years from 501 in 2017 to 1,611 in 2021. In 2021, 92% (1,420) of referrals received a positive reasonable grounds (first stage) decision.⁷ In the first half of 2022, the Immigration Enforcement Competent Authority made positive ‘reasonable grounds’ (first stage) decisions in 95% of cases, and positive ‘conclusive grounds’ (final stage) decisions in 97% of these cases.⁸ Over 90% of people referred to the NRM from detention are found to be victims of trafficking.

The Joint Committee on Human Rights (JCHR) has already highlighted insufficient protections for people detained for immigration purposes, and recommended changes to the detention system, in its 2019 report.⁹

Home Office policy, at the time of the 2019 report, stated that people with positive reasonable grounds decisions should be released unless there was a ‘public order’ reason not to release them. However, in 2021, trafficking survivors were brought entirely under the scope of the controversial ‘Adults at Risk’ (AAR) policy. Under AAR, decision-makers weigh evidence of vulnerability against immigration factors in deciding whether to continue detention, using three levels of evidence: 1) self-declaration of vulnerability 2) professional evidence of previous harm 3) professional evidence that detention is likely to cause further harm. 3) requires evidence of future harm which is inherently difficult to provide and, connectedly, “*encourages a ‘wait and see’ approach whereby vulnerable detainees are left to deteriorate in detention until avoidable harm has occurred and can then be documented.*”¹⁰

AAR replaced a policy of only detaining vulnerable people under ‘exceptional circumstances’, and was ostensibly intended to strengthen the presumption against the detention of vulnerable people. However, as the JCHR previously heard, being recognised under AAR at levels 1 and 2 rarely leads to release.¹¹

detention system, pp.25 & 36. Available at: <https://www.labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

⁷ Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.

⁸ UK Government. Home Office (2022), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 - April to June*. Available at: [https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2022-april-to-june#:~:text=In%20quarter%20%202022%2C%20the,2%20in%202021%20\(3%2C124\)](https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2022-april-to-june#:~:text=In%20quarter%20%202022%2C%20the,2%20in%202021%20(3%2C124)). See Helen Bamber Foundation, *et al.* (2022), *ibid*, note 11, p.5.

⁹ JCHR (2019), *ibid*. Note 2.

¹⁰ Helen Bamber Foundation, *et al.* (2022), *Abuse by the System: survivors of trafficking in immigration detention*, p.24. Available at: https://www.helenbamber.org/sites/default/files/2022-10/Abuse%20by%20the%20system_survivors%20of%20trafficking%20in%20immigration%20detention_1.pdf

¹¹ JCHR (2019), *op cit*, note 2, 81.

Placing trafficking under AAR has increased the detention of trafficking victims who now face increased evidential requirements to show that detention is harming them. Further, the change was brought in despite the government recognising it would result in more trafficking survivors being detained.¹²

This change specifically means that people identified as potential victims of trafficking can routinely be kept in detention throughout the period designated for their recovery under the NRM. Consequently, survivors cannot benefit from their recovery period. Detention and the fear survivors routinely experience within it “can be a triggering reminder of their trafficking”.¹³ Further, detention causes people’s mental health to deteriorate. Survivors also especially struggle to disclose elements of their trafficking in detention, affecting their final stage trafficking decision; and detention may obstruct access to Article 12 entitlements, such as specialist legal advice.

The detention gatekeeper also frequently fails to identify indicators of trafficking, evidenced by the large numbers eventually identified within detention. The screening process on arrival is also insufficient to identify survivors of trafficking, as highlighted by the Independent Chief Inspector of Borders and Immigration.¹⁴

Since detained people are not always released once identified as victims of trafficking, detention continues to have a cumulative and damaging impact upon their physical and mental health. A high proportion of people in immigration are diagnosed with depression, posttraumatic stress disorder and anxiety. A significant number experience suicidal ideation with the risk of self-harm. People who have experienced trauma are at greater risk of developing mental health problems in detention.¹⁵ It is impossible to envisage how a person’s recovery needs could be met whilst they are in continuous distress in this way.¹⁶

The use of detention under immigration powers must end. Until this occurs:

- **Abolish AAR; vulnerable individuals should not be detained.**
- **Improve screening processes for vulnerability in and at the point of detention.**¹⁷

¹² May Bulman, (2021), Home Office admits new immigration plans may see more trafficking victims locked up, *The Independent*. Available at: <https://www.independent.co.uk/news/uk/home-news/modern-slavery-trafficking-detention-home-office-b1820549.html>

¹³ Helen Bamber Foundation, *et al.* (2022), *ibid*, note 11, p.17.

¹⁴ Independent Chief Inspector of Borders and Immigration (ICIBI) (2021), “Second annual Inspection of Adults at Risk in Immigration Detention - July 2020-March 2021, 7.23, 7.30. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027583/E026836_02_ICIBI_Adults_at_Risk_Detention_Accessible.pdf

¹⁵ Helen Bamber Foundation (2022), *The Impact of Immigration Detention on Mental Health - research summary* (2022). Available at: <https://www.helenbamber.org/resources/research/impact-immigration-detention-mental-health-systematic-review>

¹⁶ Helen Bamber Foundation, *et al.* (2022), *ibid*, note 11, p.17.

¹⁷ For a fuller list of related recommendations, see the Taskforce’s joint statement. Available at: <https://www.labourexploitation.org/about-us/taskforce-victims-trafficking-immigration-detention>

- **Survivors of trafficking receiving positive reasonable grounds decisions within detention should be immediately released into appropriate and secure accommodation; no recognised victims should be detained.**

Q5: Is the electronic tagging of asylum seekers a necessary and proportionate interference with their human rights?

Several taskforce members support trafficking survivors subjected to GPS tagging, and observe the experience is traumatic. Recent research led by Taskforce members correspondingly demonstrates that GPS tagging seriously damages physical and mental health.¹⁸ It is therefore especially inappropriate and disproportionate to tag survivors of trafficking, who are already dealing with profound trauma.

GPS tagging for immigration control must be abandoned. Trafficking survivors must never be tagged.

Q 9: Is there any evidence that modern slavery laws are being abused by people “gaming” the system?

In claiming widespread abuse of the system, government officials variously misuse and ignore the available data.¹⁹ The Home Office have repeatedly been asked for data to support these claims, and have failed to provide it.²⁰

In 2021, 90% of Reasonable Grounds decisions, and 91% of Conclusive Grounds decisions were positive.²¹ These are Home Office decisions. As noted, of people referred into the NRM within detention, over 90% are found to be victims. There are no independent first responders in detention, and individuals cannot self-refer into the NRM: only the Home Office can refer people into the NRM within detention. Taskforce members frequently support victims who go unidentified for long periods, suggesting these figures represent the tip of the iceberg. Victims

¹⁸ Bail for Immigration Detainees, Medical Justice, and Public Law Project (2022), *Every Move you make: the human cost of GPS tagging in the immigration system* (2022). Available at: <https://www.biduk.org/articles/research-reveals-inhumane-effects-of-gps-tagging-on-migrants>

¹⁹ See joint letter to Ed Humpherson (Office for Statistics Regulation) dated 26 October 2022, led by Taskforce member After Exploitation. Available at: <https://afterexploitation.files.wordpress.com/2022/10/osr-letter-modern-slavery-data-final-1.pdf>

²⁰ Office for Statistics Regulation (2022), *Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics*. Available at: <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-jennifer-rubin-use-of-national-referral-mechanism-statistics/>

²¹ UK Government. Home Office (2022), *Official Statistics. Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021#:~:text=In%202021%2C%20the%20NRM%20received,referrals%20since%20the%20NRM%20began>

are identified in detention despite the hostile context creating barriers to disclosure and a conflicting interest in immigration control on the part of those identifying them.

Moreover, the latest Duty to Notify figures, documenting people who have indicators of trafficking but decline to enter the NRM, are the highest on record.²² This suggests there are many victims who, even once identified, do not consent to an NRM referral. This is likely due to fear or not seeing the NRM system as in their interest.²³ Furthermore, trafficking survivors and others in the asylum system frequently have limited understanding of trafficking and are very unlikely to know the legal framework around it. Many stand accused by the Government's sweeping statements of gaming a system they barely know exists, or have actively declined to enter.²⁴

Trafficking survivors experience re-trauma from immigration enforcement and the criminal justice system.²⁵ Far from people gaming the modern slavery system, the system is abusing those it should help.

Q10: To what extent has the enactment of the Nationality and Borders Act 2022 had an impact on the human rights of asylum seekers?

Much of part 5 of the Nationality and Borders Act 2022 (The Act) (modern slavery) has not yet been enacted. The Detention Taskforce has already highlighted concerns that:²⁶

The Act raises the threshold of proof for victim identification. It also states that if a person provides 'late' evidence, 'without good reason' the Home Office can refuse their trafficking claim on the basis of 'damaged credibility'. Victims face huge barriers to disclosure, as Home Office guidance recognises. Detained victims are especially unlikely to feel safe enough to disclose a history of trafficking to those detaining them. Recently announced plans to impose an even greater burden of proof continue a trend of obstructing victim identification.²⁷

²² 1,160 in the 3rd quarter of 2022 - UK Government. Home Office (2022), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 3 2022 – July to September*. Available at: <https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2022-july-to-september>.

²³ Details of how the support system for victims requires improvement can be found in the Detention Taskforce (June 2022) Submission to the Justice Committee, Pre-legislative scrutiny of the of the Draft Victims Bill. Available at: https://www.labourexploration.org/sites/default/files/publications/Detention%20Taskforce%20-%20Draft%20Victims%20Bill%20Submission_10.06.22.pdf

²⁴ For examples of government statements, see The Independent "'No evidence' of Suella Braverman's claims migrants are 'gaming' slavery laws, watchdog says" (10th December 2022).

²⁵ Helen Bamber Foundation (2022), *ibid.*, note 16.

²⁶ Detention Taskforce (2022), Briefing for House of Lords Committee Stage – Nationality and Borders Bill. Available at: <https://www.labourexploration.org/publications/detention-taskforce-briefing-house-lords-committee-stage-%E2%80%93-nationality-and-borders-bill>

²⁷ For these plans, see the Prime Minister's statement in parliament, made on 13.12.2022, available at: <https://www.gov.uk/government/speeches/pm-statement-on-illegal-migration-13-december-2022>.

The Act punishes asylum seekers for arriving informally, including by introducing new criminal penalties for arriving without documents. This places trafficking victims with precarious immigration status at risk of prosecution should they come forward to authorities and is open to misuse as a form of control by exploiters.

Victims are wrongly disqualified from support: The Act disqualifies people from protections afforded to trafficking survivors if they are a ‘threat to public order’, defined to include anyone subject to deportation; or viewed by the authorities to have made a claim ‘in bad faith’.²⁸ The term ‘bad faith’ is worryingly vague and the exclusion of those subject to deportation – i.e. with a sentence of 12 months or more – is at best far too wide. Furthermore, this risks penalising victims wrongly convicted of offences they were compelled to commit under exploitation. For example, Taskforce members support victims forced to work in cannabis factories and criminalised for this when the factories come to the authorities’ attention.²⁹

- **Disqualifications of victims from support and the narrowing of options for identification introduced under The Act must be abandoned.**
- **Penalties for entering the UK without documents must be abandoned.**

15/12/2022

²⁸ Nationality and Borders Act 2022, section 63. Available at: <https://www.legislation.gov.uk/ukpga/2022/36/section/63/enacted>.

²⁹ See JRS UK (2019), “Survivors of Trafficking in Immigration Detention. Available at: <https://www.jrsuk.net/wp-content/uploads/2019/06/Topical-Briefing-Survivors-of-Trafficking-in-Immigration-Detention-June-2019.pdf>; Helen Bamber Foundation, *et al.* (2022), *ibid*, note 11, p.46.